

MEMO# 13055

January 18, 2001

ICI COMMENT LETTER ON NASDR'S PROPOSED RULE CHANGES CONCERNING RELATED PERFORMANCE INFORMATION

[13055] January 18, 2001 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 1-01 SEC RULES COMMITTEE No. 8-01 RE: ICI COMMENT LETTER ON NASDR'S PROPOSED RULE CHANGES CONCERNING RELATED PERFORMANCE INFORMATION The Institute recently filed the attached comment letter with the Securities and Exchange Commission in response to its request for comment on NASD Regulation Inc.'s proposed new Interpretive Material 2210-5 to permit certain types of related performance information in mutual fund sales material.¹ The letter is substantially similar to the revised draft letter circulated on December 22, 2000.² While the Institute's letter generally supports NASDR's proposal, it provides several recommendations to improve the effectiveness of the proposed rule and facilitate members' compliance. First, to avoid potential confusion, the letter recommends streamlining the rule by deleting the proposed prohibition on material differences between the portfolios to which the related performance relates and the advertised fund (General Standard (d)(1)). Additionally, in the area of clone performance, the letter recommends: (1) requiring that a clone fund's investment policies, objectives and strategies be "in all material respects equivalent" to those of the original fund, instead of requiring them to be "the same;" (2) that the proposal be modified to permit funds to advertise clone fund performance where the original fund and the clone fund have different investment advisers, but the adviser to the original fund is the subadviser to the clone fund, under certain circumstances; and (3) a clarification that a clone of a multiple class fund does not need to show the performance of all classes of the original fund in order to advertise clone performance. The letter further recommends that funds advertising predecessor performance be required to present only one set of total return calculations, which would include the predecessor entity's performance. The letter also provides several other specific comments regarding the presentation of predecessor performance. In addition, in the area of comparison

¹ See Memorandum to Advertising Compliance Advisory Committee No. 31-00 and SEC Rules Committee No. 127-00, dated November 16, 2000 (transmitting the SEC's request for comment). ² See Memorandum to Advertising Compliance Advisory Committee No. 33-00 and SEC Rules Committee No. 135-00, dated December 22, 2000.

² portfolio performance, the letter recommends: (1) that a registered principal be permitted to verify that a fund's composite complies with the rules regarding the creation and maintenance of the composite, rather than requiring this verification to be performed by an independent third party; (2) that the provision prohibiting portfolio switching in comparison performance information be revised to track the AIMR standards, so as to avoid confusion and promote compliance with the rule; and (3) for composites containing registered funds,

that the performance be presented net of those funds' fees and that disclosure that the performance record reflects the actual fees and expenses charged to such funds be required. Finally, the letter provides several technical comments, which recommend: (1) a clarification of the point in time at which the requirement to present an advertised fund's performance in a more prominent manner than any related performance is triggered; (2) a clarification of the related performance presentation requirements for funds in operation for less than one year; and (3) a modification to the required disclosure about the impact investment company regulation might have had on an unregistered portfolio. Doretha VanSlyke Zornada Assistant Counsel Attachment Attachment (in .pdf format)

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