

MEMO# 7902

May 29, 1996

PROPOSED BANK AGENCY INTERPRETATION OF BANK SUITABILITY OBLIGATIONS

1 See Memorandum to Investment Advisers Committee No. 5-96 and SEC Rules Committee No. 23-96, dated March 27, 1996. 61 Federal Register 18470 (April 25, 1996). May 29, 1996
TO: INVESTMENT ADVISERS COMMITTEE No. 11-96 SEC RULES COMMITTEE No. 49-96 RE:
PROPOSED BANK AGENCY INTERPRETATION OF BANK SUITABILITY OBLIGATIONS

As we previously informed you, the National Association of Securities Dealers, Inc., has proposed an interpretation concerning a broker-dealers suitability obligations to institutional customers under the NASDs Rules of Fair Practice.¹ The federal bank regulatory agencies recently issued a joint proposal to adopt rules substantially similar to the NASDs suitability proposal. A copy of the bank agencies proposal is attached.² Under the bank agencies* proposal, the most important considerations in determining the scope of a bank*s suitability obligations to an institutional customer are the customer*s capability to evaluate risk independently and the extent to which the customer is exercising independent judgment in evaluating a bank*s recommendation. The interpretive rules would enumerate considerations relevant to the determination of the customer*s ability to evaluate risk and exercise independent judgment. While the rules would provide that an institutional customer is any entity other than a natural person, the bank agencies would consider the dollar value of the securities that the institutional customer has in its portfolio or under management. The interpretive rules would provide that the interpretation is more appropriately applied to an institutional customer with at least \$10 million in securities under management. The comment period on the bank agencies* proposal ends on June 24, 1996. Thomas M. Selman Associate Counsel Attachment