

MEMO# 7425

November 15, 1995

INSTITUTE COMMENT LETTER ON PROPOSED NASD INTERPRETATION OF BROKER-DEALER SUITABILITY OBLIGATIONS

1 See Memorandum to Investment Advisers Committee No. 44-95 and SEC Rules Committee No. 116-95, dated November 2, 1995; Memorandum to Small Funds Committee No. 19-95, dated November 3, 1995. November 15, 1995 TO: INVESTMENT ADVISERS COMMITTEE No. 46-95 SEC RULES COMMITTEE No. 122-95 SMALL FUNDS COMMITTEE No. 20-95 RE: INSTITUTE COMMENT LETTER ON PROPOSED NASD INTERPRETATION OF BROKER-DEALER SUITABILITY OBLIGATIONS

As we previously informed you, the Securities and Exchange Commission recently solicited comments on a proposed interpretation of the National Association of Securities Dealers, Inc., concerning a broker-dealers suitability obligations to institutional customers under the NASDs Rules of Fair Practice.¹ The Institute recently submitted the attached comment letter to the Commission on the proposal. The proposed interpretation states that, for its purposes, an institutional customer is any entity other than a natural person, but that in determining the applicability of the interpretation to an institutional customer the NASD will consider the dollar value of the securities that the institutional customer has under management. The interpretation states that it is more appropriately applied to an institutional customer with at least \$10 million in securities under management. The Institutes letter seeks clarification that a members suitability obligation and the guidance provided by the interpretation would apply identically with respect to all registered investment companies, regardless of the amount of assets that a particular investment company has under management. The letter points out that all registered investment companies are equally subject to the Investment Company Act of 1940 and must operate within the same competitive environment in which they are expected to obtain professional, experienced investment management for their shareholders. Moreover, an NASD interpretation that liberalizes the suitability requirements of its members with respect to larger investment companies could inadvertently lead to discrimination against smaller investment companies, thereby depriving them of valuable investment opportunities.

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should not be considered a substitute for, legal advice.