

**MEMO# 7272**

September 15, 1995

## **SEC SUSTAINS NASD SANCTIONS WITH RESPECT TO MUTUAL FUND ADVERTISEMENTS**

September 15, 1995 TO: COMPLIANCE COMMITTEE No. 35-95 SEC RULES MEMBERS No. 64-95 SUBCOMMITTEE ON ADVERTISING No. 14-95 RE: SEC SUSTAINS NASD SANCTIONS WITH RESPECT TO MUTUAL FUND ADVERTISEMENTS

\_\_\_\_\_ The Securities and Exchange Commission recently sustained findings of the National Association of Securities Dealers, Inc., in a disciplinary action against the former registered general securities principal and chief compliance officer of a mutual fund distributor. A copy of the Commission's order is attached. The Commission found that the registered principal was responsible for publication in The Wall Street Journal of two misleading advertisements that violated the NASD's Rules of Fair Practice, and for failing to file the advertisements with the NASD within 10 days of first use as required by the Rules of Fair Practice. The Commission found that the advertisements left the reader with the misleading impression that five funds had been ranked as the five top performing funds of all mutual funds for 1992, and that the advertisements contained exaggerated statements and omitted material information. The Commission also found that the registered principal had violated the Rules of Fair Practice in connection with the failure to disclose, in the relevant funds prospectuses, a 1991 special concession arrangement between the distributor and another NASD member. The Commission further found that the distributor, acting through the registered principal, had failed to establish and maintain adequate written supervisory procedures concerning special concession arrangements. The NASD had censured the registered principal, suspended him from acting in any principal capacity for one month, required him to requalify by examination as a principal, and fined him \$5000. The Commission remanded the matter for reconsideration of sanctions, out of concern that, among other things, certain mitigating factors were not considered. Thomas M. Selman Associate Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8305 or (202)326-5903, and ask for this memo's attachment number: 7272.