

MEMO# 5709

March 23, 1994

PROPOSED WITHDRAWAL OF NO-ACTION LETTER PERMITTING OMISSION OF SALES LOAD DISCLOSURE ON CONFIRMATION

1 In 1991, the NASD amended its Rules of Fair Practice to require confirmation disclosure of the imposition of a deferred sales load upon redemptions of mutual fund shares, where applicable. March 23, 1994 TO: OPERATIONS COMMITTEE NO. 8-94 SEC RULES COMMITTEE NO. 38-94 TRANSFER AGENT ADVISORY COMMITTEE NO. 11-94 RE: PROPOSED WITHDRAWAL OF NO-ACTION LETTER PERMITTING OMISSION OF SALES LOAD DISCLOSURE ON CONFIRMATION _____ In April 1979, the Institute received a no-action letter from the SEC's Division of Market Regulation under Rule 10b-10 under the Exchange Act, which sets forth requirements for information that must be included on a confirmation. Specifically, the letter stated that the staff would not recommend enforcement action under Rule 10b-10 if a customer's confirmation in a security issued by a registered open-end management investment company did not disclose the sales load or any other charges in connection with the transaction, provided that the customer had received, at or before the completion of the transaction, a current prospectus applicable to the security that disclosed the precise amount of the sales load or other charges or a formula that would enable the customer to calculate the precise amount of those fees. See Investment Company Institute (pub. avail. April 18, 1979). By letter dated March 16, 1994 from Brandon Becker, Director of the Division of Market Regulation, to the Institute, the staff has indicated that it no longer believes this position is appropriate and that it therefore intends to withdraw the 1979 letter. Mr. Becker's letter states that "[i]nvestment company shares have become the investment of choice for many first time investors, and sales of these shares have grown enormously over recent years." Thus, the staff believes that "all relevant aspects of transactions in investment company shares should be made clear, to avoid confusion for the many new and relatively unsophisticated buyers of these shares."1 In view of its intention to withdraw the 1979 no-action letter, the staff has asked the Institute to respond in writing if we believe the staff should adhere to its 1979 position, and to explain fully why withdrawal of the letter would be inappropriate. In addition, the staff has solicited the Institute's views on, if the letter is withdrawn, how long broker-dealers would need to prepare to disclose commissions on investment company shares on confirms. The Institute currently does not plan to oppose withdrawal of the staff's 1979 position. Please contact the undersigned at (202) 326-5822 or Justine Phoenix at (202) 326-5850 by Friday, April 15 with any comments on an appropriate time period to implement changes made necessary as a result of this withdrawal. Frances Stadler Associate Counsel Attachments

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