

MEMO# 9201

August 28, 1997

INSTITUTE PREPARES DRAFT LETTER IN RESPONSE TO NASDR REQUEST FOR COMMENT ON RELATED PERFORMANCE INFORMATION

* See Memorandum to SEC Rules Committee No. 78-97 and Advertising Subcommittee No. 28-97, dated August 7, 1997. [9201] August 28, 1997 TO: ADVERTISING SUBCOMMITTEE No. 30-97 SEC RULES COMMITTEE No. 82-97 RE: INSTITUTE PREPARES DRAFT LETTER IN RESPONSE TO NASDR REQUEST FOR COMMENT ON RELATED PERFORMANCE INFORMATION

As we previously reported, NASDR Regulation, Inc. has requested comment on issues raised by allowing mutual fund advertising and sales literature to include the presentation of performance of other substantially similar mutual funds and unregistered funds and accounts managed by the same investment adviser or portfolio manager.* Attached and summarized below is the Institutes draft comment letter in response to this request. The letter states that NASDR should permit mutual fund sponsors to include as part of an advertised funds performance record the performance of an unregistered predecessor entity (as permitted in the MassMutual no-action letter), but only if the predecessor entity was not established for the purpose of being converted into a mutual fund and was managed in all material respects in a similar manner as the fund into which it was converted. In addition, any such performance should be accompanied by information reflecting the performance of the advertised fund after its conversion once the fund has been in existence for at least a year. The letter states that NASDR should not permit sales material to include performance of another mutual fund previously managed by the advertised funds portfolio manager while he or she was with another investment advisory firm (the Bramwell no-action letter fact pattern). The letter further states that NASDR should allow mutual fund sales material to include the performance of substantially similar private accounts and mutual funds managed by the same investment adviser, subject to a number of conditions. In addition to requiring the conditions that were contained in the Nicholas-Applegate II, ITT-Hartford, and GE Funds no- action letters, NASDR should: (1) require any such performance information to be presented less prominently than the advertised funds own performance; (2) prohibit references to related performance information in headlines; (3) prohibit rankings based on related performance information; (4) require disclosures of significant differences between the advertised fund and the private accounts and other mutual funds, including differences in advisory personnel; (5) generally require all private account performance to be computed on a composite basis, adjusted for the advertised funds current fees, and otherwise in accordance with the

standards established by the Association for Investment Management and Research; (6) require any related performance information to be as current as the advertised funds performance; and (7) require all private accounts with investment objectives, policies and strategies that are substantially similar to those of the advertised fund to be included in the composite (to avoid "cherry-picking"). We welcome comments on all aspects of the draft comment letter. However, we would especially like input on the following issues: Where an unregistered fund or account is converted into a registered mutual fund (as in MassMutual), should NASDR permit sales material for the fund to include the predecessors performance as part of the registered funds track record? Should NASDR prohibit mutual fund sales material from including the performance of another mutual fund previously managed by the advertised funds portfolio manager while he or she was with another investment advisory firm in all cases? Should NASDR prohibit mutual fund sales material from including "mountain charts" and similar charts and graphs that suggest that a particular dollar investment in a private account composite would have yielded a specific dollar return? Should NASDR require an independent third party to verify the accuracy and comparability of related performance information included in sales material? What should be the minimum duration (e.g., one, three or five years) required to show related performance information? If a mutual fund employs both an investment adviser and a sub-investment adviser, should NASDR only permit the performance of other funds and private accounts that have the same adviser and sub-adviser? Or should NASDR allow the performance of other funds and accounts that are solely managed by the advertised funds sub-adviser? Comments must be filed with NASDR by Monday, September 29, 1997. A conference call will be held on Monday, September 15, at 2:30 p.m. to solicit comments on this draft letter. If you would like to participate in this conference call, please contact Melissa Magruder at 202/326-5823. If you are unable to participate in the conference call, please call (202/326-5819) or e-mail (savage@ici.org) me no later than Friday, September 12, with any comments. Joseph P. Savage Assistant Counsel Attachment (in .pdf format)

Source URL: <https://icinew-stage.ici.org/memo-9201>

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.