

MEMO# 13693

July 2, 2001

DRAFT LETTER TO SEC RECOMMENDING AMENDMENTS TO RULE 482

[13693] July 2, 2001 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 7-01 SEC RULES COMMITTEE No. 51-01 RE: DRAFT LETTER TO SEC RECOMMENDING AMENDMENTS TO RULE 482 The Securities and Exchange Commission is considering amendments to Rule 482 to, among other things, address concerns about the “currentness” of performance information in mutual fund advertisements. Attached for your review is a draft letter to the SEC, which provides our proposed recommendation for addressing this issue. Our recommendation, discussed in more detail below, is based upon prior discussions with members and conversations with staff of the SEC. Please provide your comments on the draft letter to me by the close of business on Wednesday, July 11th (via phone: 202/326-5819; fax: 202/326-5839; or e-mail: dvanslyk@ici.org). The Institute’s draft letter recommends that the staff amend Rule 482 to require narrative disclosure alerting investors to potential changes in advertised returns and directing them to a source for more current performance data, such as a web site or toll-free telephone number. The letter also recommends that funds be required to provide average annual total return information for one, five and ten year periods current to at least the most recent month end via telephone, web site, or both, at the fund’s discretion. Additionally, to ensure that this disclosure will be clearly visible to investors, the letter recommends that certain requirements apply to the location and prominence of the disclosure, including that it must appear in close proximity to the presentation of the performance numbers included in the body of the advertisement, and not in a footnote. The draft letter also presents arguments against amending Rule 482 to require performance information that is current to the most recent month end prior to the submission deadline for a particular publication. Specifically, the letter argues that a month-end requirement in 482 advertisements would: (i) increase costs and create coordination and distribution difficulties, as well as additional compliance burdens for funds; (ii) erode the standardization of performance data that is generally provided by quarter-end numbers; and (iii) would not provide much, if any, additional investor protection as compared to our proposal for additional narrative disclosure. 2We are interested in receiving members’ comments on all aspects of our draft letter. We are also interested in members’ input on the following issue. In an effort to track the language of Rule 482(f), our letter recommends that “funds be required to provide average annual total return data or one, five and ten year periods current to the most recent practicable date” on their web site or via telephone. The letter then states that “total return information current to the most recent month end, prior to the deadline for posting information on the web site or phone system, would be deemed to comply with this requirement.” This language would provide funds flexibility to include data on their web site or via telephone that is more current than month end. Do members agree with this approach, or would it be preferable to require funds to provide only month-end data via phone or web site to

promote greater uniformity and comparability? Doretha VanSlyke Zornada Assistant
Counsel Attachment Attachment (in .pdf format)

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