

MEMO# 11035

June 3, 1999

INSTITUTE COMMENT LETTER ON NASDR DAY TRADING RULES PROPOSAL

* See Memoranda to Advertising Compliance Advisory Committee No. 19-99 and SEC Rules Committee No. 31-99, dated April 29, 1999. [11035] June 3, 1999 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 13-99 SEC RULES COMMITTEE No. 44-99 RE: INSTITUTE COMMENT LETTER ON NASDR DAY TRADING RULES PROPOSAL

In response to NASDR's request for comment on two proposed day trading rules, the Institute has submitted the attached comment letter.* The Institute's letter states that while we have no objections to efforts by NASDR to regulate day trading, we are concerned that NASDR's interpretation of "recommendation" for purposes of these rules may have implications beyond them. In the Special Notice to Members proposing these rules, NASDR stated that a member "would be recommending a day trading strategy . . . if it affirmatively promoted day trading through advertising, training seminars, or direct outreach programs" and an individual engaged in day trading. The Institute's letter points out that this interpretation is far broader than NASDR's current interpretation of the term recommendation. Moreover, it is inconsistent with the position expressed by NASDR staff on whether certain statements in mutual fund sales literature and advertising constitute a "recommendation." In a 1997 letter to the Institute, NASDR confirmed that "a reference to an investment company or an offer of investment company shares in an advertisement or piece of sales literature would not by itself constitute a 'recommendation' for purposes of [NASDR's suitability rule]." Because of this inconsistency, the Institute has recommended that NASDR clarify that the position expressed to the Institute in its 1997 correspondence continues to be NASDR's position on this issue. Tamara K. Reed Associate Counsel Attachment

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