

MEMO# 1769

March 13, 1990

INSTITUTE COMMENT LETTER ON PROPOSED AMENDMENTS TO FORM N-1A

March 13, 1990 TO: BOARD OF GOVERNORS NO. 17-90 SEC RULES MEMBERS NO. 21-90
OPERATIONS MEMBERS NO. 8-90 ACCOUNTING/TREASURERS MEMBERS NO. 7-90
ADVERTISING SUBCOMMITTEE FORM N-1A TASK FORCE RE: INSTITUTE COMMENT LETTER
ON PROPOSED AMENDMENTS TO FORM N-1A

As we previously informed you, the SEC has proposed amendments to Form N-1A, the mutual fund registration statement. (See Memorandum to Board of Governors No. 3-90, SEC Rules Members No. 2-90, Operations Members No. 2-90 and Accounting/Treasurer Members No. 1-90, dated January 9, 1990.) The proposed amendments would require funds to include prospectus disclosure of the name and background of all persons who "significantly contribute" to the fund's investment advice. The release also contained two alternative proposals concerning disclosure of past performance and would amend the per share table in the prospectus. Attached is a copy of the Institute's comment letter, which was submitted March 12, 1990. The Institute had several comments on the proposals, which are summarized below.

Per Share Table The Institute supported the proposed amendments to the per share table, which would simplify the table and add annual total return information, stating that the changes would provide material information and make the table more understandable.

Portfolio Managers The Institute supported the concept of disclosing the identity of advisory personnel where appropriate but opposed the Commission's proposal to require prospectus disclosure of information concerning all persons who make "significant contributions to the investment advice provided to the registrant". The Institute's letter stated that this would result in meaningless disclosure (since it would require disclosure of numerous non-essential personnel) and burdensome costs (since funds would have to "sticker" whenever there was a change in personnel.) Instead, the Institute proposed that information on advisory personnel be set forth in prospectuses only in those instances (1) where the success of the fund may be, to a large extent, contingent upon retaining those persons and (2) where the organization actively promotes those persons to the press or the public as being critical to the success of the fund. (This test is similar, though not identical, to that proposed by the Institute in its comment letter on the proposed amendments to Form N-2, the registration form for closed-end investment companies.) The Institute argued that this test is closer to the Commission's stated goals in the Release. "Management's Discussion and Analysis" The release contained two alternative proposals concerning disclosure of past fund performance. The first would require a narrative "management's discussion and analysis." The Institute opposed this proposal, which would require fund managers to conduct a subjective self-evaluation of their own past performance and is required of no other issuer. However, the Institute endorsed a requirement for fund annual reports to contain a discussion of factors and strategies that affected past performance, provided that

the discussion not be required to include an evaluation of that performance or be required to be incorporated by reference into the prospectus. Comparison with an Index The Commission's alternative proposal would require funds to compare their one, five and ten year total returns (or yields, in the case of money market funds) to an "appropriate securities index." The Institute flatly opposed this proposal on the grounds that (1) it would violate a basic tenet of prospectus disclosure by requiring disclosure not concerning the issuer, (2) the determination of an "appropriate" index is subjective and, for many funds, there will be no appropriate index and (3) the comparison is inappropriate, as funds would be required to deduct all expenses while the performance of the index would be on a cost-free basis. Distribution Policies 3The Institute generally supported the proposal that all funds disclose the effects of any policy of fixed distributions. Other The Institute's letter also commented on various changes to Rule 34b-1, governing supplemental sales literature, and endorsed the proposed automatic incorporation by reference in the registration statement of subsequently filed annual reports. * * * The Institute would appreciate receiving copies of any comment letters filed by members. Please send any copies to Michael Branch at the Institute. We will keep you informed of developments. Craig S. Tyle Associate General Counsel Attachment

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