

**MEMO# 3857**

June 16, 1992

## **INSTITUTE TESTIFIES ON A DRAFT HOUSE BILL TO IMPROVE INVESTMENT ADVISER OVERSIGHT**

June 16, 1992 TO: BOARD OF GOVERNORS NO. 42-92 SEC RULES MEMBERS NO. 24-92 INVESTMENT ADVISER MEMBERS NO. 27-92 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 19-92 RE: INSTITUTE TESTIFIES ON A DRAFT HOUSE BILL TO IMPROVE INVESTMENT ADVISER OVERSIGHT \_\_\_\_\_ The

Institute testified on June 10 before the House Telecommunications and Finance Subcommittee of the Energy and Commerce Committee on a draft bill to amend the Investment Advisers Act of 1940 to improve the supervision of investment advisers. In its testimony, the Institute expressed its view that the existing regulatory scheme under the Advisers Act is generally adequate, but that the SEC lacks the necessary resources to enforce it. Therefore, the Institute stressed the importance of investment adviser legislation that focuses on the overriding problem -- the lack of adequate SEC resources to inspect investment advisers. The Institute expressed support for the provisions in the draft bill requiring: increased SEC funding targeted to investment adviser inspections and to addressing the problem of persons failing to register as required under the Act, a bonding requirement and a suitability requirement. In addition, the Institute supported the provision concerning inspections of investment advisers, which requires the SEC to establish a schedule for the regular inspection of advisers based on factors that the SEC determines increase the need for inspections of those advisers (such as frequency of customer complaints and custody of funds). This approach correctly recognizes that factors other than the amount of assets an adviser has under management are very relevant with respect to "high risk" categorization of advisers. The Institute strongly opposed amending the Advisers Act to establish a private right of action against investment advisers. In its testimony, the Institute stated that such a cause of action would provide no additional benefits since civil remedies already exist to redress harm suffered by investors as a result of fraudulent acts committed by investment advisers, yet it would have a severe impact on investment advisers. The Institute also noted that there were a number of serious problems with the specific provision in the draft bill, including that it fails to exclude suits against investment advisers to SEC registered investment companies, for which there already exist express private remedies under the Investment Company Act and a well- developed body of case law. A copy of the Institute's testimony and the draft bill is attached. We will keep you informed of developments on this matter. Amy B.R. Lancellotta Associate Counsel

Attachment

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