

**MEMO# 6685**

February 23, 1995

# **INSTITUTE COMMENT LETTER ON PROPOSED NASD RULES CONCERNING BANK BROKER-DEALER ACTIVITIES**

1 See Memorandum to Board of Governors No. 127-94, Bank Investment Management Members No. 39-94, SEC Rules Committee No. 133-94 and Subcommittee on Advertising No. 25-94, dated December 19, 1994. February 23, 1995 TO: BOARD OF GOVERNORS No. 33-95 BANK INVESTMENT MANAGEMENT MEMBERS No. 10-95 SEC RULES COMMITTEE No. 28-95 SUBCOMMITTEE ON ADVERTISING No. 3-95 RE: INSTITUTE COMMENT LETTER ON PROPOSED NASD RULES CONCERNING BANK BROKER-DEALER ACTIVITIES

As we previously reported, in December 1994 the National Association of Securities Dealers, Inc. published a Notice to Members proposing rules concerning broker-dealer sales activities on bank premises.<sup>1</sup> The Institute recently submitted the attached comment letter to the NASD, recommending that the NASD repropose rules concerning these activities. The Institute continues to believe that all securities sales activities, whether conducted by employees of banks, bank affiliates, or independent broker-dealers, should be subject to strict and comprehensive regulation by the SEC and the NASD. This regulation would provide investors in bank-advised and bank-sold funds with the full range of protections afforded other mutual fund investors under the federal securities laws, and would benefit participants in bank sales activities by making duplicative or inconsistent regulation unnecessary. The letter notes that so long as there is overlapping regulatory jurisdiction, however, regulations in this area must be effectively coordinated and harmonized in order to reduce burdens on industry participants. The letter points out that none of the banking agencies apparently sought to coordinate their guidelines with the NASD and that the NASD has now belatedly proposed its own rules, apparently without integrating its efforts with the banking agencies. The NASD proposal and the bnk agencies Interagency Statement thus are inconsistent in numerous important respects and would establish divergent regulation of bank sales activities. The letter urges reproposal for other reasons as well. First, it recommends the NASD withdraw the proposed prohibitions on the payment of referral fees and the use of confidential customer information, each of which is already well-regulated under NASD rules and the federal banking laws. Second, it notes the language of the proposal has generated significant confusion since it was issued. Although the NASD has attempted to respond to this confusion, it would be prudent for the NASD to reevaluate its proposal and reissue it for comment, in order to ensure that the final rules do not raise similar misunderstandings. The Institutes letter concludes with a set of specific cmments on the rule, which the Institute strongly recommends that the NASD incorporate into a reproposal (or, in the event that the NASD determines not to repropose the rules, into final rules to be submitted to the SEC). Paul Schott Stevens General Counsel Attachment

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