

**MEMO# 5793**

April 15, 1994

# **INSTITUTE, CHAIRMAN LEVITT TESTIFY IN SUPPORT OF FUNCTIONAL REGULATION (H.R. 3447); OCC, FRB, ABA OPPOSE**

1April 15, 1994 TO: BOARD OF GOVERNORS NO. 32-94 FEDERAL LEGISLATION COMMITTEE  
NO. 9-94 FEDERAL LEGISLATION MEMBERS NO. 7-94 SEC RULES COMMITTEE NO. 47-94  
INVESTMENT COMPANY ACT REFORM ISSUES GROUP BANK LEGISLATIVE ISSUES GROUP  
BANK INVESTMENT MANAGEMENT MEMBERS NO. 19-94 RE: INSTITUTE, CHAIRMAN LEVITT  
TESTIFY IN SUPPORT OF FUNCTIONAL REGULATION (H.R. 3447); OCC, FRB, ABA OPPOSE

On April 14, Institute President Matthew P. Fink, SEC Chairman Arthur Levitt, along with other industry regulators and representatives testified before the House Telecommunications and Finance Subcommittee of the Energy and Commerce Committee on H.R. 3447, the "Securities Regulatory Equality Act of 1993." H.R. 3447 is the functional regulation bill introduced with the bipartisan support of the Energy and Commerce Committee leadership: Chairmen Dingell and Markey and Ranking Republicans Moorhead and Fields. The legislation would, among other things, provide for regulation by the SEC of all bank securities activities, including mutual fund activities, and would require that such activities be placed in a separate affiliate. INSTITUTE TESTIMONY In his testimony, Mr. Fink expressed Institute support for H.R. 3447 and for legislation that would authorize banks to sponsor and underwrite mutual funds and would permit bank personnel to serve on fund boards. Mr. Fink testified that H.R. 3447 embraces a uniform regulatory structure that has three key features: ! First, all investors in mutual funds have been -- and should continue to be -- protected by a uniform set of investor protection standards under the federal securities laws. 2! Second, there have been -- and should continue to be -- clear lines of authority and responsibility in the SEC over all aspects of mutual fund activity -- whether engaged in by investment advisers, broker-dealers, insurance companies, commercial firms, financial planners, or anyone else -- including banks. ! Third, all participants in the mutual fund industry have been -- and should continue to be -- held to the same high standards of supervision and enforcement administered by the SEC. Mr. Fink also noted that "the appropriate response to issues raised by bank entry into the mutual fund business is not ad hoc regulation under banking law. It is not undercover investigations by regulators disguised as customers. Instead, Congress should modernize the federal securities laws to ensure that investors are protected through a system of functional regulation. H.R. 3447 would serve the paramount goal of investor protection." Appearing on the panel with Mr. Fink were Richard H. Jones, President of Fleet Investment Services; W. Keith Smith, Vice Chairman of Mellon Bank Corporation; Marc E. Lackritz, President of the Securities Industry Association; and Philip Feigin, Securities

Commissioner for the State of Colorado, representing NASAA. All supported H.R. 3447, except for Mr. Jones who opposed the bill. REGULATOR TESTIMONY SEC Chairman Levitt, Comptroller of the Currency Eugene Ludwig, FRB Governor John LaWare, and Joseph Hardiman, of the NASD constituted the panel of regulators. In his testimony, Chairman Levitt noted that the Commission has long supported the principle that securities activities need to be subject to one uniform set of rules, consistently applied by a single expert regulator to all market participants, regardless of whether those participants are banks or securities firms. He urged Congress to take quick action and stated, "In enacting H.R. 3447, Congress would replace an outdated regulatory framework with a system of functional regulation responsive to the needs of the 1990s and beyond." Mr. Hardiman testified likewise. Chairman Levitt and NASD President Hardiman were equally strong in endorsing H.R. 3447, noting that the continued existence of bank exemptions in the securities laws will make for regulatory confusion and duplication, thereby threatening investor protection standards. However, Messrs. Ludwig and LaWare opposed H.R. 3447, arguing that bank regulators have historic and "safety and soundness" authority to regulate all bank activities, including securities/mutual fund activities. More disturbing in Mr. Ludwig's testimony was the theoretical proposition that bank regulators could also have regulatory authority over "depository activities" of nondepositories, such as cash management accounts, savings accounts in the form of mutual fund shares, and access to the FRB discount window. Additionally, Mr. Ludwig noted the absence of reserve requirements on securities firms transaction accounts and the lack of applicability of social-responsibility laws as competitive advantages enjoyed by mutual funds and securities firms. Both Messrs. Ludwig and LaWare also objected to H.R. 3447 because it does not propose a broad, comprehensive approach that permits banking organizations to engage in the full range of securities activities that nonbank firms may conduct and that provides appropriate exceptions so as not to curtail unnecessarily certain traditional bank securities activities. A copy of the Institute testimony is attached. We will keep you informed as this matter develops. If you wish additional information, please contact the Legislative Affairs Department at 202/326-5890. This memo can be found on FUNDS, the Institute's Fund User Network and Delivery System, under "Legislative Affairs; Washington Update." Julie Domenick Senior Vice President Legislative Affairs Attachments