The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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April 29, 1991

INSTITUTE TESTIFIES IN SUPPORT OF THE "FAIR TRADE IN FINANCIAL SERVICES ACT OF 1991"

April 29, 1991 TO: BOARD OF GOVERNORS NO. 28-91 SEC RULES COMMITTEE NO. 24-91 INTERNATIONAL COMMITTEE NO. 5-91 RE: INSTITUTE TESTIFIES IN SUPPORT OF THE "FAIR TRADE IN FINANCIAL SERVICES ACT OF 1991"

_____ The Institute recently testified before the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance and Urban Affairs in support of Title IV of S. 347, the "Fair Trade in Financial Services Act of 1991." The bill 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. A copy of the Institute's written statement is attached. As you may recall, the Institute testified in favor of an earlier version of the same legislation before the Senate Banking Committee last year. (See 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.) At the end of last year, the legislation (which by that point was being considered as an amendment to the Defense Production Act Amendments of 1990) was defeated due to certain objections to other provisions of the Defense Production Act Amendments. The Institute's testimony points out that although foreign investment advisers receive national treatment and equal access to the market in the U.S., American advisers are not always granted equal market access abroad, as illustrated by the experience of U.S. advisers in Korea and Japan. The testimony notes that efforts to achieve the economic unification of the European Community have created new opportunities for U.S. fund managers seeking to establish and market funds within the EC. In addition, to date, U.S. fund managers generally have been accorded national treatment with respect to such activities. On the subject of U.S. mutual funds seeking to market their shares abroad, however, the testimony notes that legal and practical obstacles have denied U.S. funds effective market access. The testimony indicates that U.S. and European Community industry officials are currently discussing a possible reciprocal sales agreement between the U.S. and the EC, modeled on the EC Directive regarding undertakings for collective investment in transferable securities, or UCITS. Such an agreement would permit cross-marketing of mutual funds under a consistent body of regulation, based on a common level of investor protection. The testimony states that whether any such reciprocal agreement would also provide equal market access will be demonstrated only by actual experience. Thus, the additional authority that would be

provided by the U.S. government under Title IV of S.347 is reassuring. In addition to market access, successful competition by U.S. funds abroad would require changes in certain U.S. tax provisions that currently create disincentives for foreign investors. We will keep you informed of developments. Frances M. Stadler Assistant General Counsel Attachment

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