

MEMO# 16968

January 13, 2004

DRAFT ICI COMMENT LETTER REGARDING NASD PROPOSAL TO REQUIRE EXPENSE RATIOS IN FUND PERFORMANCE ADVERTISEMENTS; COMMENTS REQUESTED BY JANUARY 20TH

[16968] January 13, 2004 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 1-04 SEC RULES COMMITTEE No. 5-04 SMALL FUNDS COMMITTEE No. 3-04 RE: DRAFT ICI COMMENT LETTER REGARDING NASD PROPOSAL TO REQUIRE EXPENSE RATIOS IN FUND PERFORMANCE ADVERTISEMENTS; COMMENTS REQUESTED BY JANUARY 20th The Institute has prepared the attached draft comment letter on NASD's proposal to require disclosure of fund expense ratios in performance advertisements.¹ Comments on the proposal must be filed with the NASD no later than January 23rd. Please provide any comments you may have on the Institute's draft letter to me at (202) 218-3563 (phone), (202) 326-5827 (fax), or ddonohue@ici.org no later than January 20th. The draft letter is briefly summarized below. • The draft letter supports requiring fund performance advertisements to disclose the fund's annual expense ratio but recommends revising the proposal to require disclosure in performance advertisements of the same annual expense ratio that appears in a fund's most recent report to shareholders, rather than an expense ratio computed as a percentage of total assets in accordance with Item 3 of Form N-1A, as of the most recent calendar quarter. • The draft letter supports NASD's decision not to propose requiring disclosure in performance advertisements of the actual dollar amount of expenses incurred by a hypothetical fund shareholder (as an alternative to requiring disclosure of a fund's annual expense ratio). The draft letter states that it is more appropriate to require such dollar amount disclosure in reports to shareholders. • The draft letter states that it is not necessary to require funds to disclose their annual expense ratios in sales material that does not present performance information. ¹ See Memorandum to Advertising Compliance Advisory Committee No. 14-03, SEC Rules Committee No. 100-03, Small Funds Committee No. 32-03, and Unit Investment Trust Committee No. 23-03 [16861], dated December 9, 2003. ² • The draft letter strongly urges NASD not to require fund performance advertisements to provide disclosure of standardized performance information, the fund's maximum sales charge, and the fund's annual expense ratio in a text box. Rather, it recommends requiring this disclosure to be presented in performance advertisements in any manner reasonably calculated to draw investor attention to the information. • The draft

letter recommends that NASD require that fund performance advertisements present a fund's standardized performance information, maximum sales charge, and annual expense ratio in a type size at least as large as that used in the major portion of a print advertisement and that radio, television, and video advertisements be required to provide this information emphasis equal to that used in the major portion of the advertisement. . • The draft letter recommends that NASD provide for a compliance date ranging from three to six months from the date of adoption, depending on the nature of the new requirements. • The draft letter recommends that fund communications with institutional investors not be subjected to the proposed requirements. Dorothy M. Donohue Associate Counsel
Attachment (in .pdf format)

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