INVESTMENT COMPANY INSTITUTE

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TESTIMONY OF FORMER BANK AND SECURITIES REGULATORS ON EXTENSION OF CRA TO MUTUAL FUNDS

September 17, 1993 TO: BOARD OF GOVERNORS NO. 81-93 RE: TESTIMONY OF FORMER BANK AND SECURITIES REGULATORS ON EXTENSION OF CRA TO MUTUAL FUNDS ____ As we previously reported, in recent months some members of the banking industry and others have called for the imposition of the Community Reinvestment Act on mutual funds. (See Memorandum to Board of Governors No. 65-93, dated July 27, 1993; Memorandum to Board of Governors No. 76-93, dated August 31, 1993; Memorandum to Board of Governors No. 80-93, dated September 15, 1993.) The Institute has worked vigorously to oppose any effort to impose CRA on mutual funds. As we previously reported, then-Acting SEC Chair Mary Schapiro sent a letter to the Department of the Treasury opposing extension of CRA to mutual funds. (See Memorandum to Board of Governors No. 53-93, dated June 9, 1993.) More recently, several former bank and securities regulators, testifying before the Senate Committee on Banking, Housing and Urban Affairs, expressed their reservations about such an extension of CRA. Former Chairman of the Securities and Exchange Commission Richard Breeden strongly opposed such extension. He noted that "banks have felt that they were at a regulatory disparity forever," and when complaining about their competition banks rarely offer "to drop deposit insurance" or "access to the Fed's discount window or the many special advantages that banks have in the financial marketplace." Breeden emphasized that the CRA "is a concept that is utterly foreign and almost impossible to conceive how or why it would apply to mutual funds." He cited the fact that funds operate nationwide, not in specific locales, and that they are governed by independent directors responsible "to make investments 100 percent in the sole interests of the shareholders, not to get into other forms of investing that wouldn't be in the shareholders' best interest." He added that by extending CRA to mutual funds Congress would be "expropriating a portion of the assets of the shareholders," which would be "undesirable." Breeden concluded: So while there's an easy intention to say well, if we have a law in one area, maybe we ought to apply it to everybody . . . you do have to look at the differences in the underlying rationale for some of those laws. And in a mutual fund you don't have geographic protections, you don't have branching limitations, you don't have chartering, you don't have deposit insurance, you don't have a discount window, you don't have all the attributes that justified in the view of Congress asking banks to then make some special efforts and then have some special programs in their own local area. Former Comptroller of the Currency John Heimann expressed concern that banks have been at an increasingly competitive disadvantage. He nonetheless noted "the big difference" between banks and mutual funds is that "commercial banks and thrifts have had the benefit of deposit insurance and . . . the benefit of access to a payments system . . . and of course the discount window." Heimann called it "simplistic" to argue that Congress should "put everybody in jail to solve the competitive problem." Former Governor of the Federal Reserve System Andrew Brimmer stated that the CRA is "really concerned about lending, not investment." He said that CRA was passed in the belief that "a number of the depository institutions were redlining with respect to draining funds out of the community and not relending into the community, particularly in central cities." He noted that mutual funds "raise funds not in local markets but in general and they deploy those funds in general." He said that the CRA is not the cause of the banks' competitive burdens and that banks are "looking at the wrong target." Former Chairman of the Federal Deposit Insurance Corporation William Seidman agued that CRA "is antiquated . . and no longer ought to apply to the banking industry either. The banking industry is no more local than the mutual fund is." He pointed out that, with interstate banking, banks "will become national institutions in how they reinvest in their community." He said the Administration's plan of having special lending facilities for inner cities was a "hopeful" development. He concluded, "I would just say to your bankers, the worst thing I could think they could do would be to try to apply it to mutual funds." A copy of the relevant portions of the hearing transcript is attached. Matthew P. Fink President Attachment

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