

MEMO# 7033

June 15, 1995

NASD PROPOSAL TO EXCLUDE INVESTMENT COMPANIES FROM DEFINITION OF "LIMITED PARTNERSHIP ROLLUP TRANSACTION;" DRAFT COMMENTS

June 15, 1995 TO: SEC RULES COMMITTEE No. 73-95 RE: NASD PROPOSAL TO EXCLUDE
INVESTMENT COMPANIES FROM DEFINITION OF "LIMITED PARTNERSHIP ROLLUP
TRANSACTION;" DRAFT COMMENTS

The NASD recently issued proposed amendments to Article III, Section 34 of its Rules of Fair Practice and Part I of Schedule D to its By-laws that would exclude registered investment companies from the definition of "limited partnership rollup transaction" set forth therein. A copy of the proposing release and a draft of the Institute's comment letter supporting the proposed changes are attached. The proposed amendments are intended to make the NASD provisions consistent with Rule 3b-11 under the Securities Exchange Act of 1934, which the SEC adopted in December 1994 to exclude, among other things, registered investment companies from the definition of "limited partnership rollup transaction." As indicated in the attached proposing release, in adopting Rule 3b-11, the SEC stated that it was defining terms used in the 1993 federal legislation regulating limited partnership rollups ". . . for purposes of, among other things, the SRO rules." The attached draft comment letter expresses strong support for the proposed exclusion of registered investment companies from the NASD's "limited partnership rollup transaction" definition. It cites the Institute's agreement with the statement in the proposing release that "Investment Companies . . . are already subject to extensive regulation under the 1940 Act and have not been perceived as entities connected with the types of abusive limited partnership rollup transactions for which investor protection provisions of the rollup rules were sought." The draft letter also notes the importance of consistent regulatory treatment of registered investment companies by the SEC and the NASD. Finally, the draft letter states that the Institute shares the NASD's view that "the proposed rule change provides for regulatory consistency in the definition of 'limited partnership rollup transaction' and appropriately excludes investment companies . . . from unnecessary, and potentially burdensome, additional regulation." Comments on the proposed amendments must be filed by June 22, 1995. Please call the undersigned at (202) 326-5822 by Wednesday, June 21 with any comments on the attached draft letter. Frances M. Stadler Associate Counsel Attachments

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