

MEMO# 3335

December 10, 1991

LIABILITY FOR RULE 482 ADVERTISEMENTS

December 10, 1991 TO: SUBCOMMITTEE ON ADVERTISING NO. 7-91 1990s AD HOC
COMMITTEE RE: LIABILITY FOR RULE 482 ADVERTISEMENTS

In September 1991, the Institute submitted a letter to the Investment Companies Committee of the NASD asking for their support for changes to the rules under the Securities Act governing mutual fund advertising. Specifically, the Institute recommended that the current dichotomy between Rule 134 tombstone advertisements and Rule 482 advertisements (which can include performance data) be abandoned. The Institute's letter suggested two means of accomplishing this: by dropping the content limitations of Rule 134 or by dropping the requirement that Rule 482 advertisements only include information the "substance of which" appears in the fund's statutory prospectus. In a letter dated November 7, 1991, the NASD stated that the Investment Companies Committee would support the second alternative -- to eliminate the "substance of which" requirement -- provided that the liability attached to Rule 482 advertisements "would be appropriate". It is our understanding that the Committee believes that prospectus liability (the current standard) is the appropriate one for such advertisements. The November 7 letter requested that the Institute provide a formal statement of its position on this issue. The Institute's original comment letter on the SEC's release on investment company reform recommended that mutual fund advertisements generally not be subject to prospectus liability. However, it appears to be the case that the NASD (and, possibly, the SEC) will endorse the Institute's other proposed changes to Rule 482 only if the liability standard remains the same. Accordingly, attached is a draft letter to the NASD that states that the Institute does not believe that it is necessary to change the liability standard applicable to Rule 482 advertisements in connection with the removal of the "substance of which" requirement. (At the same time, the letter states that Rule 134 advertisements should remain not subject to prospectus liability.) If you have any comments on the draft letter, especially with respect to the proposed change in the Institute's position on liability, please call the undersigned no later than Thursday, December 19. Craig S. Tyle Deputy General Counsel Attachment

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