

MEMO# 2971

July 31, 1991

INSTITUTE COMMENTS ON NASD PROPOSAL TO EXEMPT DIRECTLY MARKETED FUNDS FROM REQUIREMENT TO OBTAIN CUSTOMER EMPLOYMENT DATA

July 31, 1991 TO: SEC RULES COMMITTEE NO. 44-91 BROKER/DEALER ADVISORY COMMITTEE NO. 26-91 RE: INSTITUTE COMMENTS ON NASD PROPOSAL TO EXEMPT DIRECTLY MARKETED FUNDS FROM REQUIREMENT TO OBTAIN CUSTOMER EMPLOYMENT DATA _____ The Institute submitted the attached comment letter urging the NASD to adopt the proposed interpretation of Article III, Section 21(c) of the Rules of Fair Practice that would state that the provisions thereunder that require mutual funds to make reasonable efforts to obtain customer employment information are inapplicable to directly marketed funds. (See Memorandum to SEC Rules Committee No. 36-91 and Broker/Dealer Advisory Committee No. 22-91, dated July 8, 1991.) In its letter, the Institute asserted that directly marketed funds should be exempt from the requirement under Section 21(c) since information about a customer's employment is irrelevant with respect to these funds. The only purpose for obtaining such information is to evaluate the suitability of an investment recommendation. The Institute also noted that funds incur high costs in connection with this requirement for storing the information and expressed concern that investors may view an inquiry about their employment as intrusive thereby discouraging some investors from purchasing fund shares. The Institute recommended that the NASD extend the proposed interpretive exemption to accounts of broker-sold funds that are unsolicited. In those instances, the investor purchases shares directly from the fund and not on the basis of a broker recommendation. These accounts are virtually identical to those of directly marketed funds in that no recommendation has been made to the investor. Therefore, unsolicited accounts also should be exempt from the requirement to obtain employment data under Section 21(c). We will keep you informed of developments. Amy B.R. Lancellotta Assistant General Counsel Attachment