

MEMO# 4257

November 16, 1992

SEC COMMISSIONER ROBERTS SPEAKS TO BANKING COMMUNITY ON RETIREMENT PLANS, OFF-THE-PAGE SALES AND CHINESE WALLS

November 16, 1992 TO: BOARD OF GOVERNORS NO. 81-92 PENSION MEMBERS NO. 33-92 SEC RULES MEMBERS NO. 62-92 RE: SEC COMMISSIONER ROBERTS SPEAKS TO BANKING COMMUNITY ON RETIREMENT PLANS, OFF-THE-PAGE SALES AND CHINESE WALLS

In a recent speech at the 1992 National Mutual Fund Conference of the Bank Securities Association, SEC Commissioner Richard Roberts expressed his views on (1) the need for participants in participant-directed defined contribution plans to receive more information concerning their investment choices, (2) the Division of Investment Management's proposal to permit "off-the-page" mutual fund sales and (3) conflict of interest issues for banks involved in mutual fund activities. A copy of Commissioner Roberts' speech is attached and his remarks are summarized below.

Retirement Plans Commissioner Roberts expressed his support for the recommendation made by the Division of Investment Management in its study of investment company regulation published in May 1992 (the "Study") that the Commission propose legislation to remove the current exception under the Securities Act of 1933 for collective trust funds and separate accounts sold to participants in defined contribution retirement plans who direct their own investments. The Institute has strongly supported this recommendation.

Commissioner Roberts stated that it is important for participants in participant-directed defined contribution plans to have adequate information about their investment options because they make the investment decision and bear the investment risk. He noted that the recent adoption of regulations under Section 404(c) of ERISA will at least partially close the information gap that currently exists, but explained that "even with the new rules and exemptions in place, an information gap will continue to exist." Commissioner Roberts concluded that "legislation remains necessary to ensure full and fair disclosure to every pension plan participant responsible for investing his or her own retirement funds." Off-the-Page Sales Commissioner Roberts discussed the proposal in the Study to permit investors to purchase mutual fund shares directly from certain advertisements (i.e., "off-the-page"). He expressed general support for the staff's recommendation and stated his belief that if it is implemented properly, any investor protection concerns can be appropriately handled. (The Institute supports this recommendation and has submitted to the SEC staff proposed rule amendments to permit "off-the-page" sales, subject to certain conditions.)

Conflict of Interest Issues The final topic covered in Commissioner Roberts' speech was conflict of interest problems that arise when banks become involved in the investment company or investment advisory business. For example, he stated, there may be conflicts between the

duties of a bank's commercial loan department to its customers and the duties of the bank's trust or advisory department to its clients. Commissioner Roberts noted that there were provisions in last year's banking bill (which did not pass) that would have addressed some of the potential conflicts. He also suggested that one way for banks involved in the mutual fund or investment advisory business to avoid certain conflict of interest problems is through the use of "Chinese Wall" procedures. After discussing several legal restrictions on insider trading, Commissioner Roberts commented that the staff of the Division of Investment Management, in connection with conducting examinations, has increased its focus on firms' internal procedures for controlling the use of nonpublic information and for preventing inherent conflicts of interest from harming the interests of clients. He then mentioned several specific items that the staff is now examining and evaluating as part of its investment company examination program. According to Commissioner Roberts, these include funds' written policies and procedures with respect to the control of information, the organizational structure of the firm and its investment practices and businesses (to identify potential sources of nonpublic information), policies and procedures concerning employees' personal securities transactions, education of employees about insider trading, enforcement of policies, and the timing of certain employee, fund or adviser transactions as compared to the timing of news reports and press releases. Matthew P. Fink President Attachment