

MEMO# 12928

December 11, 2000

DRAFT ICI COMMENT LETTER ON NASDR'S PROPOSED RULE CHANGES CONCERNING RELATED PERFORMANCE INFORMATION

[12928] December 11, 2000 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 32-00 SEC RULES COMMITTEE No. 131-00 RE: DRAFT ICI COMMENT LETTER ON NASDR'S PROPOSED RULE CHANGES CONCERNING RELATED PERFORMANCE INFORMATION Attached for your review is a draft of the Institute's comment letter to the Securities and Exchange Commission in response to its request for comment on NASD Regulation Inc.'s proposed new Interpretive Material 2210-5 to permit certain types of related performance information in mutual fund sales material.¹ The proposal would generally permit, subject to certain conditions, three types of related performance information ("clone" performance, "predecessor" performance, and "comparison portfolio" performance) to appear in fund sales material. The draft comment letter is summarized below. Comments on the proposal must be filed with the SEC by December 26, 2000. Please provide your comments on the draft letter to the undersigned no later close of business this Friday, December 15, 2000 (phone: 202/326-5819; fax: 202/326-5839; e-mail: dvanslyke@ici.org). While the Institute's draft comment letter generally supports NASDR's proposal, it provides several recommendations to improve the effectiveness of the proposed rule and facilitate members' compliance. First, to avoid unduly restricting funds from advertising related performance information, the letter recommends deleting the proposed prohibition on material differences between the portfolios to which the related performance relates and the advertised fund (General Standard (d)(1)). Instead, it recommends that disclosure of any such differences should be required. The draft letter also recommends that funds advertising predecessor performance be required to present only one set of total return calculations, which would include the predecessor entity's performance, and makes several other specific comments regarding the presentation of predecessor performance. Additionally, the letter recommends, that for composites containing registered funds, the performance be presented net of those funds' fees and that disclosure that the performance record reflects the actual fees and expenses charged to such funds should be required. In addition, the letter recommends: (i) a refinement to the proposed requirement that a clone fund's investment policies be the same as those of the original fund; (ii) that a registered principal be permitted to verify that a composite 1 See Memorandum to Advertising Compliance Advisory Committee No. 31-00 and SEC Rules Committee No. 127-00, dated November 16, 2000 (transmitting the SEC's request for comment). 2complies with the proposed rule, rather than requiring verification by an independent third party; and

(iii) revising a provision prohibiting portfolio switching in comparison performance information to track the AIMR standards. Finally, the letter provides certain other technical comments. Doretha VanSlyke Zornada Assistant Counsel Attachment Attachment (in .pdf format)

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