

MEMO# 3472

January 23, 1992

INSTITUTE TESTIFIES IN SUPPORT OF H.R. 3503, THE "FAIR TRADE IN FINANCIAL SERVICES ACT OF 1991"

January 23, 1992 TO: BOARD OF GOVERNORS NO. 7-92 INTERNATIONAL COMMITTEE NO. 2-92 SEC RULES COMMITTEE NO. 5-92 RE: INSTITUTE TESTIFIES IN SUPPORT OF H.R. 3503, THE "FAIR TRADE IN FINANCIAL SERVICES ACT OF 1991"

The Institute testified yesterday before the Subcommittee on International Development, Finance, Trade and Monetary Policy of the House Committee on Banking, Finance and Urban Affairs in support of H.R. 3503, the "Fair Trade in Financial Services Act of 1991." Copies of the Institute's written statement and oral testimony, as well as an excerpt from the testimony of another witness referenced in the Institute's oral testimony, are attached. The proposed legislation is very similar to several bills on which the Institute previously has testified. (See Memorandum to Board of Governors No. 55-91, SEC Rules Committee No. 43-91 and International Committee No. 17-91, dated July 30, 1991; Memorandum to Board of Governors No. 28-91, SEC Rules Committee No. 24-91 and International Committee No. 5-91, dated April 29, 1991; Memorandum to Board of Governors No. 25-90, SEC Rules Members No. 27-90 and International Funds Task Force No. 4-90, dated April 6, 1990.) Like the earlier bills, H.R. 3503 would, among other things, authorize the Securities and Exchange Commission to deny registration as an investment adviser to a person from a foreign country that, according to a finding by the Treasury Department, discriminates against U.S. advisers by failing to offer the same competitive opportunities, including effective market access, as are available to domestic investment advisers. However, under H.R. 3503, financial institutions from EC countries or Canada generally would be excluded from this provision. The Institute's testimony points out that foreign investment advisers receive national treatment and equal access to the market in the U.S., although American advisers are not always granted equal market access abroad, as illustrated by the - 2 - experience of U.S. advisers in Korea and Japan. Thus, in its oral testimony, the Institute expressed its absolute disagreement with the testimony of a Japanese law professor that "foreign entry into the U.S. mutual fund industry has been restrictive, too." The Institute's testimony notes that U.S. advisers generally have been accorded national treatment in EC countries and Canada with respect to managing domestic funds to be marketed those countries. The testimony expresses the Institute's concern, however, that by excluding institutions from those countries from the possible application of sanctions, the bill would not provide a mechanism for ensuring that the EC and Canada will continue to accord U.S. investment advisers national treatment in the future. Therefore, the testimony urges the Subcommittee to consider narrowing these exclusions. The testimony states that the Fair Trade in Financial

Services Act would foster the opening of global mutual fund and investment advisory markets to effective and equitable international competition and supports its enactment, subject to the recommendation to narrow the exclusions described above. We will keep you informed of developments. Frances M. Stadler Assistant General Counsel Attachments

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