

**Securities Industry Association**

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July 1, 1998

Margaret H. McFarland
Deputy Secretary
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

**Re: Securities Exchange Act Release No. 34-40074;
(File No. SR-NASD-98-32)**

Dear Ms. McFarland:

This Investment Company Committee of the Securities Industry Association ("SIA")¹ is pleased to take this opportunity to comment on a proposed amendment to NASD Conduct Rule 2210, which is described in the above captioned release issued on June 4, 1998. The proposed amendment would exclude independent research reports from the filing requirements applicable to investment company advertisements and sales literature, provided certain conditions enumerated in the amendment are met.

In recent months, the Committee has had an ongoing dialogue with NASD Regulation, Inc. (the "NASDR") to discuss our mutual concern regarding the effectiveness of the current rules and procedures governing the filing and review of investment company related advertising and sales literature. These concerns are the result of an ever increasing volume of such material, which is placing a strain on the resources of the NASDR, and threatens to adversely impact the quality and timeliness of the review process. Therefore, it would appear that an important aspect of any effort to alleviate the problem is to focus on those areas where filing requirements can be reduced or eliminated without compromising investor protection. We believe that elimination of filing requirements with respect to independent research is clearly a step in the right direction. Since such reports are not prepared by the funds themselves or fund distributors, their objectivity is certainly less subject to question as a general matter, and the conditions set forth in subsections (ii) through (v) of the proposed amendment will further insure such objectivity. Therefore, the Committee strongly supports the proposed amendment and looks forward to additional NASDR measures which will further streamline the review process, while making it even more effective. We do believe, however, that in order to ensure that the proposed amendment achieves its intended objective, certain matters need to be clarified, either through

further revisions to the amendment or through an NASDR Notice to Members accompanying the adoption of the amendment. The areas in need of clarification are as follows:

Relationship Between Conduct Rule 2210 and Section 24(b) of the Investment Company Act

Section 24(b) of the Investment Company Act of 1940 requires that all advertisements and sales literature used by a mutual fund or its underwriter be filed with the SEC within 10 days of its use. Rule 24b-2 under the Act provides, in effect, that the requirement of Section 24(b) will be deemed to have been satisfied if such materials have been filed with the NASDR.

Therefore, elimination of the requirement for an NASDR filing will have the effect of requiring the same materials to be filed with the SEC. This result seems inconsistent with the NASDR's intent and would give rise to numerous uncertainties. Among other things, it is unclear how the SEC and its staff would deal with such filings. To avoid these uncertainties, many funds/underwriters may continue to file with the NASDR, at least on a post-use (i.e., limited review) basis. This result also would seem to frustrate the NASDR's intent in eliminating the requirement for such filings in Conduct Rule 2210. Accordingly, we suggest that the NASDR address this matter to provide guidance for the industry.

Definition of "Materially Altered" in Subsection (v) of the Proposed Amendment

The NASDR also should clarify the meaning of the phrase "materially alter" in condition (v) to proposed new paragraph (G) of Conduct Rule 2210. Currently, funds and/or underwriters often supplement mutual fund research reports for the purpose of adding information to clarify terms and/or rating systems used in the report, and to add disclosure required by SEC rules, such as Rules 134 and 482 under the Securities Act of 1933. While such additions are designed to enhance an investor's ability to understand the material involved and/or to comply with legal requirements, they might also be deemed to be material alterations. As a result, arguably, these changes to the research reports could cause the materials involved to fail to qualify for condition (v) of the proposed exclusion from the NASDR filing requirements. The NASDR therefore should clarify that the sorts of alterations and/or additions described above are not ones that would cause the NASDR to consider a mutual fund research report to have been "materially altered" within the meaning of condition (v) of the proposed amendment. Perhaps this could be done by clarifying that "alter" for this purpose means to change the text or presentation of the report itself, rather than to supplement the report with additional information intended to clarify terminology or add information required by applicable rules.

In summary, we welcome and applaud the NASDR's efforts to address industry and regulatory concerns engendered by the substantial increase in investment company sales and advertising materials, and we fully support the proposed amendment, subject to the provision of the clarifications outlined above. Any questions concerning this letter may be directed to Michael D. Udoff, Staff Adviser to the Committee at (212) 618-0509.

Sincerely,

Lawrence H. Kaplan
Chairman,
Investment Company Committee

cc: Thomas Selman - NASDR

Thomas Pappas - NASDR

R. Clark Hooper - NASDR

Douglas Scheidt - SEC

Footnote:

¹ The Securities Industry Association brings together the shared interests of nearly 800 securities firms, employing more than 380,000 individuals, to accomplish common goals. SIA members - including investment banks, broker-dealers, and mutual fund companies - are active in all markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans and accounts for \$270 billion of revenues in the U.S. economy.