

MEMO# 946

January 27, 1989

INSTITUTE RECEIVES NO-ACTION ASSURANCE FOR A NEW FUND TO ADVERTISE ITS AGGREGATE TOTAL RETURN THAN ITS ANNUALIZED TOTAL RETURN

@ 1 @ January 27, 1989 TO: SEC RULES MEMBERS NO. 6-89 RE: INSTITUTE RECEIVES NO-ACTION ASSURANCE FOR A NEW FUND TO ADVERTISE ITS AGGREGATE TOTAL RETURN THAN ITS ANNUALIZED TOTAL RETURN

The amendments to Securities Act Rule 482 adopted by the SEC last year require mutual fund performance advertisements to contain standardized total return information, specifically the fund's annualized total return for the prior one, five and ten year periods or the life of the fund if less. (Total return is to be computed as of the end of the prior calendar quarter). Moreover, no performance data may be given more prominence in an advertisement than the fund's standardized total return information. Investment Company Act Rule 34b-1, adopted at the same time as the amendments to Securities Act Rule 482, applies the same requirements to supplemental sales literature. As a result, performance advertisements and supplemental sales literature for a fund that has been in existence for less than a year must contain the fund's annualized total return (based on the performance of the fund through the end of the prior calendar quarter). In addition, no other performance information in an advertisement or supplemental sales literature for a new fund may be given more prominence than the fund's annualized total return. Because the Institute believes that annualized total return for a new fund may be misleading under certain circumstances, the Institute requested assurance that the SEC's Division of Investment Management would not recommend enforcement action if a new fund advertised its aggregate total return, rather than its annualized total return under the circumstances described in the request. We are pleased to inform you that in the attached response to the Institute's no-action request, the Division has assured us that it would not recommend that the Commission take any action if a new fund (one that has been in operation for less than a one-year period, the entirety of which it has had an effective registration statement) advertises its aggregate total return in @ 2 @ addition to, or in lieu of, its otherwise required annualized total return. Moreover, the Division would not recommend action if a new fund advertised its aggregate total return and presented an annualized total return figure of lesser prominence, as long as no other performance figure is given greater prominence than the aggregate total return figure. In addition, to requesting no-action assurance on this point, the Institute has also requested amendments to Securities Act Rule 482 and Form N-1A that would substitute aggregate

total return for annualized total return as the standardized performance for a new fund. We will keep you informed of developments. Mary K. Bellamy Associate General Counsel
Attachment

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