

**MEMO# 9221**

September 5, 1997

## **SEC NO-ACTION LETTER ADDRESSES PRICING OF ORDERS PLACED WITH THIRD PARTIES UNDER RULE 22C-1**

[9221] September 5, 1997 TO: PENSION MEMBERS No. 41-97 OPERATIONS COMMITTEE No. 32-97 TRANSFER AGENT ADVISORY COMMITTEE No. 46-97 RE: SEC NO-ACTION LETTER ADDRESSES PRICING OF ORDERS PLACED WITH THIRD PARTIES UNDER RULE 22c-1

The Securities and Exchange Commission staff recently issued a no-action letter confirming that customer orders placed with a broker-dealer or an entity designated by the broker-dealer may be deemed to have been received by a registered investment company ("fund") for purposes of Investment Company Act Rule 22c-1. Specifically, the staff confirmed that a fund will not violate Rule 22c-1 if it prices an order for the purchase or sale of fund shares based on the fund's net asset value per share ("NAV") next computed after the order is placed with a third party, even where the order is not transmitted to the fund until after the NAV has been computed. This ruling is significant to funds participating in bundled services alliances servicing the retirement plan markets, as well as to funds participating in retail sales programs, such as that specifically described in the no-action letter. In bundled services alliances, a third-party often accepts plan participant purchase and sales orders, aggregates them and transmits them to funds participating in its "bundled services product." Rule 22c-1 of the Investment Company Act provides that no fund issuing redeemable securities may sell or redeem fund shares except at a price based on the current NAV that is next computed after receipt of the tender of securities. The primary purpose of the rule is to prevent "backward pricing," the purchase or sale of fund shares at a price based upon a previously determined NAV. The facts presented in the no-action letter are as follows: The broker-dealer sponsors programs that enable its customers to purchase and redeem shares of participating funds through the broker-dealer. Under its programs, the broker-dealer aggregates all customer orders received into single omnibus purchase and redemptions orders and transmits the daily orders to each fund participating in the programs. The broker-dealer orders are through accounts in the funds established in the broker-dealer's name for the benefit of its programs' participants. Under the programs, customer orders received by the broker-dealer after a 3:00 p.m. Eastern Time deadline are not included in the omnibus orders for that day and are included in the orders for the next day. The broker-dealer, however, proposes to accept such - 2 - orders until 4:00 p.m., the time that most funds calculate their NAV, so that its customers are not disadvantaged by comparison to investors that may place their orders directly with funds until 4:00 p.m. As a result aggregate orders are placed with the funds after the NAV has been established. For purposes of the no-action ruling, the SEC staff assumed the following facts, as represented by the broker-dealer: The broker-dealer would enter into agreements with each fund

participating in its programs providing that the broker-dealer would accept customer orders until 4:00 p.m. and transmit aggregated orders to the fund by 8:00 p.m. or some other specified time. Each agreement would provide that (1) the fund authorize the broker-dealer or its sub-designee to receive customer purchase and redemption orders on the fund's behalf for purposes of Rule 22c-1, (2) customers of the broker-dealer receive the fund's NAV next computed after they place their purchase or redemption orders with the broker-dealer or its sub-designee, (3) the fund's board of directors approve or ratify the agreement and periodically review it, (4) the broker-dealer or its sub-designee establish procedures to follow in accepting customer orders and transmitting an aggregated order to the fund and (5) the broker-dealer and any sub-designees establish appropriate internal controls, which would be annually reviewed by an independent public accountant, whose annual review reports would be available to the fund upon request. Finally, the fund's prospectus would identify the broker-dealer and its sub-designees as parties authorized to accept purchase and redemption orders on behalf of the fund, state that the fund would be deemed to have received a purchase or redemption order when an authorized broker or sub-designee accepts the order, and further state that customer orders will be priced at the fund's NAV next computed after they are accepted by an authorized broker or sub-designee. We will keep you informed of developments. Russell G. Galer Assistant Counsel - Pension Attachment (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 9221.

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