

MEMO# 6114

August 4, 1994

INSTITUTE COMMENT LETTER ON NASD RANKING GUIDELINES

August 4, 1994 TO: SEC RULES COMMITTEE NO. 86-94 SUBCOMMITTEE ON ADVERTISING
NO. 15-94 RE: INSTITUTE COMMENT LETTER ON NASD RANKING GUIDELINES

As we previously informed you, the Securities and Exchange Commission recently approved proposed NASD guidelines concerning the use of rankings in mutual fund sales material and solicited comments on certain aspects of the guidelines. (See Memorandum to SEC Rules Committee No. 76-94; Subcommittee on Advertising No. 13- 94, dated July 14, 1994.) The Institute recently submitted the attached comment letter on the proposal. The Institute's letter generally supports the guidelines, subject to certain specific comments. The guidelines contain a new Section II, which could be read to prohibit the use of rankings created by funds on the basis of rankings developed by a ranking entity. Because neither the NASD nor the Commission intended such a prohibition, the Institute urged that the section be amended to clarify that the guidelines permit these fund-created rankings. The Institute also recommended deletion of the ambiguous term "general promotional material" from Section II. The guidelines require that total return and yield rankings for non-money market funds be accompanied by total return rankings for 1, 5, and 10-year periods supplied by the same ranking entity. The Institute's letter states that many ranking entities, particularly publications in general circulation, might not develop those rankings. The Institute recommended an amendment to require rankings for these periods only "to the extent that they have been issued by the Ranking Entity." The Institute also recommended that, at a minimum, the guidelines be clarified so that when a publication in general circulation bases its rankings on measurements of an independent ranking entity, disclosure of the 1, 5, and 10-year rankings of the other ranking entity will satisfy the requirements of the guidelines. Thomas M. Selman Assistant Counsel Attachment