

MEMO# 9143

August 7, 1997

NASDR REQUESTS COMMENT ON PRESENTATION OF RELATED PERFORMANCE INFORMATION

1 See NASD Notice to Members 97-47 (August 1997). The Request for Comment is also available on the Internet at <http://www.nasdr.com/2520.htm>. 2 See MassMutual Institutional Funds (pub. avail. Sept. 28, 1995). 3 See Bramwell Growth Fund (pub. avail. Aug. 7, 1996). 4 See Nicholas-Applegate Mutual Funds (pub. avail. Aug. 6, 1996 and Feb. 7, 1997), ITT-Hartford Mutual Funds (pub. avail. Feb. 7, 1997) and GE Funds (pub. avail. Feb. 7, 1997). August 7, 1997 TO: SEC RULES COMMITTEE No. 78-97 ADVERTISING SUBCOMMITTEE No. 28-97 RE: NASDR REQUESTS COMMENT ON PRESENTATION OF RELATED PERFORMANCE INFORMATION

NASD

Regulation, Inc. recently requested comment on issues raised by allowing mutual fund advertising and sales literature to include the presentation of performance information of other substantially similar mutual funds and unregistered funds and accounts managed by the same investment adviser or portfolio manager.¹ A copy of NASDR's notice requesting comment is attached. The Notice discusses a series of no-action letters issued by the SEC staff that permit mutual funds to present a range of performance information in their sales material and prospectuses in specific factual situations and subject to certain conditions. These letters can be categorized as allowing the performance of: (1) an unregistered private account or fund which is converted into a registered mutual fund to be included as part of the registered funds track record (the MassMutual no-action letter);² (2) a substantially similar mutual fund managed by the same portfolio manager to be included in a newer, unaffiliated mutual funds prospectus (the Bramwell no-action letter);³ and (3) a substantially similar unregistered private account or registered mutual fund to be included in the prospectus and sales material of a mutual fund managed by the same investment adviser (the Nicholas-Applegate I & II, ITT-Hartford, and GE Funds no-action letters).⁴ The Notice refers to these types of performance information as "Related Performance Information." Although these no-action letters indicate that the SEC staff will not recommend enforcement action for presentation of Related Performance Information in mutual fund sales,⁵ Since the SEC staff's issuance of the MassMutual no-action letter, NASDR has permitted NASD members to include the performance of an unregistered predecessor fund as part of a registered mutual funds track record in sales material under appropriate conditions. NASDR states that it is now reviewing its position concerning the presentation of predecessor performance as part of its comprehensive consideration of the presentation of all types of Related Performance Information. material based on the representations contained in those letters, to date, NASDR generally has not permitted

Related Performance Information in mutual fund sales material.⁵ In light of these letters, as well as the public interest in Related Performance Information, NASDR has commenced a comprehensive examination of the issues related to such presentations. The Notice includes a series of questions raised by these issues and requests both general and specific comments on the potential investor benefits and concerns associated with the presentation of Related Performance Information. With respect to the potential benefits, commenters are asked to address a number of questions, including: (i) whether Related Performance Information provides a "sound basis" for making an investment decision; (ii) whether investors want or need this information; (iii) how mutual funds propose to present this information; (iv) what are the legal and practical limitations on providing this information; (v) what conditions should be imposed on using this type of information (e.g., should it be limited to new funds); and (vi) whether the benefits are so great that NASDR should require the use of this information in mutual fund sales material. With respect to the potential concerns, NASDR also has requested comment on a number of issues, including: (i) whether NASDR should impose specific disclosure standards on the presentation of Related Performance Information; (ii) whether NASDR should impose standards on the calculation of Related Performance Information; (iii) whether NASDR should impose standards to discourage the "incubation" of private account performance; and (iv) whether NASDR should impose standards to promote the comparability of performance data. Comments must be received by NASDR by September 29, 1997. Before any rule change becomes effective, it must be adopted by the NASDR Board of Directors, may be reviewed by the NASD Board of Directors, and must be approved by the SEC. A group composed of Advertising Subcommittee members, as well as the full Subcommittee, have been working on the Institutes position with regard to these types of prior performance issues. A draft comment letter in response to the Notice, based upon the work of this group, will be circulated for your review. If in the mean time you have any questions or comments regarding the Notice, please call or e-mail Joe Savage (202/326-5819 or savage@ici.org) or Craig Tyle (202/326-5815 or tyle@ici.org). Joseph P. Savage Assistant Counsel Attachment (in .pdf format)

Source URL: <https://icinew-stage.ici.org/memo-9143>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.