

**MEMO# 3385**

December 23, 1991

## **SUPPLEMENTAL SUBMISSION TO SEC ON NASD PROPOSAL TO REGULATE ASSET-BASED SALES CHARGES**

December 23, 1991 TO: BOARD OF GOVERNORS NO. 92-91 SEC RULES COMMITTEE NO. 77-91 RULE 12b-1 AD HOC COMMITTEE RE: SUPPLEMENTAL SUBMISSION TO SEC ON NASD PROPOSAL TO REGULATE ASSET-BASED SALES CHARGES

Attached for your information is a copy of the Institute's supplemental submission to the Securities and Exchange Commission relating to the NASD's proposal to regulate asset-based sales charges in connection with sales of mutual fund shares. The submission consists of an Institute study comparing the expense ratios of mutual funds with no front-end or deferred sales charges that assess asset-based sales charges of 25 basis points or less ("No-Load with Small 12b-1 funds"), with the expense ratios of funds with different pricing structures. The Institute performed the study to follow up on discussions with members of the staff of the Division of Investment Management regarding the provision of the NASD proposal that, in effect, would permit funds with asset-based sales charges and/or service fees of 25 basis points or less (but no front-end or deferred sales charges) to be described as "no load". The results of the study show that for all fund categories analyzed, there is a greater overlap between the expense ratios of No-Load with Small 12b-1 funds and "pure" no-load funds than between the expense ratios of No-Load with Small 12b-1 funds and funds that have 12b-1 fees of more than 25 basis points or funds that assess front-end or deferred sales charges. Thus, the study affirms that funds with 12b-1 fees of 25 basis points or less are more similar to no-load funds than to load funds (whether the latter assess front-end loads, deferred sales charges, 12b-1 fees of more than 25 basis points or any combination of the foregoing). These results provide further support for the position set forth in the Institute's May 10, 1991 comment letter to the Commission (see Memorandum to Board of Governors No. 33-91, SEC Rules Members No. 30-91 and Rule 12b-1 Ad Hoc Committee, dated May 14, 1991) that the Commission should approve the NASD's proposal in its current form. We will keep you informed of developments. Lawrence A. Rogers General Counsel Attachment