

MEMO# 11614

February 8, 2000

SEC APPROVES PROPOSAL TO EXCLUDE INDEPENDENTLY PREPARED RESEARCH REPORTS FROM NASD ADVERTISING FILING REQUIREMENTS

1 See SEC Rel. No. 34-42340 (Jan. 13, 2000), 65 Fed. Reg. 3510 (Jan. 21, 2000). 2 SEC Rel. No. 34-40074 (June 4, 1998), 63 Fed. Reg. 32690 (June 15, 1998). See also Memorandum to Advertising Compliance Subcommittee No. 27-98 and SEC Rules Committee No. 59-98, dated June 18, 1998. 3 Letter from Joseph P. Savage, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated July 6, 1998. See also Memorandum to Advertising Compliance Subcommittee No. 32-98 and SEC Rules Committee No. 69-98, dated July 6, 1998. [11614] February 8, 2000
TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 4-00 SEC RULES COMMITTEE No. 19-00 RE: SEC APPROVES PROPOSAL TO EXCLUDE INDEPENDENTLY PREPARED RESEARCH REPORTS FROM NASD ADVERTISING FILING REQUIREMENTS

The Securities and Exchange Commission recently approved NASD Regulation, Inc.'s proposed rule change to exclude independently prepared research reports from the filing requirements of NASD Rule 2210.¹ A copy of the SEC release approving the rule change is attached. The proposed rule change was published for comment by the SEC in June 1998.² Under the proposal, a research report concerning a registered investment company would be excluded from Rule 2210's filing requirements provided: (i) it is prepared by a research firm that is independent of the fund, its affiliates and the member issuing the report; (ii) in preparing the report, the research firm's services are not procured by the fund, its affiliates or the member using the report; (iii) the research firm prepares similar reports with respect to a substantial number of funds; (iv) the report is distributed and updated with reasonable regularity; and (v) the report has not been materially altered by the member using the report. In response to the comments the SEC received from the Institute³ and three other entities, NASDR amended its rule proposal in several respects. First, NASDR clarified that the proposed filing exemption would be available for the procurement of a research firm's services, but would not be available with respect to the commissioning of research. Additionally, NASDR would permit research firms and members more flexibility to develop customized reports. Second, NASDR clarified that the rule change would not affect its "long-standing informal interpretation" that members may distribute a research report that does not meet the currentness standards of Rule 482, as long as the research report "represents the most recent version issued by the research firm and is accompanied by information that meets those standards." Third, NASDR confirmed that the exemption would explicitly

permit material alterations necessary to make the report consistent with NASD, Commission or other applicable standards. Fourth, NASDR clarified that the rule change would not apply to article reprints, which Rule 2210 includes in the definition of “sales literature.” However, NASDR declined to provide a specific definition of “research report” based on the belief that the rule change provides sufficient guidance to members concerning the meaning of the term. Finally, NASDR confirmed that research reports could include performance ranking information, as long the reports comply with the content requirements of IM-2210-3 regarding rankings, and any other applicable Commission and NASD requirements. The amended rule proposal also clarifies that independent research reports that are eligible for the filing exemption will be deemed to be filed with the NASD for the purposes of Section 24(b) of the 1940 Act and Rule 24b-3 thereunder. Doretha VanSlyke Zornada Assistant Counsel Attachment

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