

MEMO# 3922

July 9, 1992

SEC APPROVES NASD 12B-1 RULE

July 9, 1992 TO: BOARD OF GOVERNORS NO. 44-92 MARKETING POLICY COMMITTEE NO. 23-92 SEC RULES MEMBERS NO. 30-92 ACCOUNTING/TREASURERS MEMBERS NO. 26-92 BROKER/DEALER ASSOCIATE MEMBERS NO. 10-92 DIRECT MARKETING COMMITTEE NO. 21-92 SALES FORCE MARKETING COMMITTEE NO. 21-92 PUBLIC INFORMATION COMMITTEE NO. 24-92 SMALL FUNDS MEMBERS NO. 13-92 RULE 12b-1 AD HOC COMMITTEE RE: SEC APPROVES NASD 12b-1 RULE _____ We

are pleased to report that the SEC has approved the NASD's proposal to amend its Rules of Fair Practice to impose limits on asset-based sales charges under the mutual fund maximum sales charge rule. (See Memorandum to Board of Governors No. 25- 91, SEC Rules Members No. 25-91 and Rule 12b-1 Ad Hoc Committee, dated April 22, 1991.) The new rule will become effective on July 7, 1993. A copy of the SEC release is attached. The NASD rule imposes two related limits on 12b-1 fees paid by investors -- an annual limit and a rolling cap based on total new sales. The annual limit is 0.75 of assets, with an additional 0.25 permitted as a service fee, which may be paid to brokers or other sales professionals in return for providing ongoing information and assistance to shareholders. The rolling cap on the total of all sales charges is 6.25 percent of new sales, plus interest, for funds that charge a service fee, and 7.25 percent, plus interest, for funds that do not have a service fee. The new rule prohibits any fund with a front-end, deferred, or asset-based sales charge to be referred to as "no load", except for a fund with no front-end load and a 12b-1 fee that does not exceed 0.25 percent of average annual net assets. As the Release states, this de minimis exception was added in response to the Institute's comments that, "funds with Rule 12b-1 fees of 0.25 percent or less resemble traditional no-load funds...much more than load funds" and that "without the exception it would be difficult for investors to distinguish between funds that use relatively small Rule 12b-1 fees to finance advertising and other sales promotion activities and funds that use larger Rule 12b-1 fees as alternatives to front-end sales loads." (See p. 10 in the Release.) Now that the rule has been approved by the SEC, the NASD will be issuing a "Question and Answer" release to clarify issues raised by commenters regarding service fees, the appropriate amount for calculating interest charges for purposes of the rule, and exchange transactions. The Institute intends to request that the NASD address in that release additional operational issues that have been identified by members. We will keep you informed of developments. Frances M. Stadler Assistant Counsel Attachment