

MEMO# 5551

February 4, 1994

CHAIRMAN LEVITT'S REMARKS ON PRIVATE SECURITIES LITIGATION

February 4, 1994 TO: BOARD OF GOVERNORS NO. 13-94 SEC RULES COMMITTEE NO. 10-94
RE: CHAIRMAN LEVITT'S REMARKS ON PRIVATE SECURITIES LITIGATION

At a recent meeting of the Securities Regulation Institute, SEC Chairman Arthur Levitt expressed the need for appropriate legislation to limit private securities litigation. While recognizing the important role that private litigation serves as a supplement to the Commission's enforcement activities and as the primary vehicle for compensating defrauded individuals, Chairman Levitt stated, "Perhaps investors in the aggregate would be better off if we placed more stringent limitations on access to the courts and penalized those who abuse the litigation system." Specifically, Chairman Levitt recommended: (1) adding to Section 10(b) of the Securities Exchange Act of 1934 a fee-shifting provision that would expressly authorize courts to require that plaintiff's counsel pay for the cost of defending a case brought without any substantial basis in fact or law; (2) implementing measures to prevent law firms from using professional plaintiffs or otherwise maintaining an inventory of shareholders to serve as nominal plaintiffs in derivative suits; and (3) eliminating the overlap between private remedies under RICO and those available under the federal securities laws. In addition to seeking these legislative reforms, Chairman Levitt stated that "the SEC has a responsibility to see what it can do on its own to minimize unproductive securities litigation." In this regard, he suggested that the SEC encourage judges to make greater use of their existing authority, such as by filing an amicus brief in support of an appropriate motion to dismiss. He also recommended that the Commission use its interpretive authority to clarify the federal securities laws, which, in turn, would provide greater certainty to business transactions and allow issuers to avoid litigation or at least to dispose of lawsuits at an early stage. Finally, in discussing the Commission's enforcement program, Chairman Levitt stated that steps are being taken to assist the Division of Enforcement and the regional offices in making their enforcement activities more efficient. One step the Commission is taking is streamlining the process for approving formal orders of investigation and subpoena enforcement actions. A copy of Chairman Levitt's remarks is attached. We will keep you informed of further Commission announcements in this area.

Paul Schott Stevens General Counsel Attachment