The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 1827

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INSTITUTE TESTIMONY ON S.2028, THE "FAIR TRADE IN FINANCIAL SERVICES ACT OF 1990", BEFORE THE SENATE BANKING COMMITTEE

April 6, 1990 TO: BOARD OF GOVERNORS NO. 25-90 SEC RULES MEMBERS NO. 27-90 INTERNATIONAL FUNDS TASK FORCE NO. 4-90 RE: INSTITUTE TESTIMONY ON S.2028, THE "FAIR TRADE IN FINANCIAL SERVICES ACT OF 1990", BEFORE THE SENATE BANKING COMMITTEE _____ On April 5, the Institute testified before the Senate Banking Committee in support of S.2028, the "Fair Trade in Financial Services Act of 1990." The bill would, among other things, authorize the Securities and Exchange Commission to deny registration as an investment adviser to a person from a foreign country that, according to a finding by the Treasury Department, discriminates against U.S. advisers by failing to offer the same competitive opportunities, including effective market access, as are available to domestic investment advisers. A copy of the Institute's written statement is attached. The Institute's testimony notes that despite tremendous worldwide growth of the mutual fund industry in recent years and favorable prospects for future growth, the ability of U.S. mutual funds and investment advisers to export their products and services abroad will depend in large measure on the availability of equal competitive opportunity in foreign markets. The testimony further states that the U.S. government should have the appropriate tools to negotiate for and obtain equal access to financial markets for U.S. advisers and mutual funds. The testimony points out that although foreign investment advisers receive national treatment and equal access to the market in the U.S., American advisers are not always granted equal market access abroad, as illustrated by the experience of U.S. advisers in Japan. The Japanese statutory criteria governing issuance of investment trust management licenses are totally subjective and give the Ministry of Finance complete control over access to the market. Guidelines issued last December describing the standards and procedures for licensing new entrants reinforce the discretionary authority of the Ministry of Finance and impose significant burdens on license applicants (such as the establishment, in advance, of a sales network, that are particularly onerous for foreign firms. (See Memorandum to SEC Rules Committee No. 1-90, International Funds Task Force No. 1-90, dated January 2, 1990.) In addition, foreign investment advisers in Japan have only very limited access to non-investment trust clients. On the subject of U.S. mutual funds seeking to market their shares abroad, the testimony notes that legal and practical obstacles have denied U.S. funds effective market access. The testimony indicates that U.S. and European Community industry officials are currently discussing a possible reciprocal sales agreement between the U.S. and the EC, modeled on the EC Directive regarding undertakings for collective investment in transferable securities,

or UCITS. Such an agreement would permit cross-marketing of mutual funds under a consistent body of regulation, based on a common level of investor protection. The testimony states whether any such reciprocal agreement would also provide equal market access will be demonstrated only by actual experience. Thus, the additional authority that would be provided by the U.S. government under S.2028 is reassuring. In addition to market access, successful competition by U.S. funds abroad would require changes in certain U.S. tax provisions that currently create disincentives for foreign investors. We will keep you informed of developments. Frances M. Stadler Assistant General Counsel Attachment

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