

MEMO# 7486

December 15, 1995

INSTITUTE TESTIFIES ON STATE-FEDERAL REGULATION OF MUTUAL FUNDS

December 15, 1995 TO: ACCOUNTING/TREASURERS COMMITTEE No. 57-95 BOARD OF GOVERNORS No. 79-95 FEDERAL LEGISLATION MEMBERS No. 26-95 MEMBERS - ONE PER COMPLEX No. 109-95 PUBLIC INFORMATION COMMITTEE No. 49-95 SEC RULES COMMITTEE No. 128-95 STATE LIAISON COMMITTEE No. 33-95 RE: INSTITUTE TESTIFIES ON STATE-FEDERAL REGULATION OF MUTUAL FUNDS

In early December, Institute President Matthew P. Fink testified before the House of Representatives Telecommunications and Finance Subcommittee on H.R. 2131, the "Capital Markets Deregulation and Liberalization Act of 1995", on federal-state regulation of mutual funds. (Also, see Memorandum to Board of Governors No. 73-95; Federal Legislation Members No. 23-95; Members - One Per Complex No. 93-95; SEC Rules Committee No. 114-95; and State Liaison Committee No. 31-95, dated October 26, 1995.) Institute Testimony In its testimony, the Institute addressed the federal-state regulatory proposals in H.R. 2131. Calling the measure an extremely important initiative, the Institute described it as offering "the opportunity to revise a system that has resulted in regulatory conflict, duplication, inefficiency, and, most importantly, harm to investors" and urged Congress to achieve a rational reallocation of regulatory powers between the Federal government and state securities regulators. The Institute strongly encouraged Congress to move without delay to place sole authority for review of mutual fund prospectuses and advertisements in the hands of the SEC and NASD. Likewise, the Institute recommended that authority over investment limitations and other substantive requirements should be established exclusively at the federal level. The Institute noted that the states play a critical role in fraud and sales practice enforcement and investor education, and that redefining the federal-state partnership as the Institute recommends would allow states to focus more resources on these areas. The Institute also advocated that states should retain the authority to receive notice filings and fees from mutual funds, thereby providing the revenues necessary to support enforcement and educational programs. The Institute emphasized that the time was ripe for Congressional action regarding mutual fund regulation, pointing to the broad general support for the proposal and the exhaustive amount of study that has already been given to the issue. -2- Other Testimony Other witnesses were in agreement with legislation to redefine the federal-state relationship for securities regulation, particularly with regard to the mutual fund industry. The Securities Industry Association, the American Bankers Association, and the Managed Futures Association, expressed strong support for such legislation. In addition, Professor Mark Sargent (University of Maryland School of Law) said states should focus on anti-fraud enforcement, and monitoring the activities of broker-dealers, leaving all other aspects of the securities industry to the federal government. Professor Rutherford Campbell

(University of Kentucky, School of Law) agreed, adding that state bureaucrats should not control the flow of capital into the market. (In testimony on H.R. 2131 in November, SEC Chairman Arthur Levitt also stated that reallocating the federal-state regulation of mutual funds could be done "without compromising investor protection." Levitt proposed that "investment companies [would] be exempt from state review, but [would] continue to file documents with the states and pay the same fees...the states would still enforce sales practice violations.") Although Dee Harris, President of NASAA, stated his general opposition to "sweeping federal pre-emption of state securities laws," he acknowledged the national character of the mutual fund industry and indicated an openness to discussion of a federal resolution of state review of investment company offerings. Harris explained the work of a newly appointed Task Force to study the issue of federal-state regulation. When questioned by Chairman Fields concerning the timing of any recommendations from the Task Force, Mr. Harris offered that the Task Force expected to complete its work in April but may be willing to move forward earlier on changes in discrete areas of state securities laws. We will keep you informed as this matter develops. Copies of the Institute's oral and supplemental testimony are enclosed. For those members with access privileges, this memo, without the attached testimony, can be found on ICINet. For additional information, please contact as follows: Legislative Affairs 202-326-5890 Media Relations 202-326-5860 ICINET 202-326-5933 Julie Domenick Senior Vice President Public Affairs Attachment

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