

**MEMO# 8376**

November 6, 1996

## **DRAFT LETTER TO NASD CONCERNING PROPOSED RULE CHANGES TO IMPLEMENT RULE 6C-10 AMENDMENTS**

1 See Memorandum to SEC Rules Committee No. 108-96, dated October 14, 1996.  
November 6, 1996 TO: SEC RULES COMMITTEE No. 119-96 RE: DRAFT LETTER TO NASD  
CONCERNING PROPOSED RULE CHANGES TO IMPLEMENT RULE 6c-10 AMENDMENTS

As we discussed at the October 30th SEC Rules Committee meeting, attached for your review is a draft letter to the NASD proposing changes to various provisions of NASD Conduct Rule 2830 governing mutual fund sales charges.<sup>1</sup> The proposed changes relate to recent amendments to Rule 6c-10 under the Investment Company Act that, among other things, expand the types of deferred sales charges that mutual funds may impose. The recommendations included in the draft letter are summarized below. Please call me at (202) 326-5822 by Friday, November 22nd with any comments on the attached draft letter.

**Definition of "Deferred Sales Charge"** The draft letter notes that the current definition of "deferred sales charge" in the NASDs rules would not cover deferred charges paid other than upon redemption, such as installment loads. The letter recommends that the NASD revise its definition to track the new definition of "deferred sales load" in Rule 6c-10, but maintain certain exclusions set forth in the NASDs current definition. Please review the Institutes proposed wording of the definition of "deferred sales charge" on page 2 of the draft letter.

**Calculation of Deferred Loads** The draft letter takes the position that, in light of the requirement in amended Rule 6c-10 that a deferred sales charge may not exceed a specified percentage of the net asset value or the offering price of the funds shares at the time of purchase, as well as detailed prospectus disclosure requirements and the NASDs sales charge limits, no further NASD requirements or restrictions concerning the calculation of deferred sales charges are needed. Please consider whether the amount of flexibility permitted with respect to the calculation of deferred loads, in the absence of further NASD restrictions, would be appropriate.

**Deferred Sales Charges on Reinvested Distributions** The draft letter recommends that funds that impose deferred sales charges on shares purchased through reinvested distributions be subject to the same aggregate sales charge limits under the NASDs rules as funds that do not offer reinvestment at net asset value. For example, funds without an asset-based sales charge that do not offer reinvestment at net asset value are subject to a maximum sales charge limit of 7.25% of offering price (vs. 8.5% for funds that reinvest at NAV). Please note that, with respect to funds with an asset-based sales charge, the NASDs rules do not differentiate between those that offer reinvestment at net asset value and those that do not. Thus, under the Institutes proposal, for funds with an asset-based sales charge, those that impose deferred sales charges on

shares purchased through reinvested distributions would be treated the same as funds that do not impose such charges. We believe this is appropriate, as "sales from the reinvestment of distributions" are excluded under Rule 2830 from the calculation of "total new gross sales" for purposes of determining the cumulative sales charge caps applicable to funds with asset-based sales charges). Do members agree? "No-Load" Labeling The draft letter indicates that, if the NASD revises the definition of "deferred sales charge" as proposed by the Institute, the NASDs policy regarding "no-load" nomenclature will apply by its terms to installment loads. Frances M. Stadler Associate Counsel Attachment

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