

MEMO# 2066

July 27, 1990

COMMISSIONER SCHAPIRO TESTIFIES ON PROPOSED INVESTMENT ADVISER LEGISLATION

July 27, 1990 TO: INVESTMENT ADVISER MEMBERS NO. 37-90 INVESTMENT ADVISER
ASSOCIATE MEMBERS NO. 33-90 RE: COMMISSIONER SCHAPIRO TESTIFIES ON PROPOSED
INVESTMENT ADVISER LEGISLATION

SEC Commissioner Mary Schapiro testified on July 18th on The Investment Advisors Disclosure and Enforcement Act of 1990 (H.R. 4441) before the Telecommunications and Finance Subcommittee of the House Energy and Commerce Committee. Attached is a copy of the testimony. Commissioner Schapiro testified that while the Commission supports the objectives of the bill, there were a number of provisions that should be modified. She expressed support for creating a private right of action for violations of proposed provisions that would require an adviser to have a suitable basis for its recommendations and that would prohibit an adviser and its employees from making any misrepresentations or omissions about its qualifications, services or fees. However, she stated there should not be a private right of action for violations of provisions that would require certain disclosures to clients such as disclosure that advisory fees will be offset by commissions. Schapiro stated that with respect to the bill's expansion of regulation to cover additional financial planners, the Commission does not support regulating persons who do not give advice about securities. In addition, while supporting the objectives of the proposed disclosure requirements in the bill, Schapiro testified that the Commission should implement those objectives through rulemaking instead of including detailed disclosure requirements in the statute. In addition, Schapiro commented on the Commission's proposal submitted to Congress last year to create an adviser SRO. Her testimony indicates that the Commission is reconsidering its position on the SRO concept. She testified that direct Commission regulation is preferable to a self-regulation scheme. However, if the Commission's resources are not increased, the creation of an SRO should still be considered. Schapiro also commented on the GAO's study on SEC regulation of the investment adviser industry. (See Memorandum to Investment Adviser Members No. 32-90 and Investment Adviser Associate Members No. 29-90, dated July 18, 1990.) She vigorously defended the Commission against any implication raised in the report that the Commission is not doing an exemplary job within its existing budgetary constraints. Schapiro noted that the concerns raised by the report resulted from defects in the Advisers Act and the inadequacy of the Commission's resources. We will keep you informed of developments. Amy B. Rosenblum Assistant General Counsel Attachment

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