

# Investment Company Institute

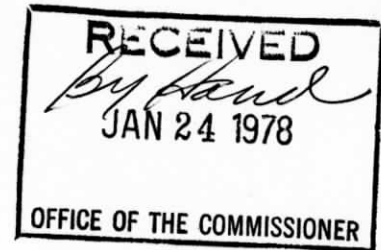
1775 K STREET N. W., WASHINGTON, D. C. 20006

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January 24, 1978

DAVID SILVER  
PRESIDENT

Honorable Harold L. Williams  
Chairman  
Securities and Exchange Commission  
500 North Capitol Street  
Washington, D. C. 20549



Dear Chairman Williams:

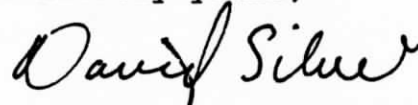
I am certain that the Commission is aware that in recent years the Supreme Court has decided a series of cases which make it clear that protections of the First Amendment extend to "commercial" speech. Enclosed herewith is an analysis of these cases and an opinion of Professor David L. Ratner of the Cornell Law School as to their applicability to mutual fund advertising and other promotional material.

The Institute does not contend, nor does Professor Ratner conclude, that the Commission has no authority over mutual fund advertising. However, we believe that there can be no question that the Supreme Court cases do draw the umbrella of the First Amendment over such advertising. As a practical matter, it now appears that the Commission's authority in this area is Constitutionally limited. Moreover, as Professor Ratner concludes, the burden is on the government to establish that a particular restriction, even though necessary to prevent fraud, represents the minimum possible intrusion on free expression.

It might be noted that we do not express any views on the authority of the Commission to control commercial speech during the normally short period of a typical securities offering by an industrial company. Certainly, this is very different from the continuous restrictions under which open-end mutual funds operate. As you know, there are some mutual funds over 50 years old which, since 1933, have been compelled to comply with the legal fiction that their shares are "new" issues. No other financial institution labors under the burden of such restrictions in offering its services to the investing public.

We believe that, regardless of whether there is agreement on the details of Professor Ratner's opinion, the Commission is mandated to take a fresh look at the advertising issue in light of the recent Supreme Court cases extending the protections of the First Amendment to commercial speech.

Sincerely yours,



David Silver

DS:jl

Enclosure

cc: Commissioners Evans

Karmel

Loomis

Pollack

Messrs. Harvey L. Pitt

Sydney H. Mendelsohn