

**MEMO# 6066**

July 21, 1994

# **INSTITUTE OPPOSES WITHDRAWAL OF SEC STAFF NO-ACTION LETTER REGARDING DISCLOSURE OF FUND SALES CHARGES ON CONFIRMATIONS**

July 21, 1994 TO: BANK BROKER/DEALER ADVISORY COMMITTEE NO. 17-94 BOARD OF GOVERNORS NO. 62-94 BROKER/DEALER ADVISORY COMMITTEE NO. 15-94 MARKETING POLICY COMMITTEE NO. 32-94 OPERATIONS COMMITTEE NO. 17-94 SALES FORCE MARKETING COMMITTEE NO. 26-94 SEC RULES COMMITTEE NO. 81-94 TRANSFER AGENT ADVISORY COMMITTEE NO. 28-94 RE: INSTITUTE OPPOSES WITHDRAWAL OF SEC STAFF NO-ACTION LETTER REGARDING DISCLOSURE OF FUND SALES CHARGES ON CONFIRMATIONS

The Institute recently submitted a letter to the staff of the Securities and Exchange Commission strongly opposing the staff's proposal to withdraw a 1979 no-action letter issued to the Institute that provides, in essence, that mutual fund confirmations do not have to include disclosure of sales charges. In a letter to the Institute earlier this year (shortly after the North American Securities Administrators Association suggested by letter to the staff that the no-action position be withdrawn), the Director of the Division of Market Regulation announced the staff's intention to withdraw the no-action position and require confirmation disclosure of front-end sales charges. Subsequently, senior representatives of the Institute met with staff of the Divisions of Market Regulation and Investment Management to discuss the serious concerns raised by the proposal. At the meeting, the staff agreed to give the Institute additional time to prepare a submission that would address these issues in detail and suggest an alternative approach. A copy of the Institute's letter is attached. The Institute urges that the staff's 1979 position -- that mutual fund transaction confirmations need not duplicate sales charge information disclosed in fund prospectuses -- is even more compelling today in light of regulatory and industry developments since 1979. These developments include, for example, the decline in size of front-end loads charged; the availability of a variety of alternative sales charge structures, some of which cannot be captured on a confirmation; and the adoption of the prospectus fee table, which provides comprehensive information about the costs of investing in a mutual fund in a centralized location. Based on these developments, the Institute's letter argues that withdrawal of the 1979 no-action letter not only is unwarranted, but also would have significant adverse consequences. For example, it would represent a return to piecemeal disclosures, would result in unequal regulatory treatment of different types of sales charges, would create many operational difficulties and would raise numerous interpretive issues under Rule 10b-10 under the Securities Exchange Act of 1934. The Institute's letter proposes that any additional disclosure believed necessary consist of a uniform legend on confirmations of sales of shares of mutual funds

(other than no load funds). The legend would refer the investor to the prospectus fee table "for a description of sales charges and other distribution expenses." The letter also suggests that broker-dealers using a confirmation form with a box calling for disclosure of "commission or charge" either insert an asterisk in the box alerting the investor to the legend or delete the box from the form. Finally, the Institute's letter recommends that the NASD implement the proposed legend requirement through an amendment to its Rules of Fair Practice. Paul Schott Stevens General Counsel Attachment

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