

MEMO# 11412

November 19, 1999

HOUSE AND SENATE PASS ELECTRONIC SIGNATURES BILLS

[11412] November 19, 1999 TO: BOARD OF GOVERNORS No. 72-99 FEDERAL LEGISLATION MEMBERS No. 26-99 PRIMARY CONTACTS - MEMBER COMPLEX No. 103-99 PUBLIC INFORMATION COMMITTEE No. 47-99 RE: HOUSE AND SENATE PASS ELECTRONIC SIGNATURES BILLS

On November 9, the House of Representatives passed H.R. 1714, the "Electronic Signatures in Global and National (E-SIGN) Commerce Act," by a 356-66 vote. The bill provides for the acceptance of electronic signatures and records in interstate commerce, including securities transactions, by according electronic signatures and records the same legal effect and validity as written ones. However, the bill also requires that consumers consent ("opt-in") before electronic records can be used to provide disclosures, notices or other information that a law requires to be "in writing." The bill does not apply this opt-in provision to disclosures and other records that are required under the securities laws and which, therefore, are subject to SEC regulation. Importantly, H.R. 1714 contains exceptions for federal regulations that require records be filed or maintained in a particular format, and for existing SEC regulations that require writings. Furthermore, state legislatures may supersede the bill by enacting the Uniform Electronic Transactions Act (UETA) or other laws, provided that those laws are consistent with H.R. 1714 and satisfy other certain conditions. The bill directs the Secretary of Commerce to conduct several studies, including one, to be completed within five years, on the status of state laws regarding the use of electronic signatures and records. Another study, to be completed in 18 months, compares the effectiveness of delivering electronic records to the effectiveness of delivering written records via the U.S. mail and private delivery services. The Senate passed, S. 761, the "Millennium Digital Commerce Act," on November 19. This bill also would provide for the validity and legal effect of electronic signatures in interstate commerce. However, as passed, the Senate bill addresses only the use of electronic signatures in connection with the formation of contracts or agreements. This omits the use of electronic signatures on records, which is problematic to the mutual fund industry, particularly with the establishment of retirement accounts. A House and Senate conference committee will meet early next year to resolve the differences between the two bills. We will keep you informed of further developments. Matthew P. Fink President