

MEMO# 3796

May 20, 1992

DRAFT INTERPRETIVE REQUEST REGARDING MONTHLY CONFIRMATION OF TRANSACTIONS IN SHARES OF MONEY MARKET FUNDS WITH 12B-1 FEES

May 26, 1992 TO: SEC RULES COMMITTEE NO. 36-92 RE: DRAFT INTERPRETIVE REQUEST REGARDING MONTHLY CONFIRMATION OF TRANSACTIONS IN SHARES OF MONEY MARKET FUNDS WITH 12b-1 FEES

Attached for your review is a draft letter to the Division of Market Regulation requesting that the Division issue a no- action or interpretive position concerning the ability of money market funds that pay a 12b-1 fee to take advantage of the monthly confirmation procedures permitted for "no load" money market funds under Rule 10b-10(c) under the Securities Exchange Act of 1934. The letter asks the staff to concur with the Institute's view that transactions in shares of such funds may be confirmed in the manner provided by Rule 10b-10(c) so long as no front-end or deferred sales load is charged. The letter points out that Rule 10b-10 is intended to discourage deceptive or fraudulent acts and practices by brokers and dealers and to provide investors with information about transaction costs for comparative purposes. In adopting Rule 10b-10(c), the Commission determined that in the case of a fund that maintains a constant net asset value and does not assess any sales charges, the opportunity for deceptive or fraudulent activity would be minimized and there would be no transaction costs for investors to take into account. The letter states that this is true whether or not the fund pays a 12b-1 fee. The letter notes that while the term "no load" is not defined in Rule 10b-10, it is possible that if the NASD's asset- based sales charge proposal is adopted, it could be read to disqualify a money market fund that pays a 12b-1 fee of more than .25% (or some other level, depending upon the final form of the rule) from using the monthly confirmation procedures set forth in Rule 10b-10(c). This result seems neither intended nor justified, in the Institute's view. The letter emphasizes that our proposed interpretation would not be inconsistent with the policies behind the provision of the NASD proposal that would restrict use of the term "no load" to describe a fund. Our proposal would govern only the frequency of sending confirmation statements to shareholders, not the terminology used to describe a fund or the content of any required disclosures. If you have any comments on the enclosed draft letter, please call me at (202) 955-3514 by Thursday, June 4. Frances M. Stadler Assistant General Counsel Attachment

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