

MEMO# 2753

May 14, 1991

INSTITUTE FILES COMMENT LETTER WITH SEC URGING PROMPT APPROVAL OF NASD PROPOSAL TO REGULATE ASSET-BASED SALES CHARGES

May 14, 1991 TO: BOARD OF GOVERNORS NO. 33-91 SEC RULES MEMBERS NO. 30-91 RULE 12b-1 AD HOC COMMITTEE RE: INSTITUTE FILES COMMENT LETTER WITH SEC URGING PROMPT APPROVAL OF NASD PROPOSAL TO REGULATE ASSET-BASED SALES CHARGES

As we previously informed you, the Securities and Exchange Commission recently published for comment the NASD's proposal to amend its Rules of Fair Practice to impose limits on asset-based sales charges under the mutual fund maximum sales charge rule. (See Memorandum to Board of Governors No. 25-91, SEC Rules Members No. 25-91 and Rule 12b-1 Ad Hoc Committee, dated April 22, 1991.) Attached is a copy of the Institute's comment letter. The Institute's letter expresses strong support for the NASD's proposal and urges the Commission to approve it as swiftly as possible. The letter notes that several recent regulatory developments address concerns previously raised regarding disclosure of Rule 12b-1 fees and/or contingent deferred sales charges, and that the NASD's proposal to regulate asset-based sales charges is the next logical step. In response to the SEC's specific request for comments, the Institute's letter states that the portion of the NASD proposal that would prohibit a fund from being described as "no load" if it has a front-end or deferred sales charge or has asset-based sales charges and/or service fees that, in the aggregate, exceed 25 basis points annually is appropriate. The letter explains that where a fund (with no initial or deferred sales charge) has a 12b-1 plan providing for annual payments of 25 basis points or less, such payments do not serve as the functional equivalent of a front-end sales charge. The letter expresses the Institute's hope that, once the SEC has approved the proposed rule change, the NASD will reconsider instituting a procedure to accommodate alternative sales charge structures that do not meet all of the technical requirements of the proposal. In addition, the letter indicates the Institute's agreement with the NASD that a one-year grace period should be provided for implementation of the proposed rule change. We will keep you informed of developments. Frances M. Stadler Assistant General Counsel
Attachment