

MEMO# 7049

June 23, 1995

SEC APPROVES NASD RULE CHANGE TO REQUIRE ""DO NOT CALL"" LISTS

1 See Memorandum to Compliance Committee No. 21-92, Direct Marketing Committee No. 42-92, Sales Force Marketing Committee No. 43-92, SEC Rules Members No. 54-92 and Unit Investment Trust Members No. 54-92, dated October 28, 1992. 2 See Memorandum to Compliance Committee No. 16-94, Direct Marketing Committee No. 28-94, Sales Force Marketing Committee No. 38-94, SEC Rules Members No. 65-94 and Unit Investment Trust Members No. 37-94, dated September 19, 1994. June 23, 1995 TO: COMPLIANCE COMMITTEE No. 26-95 DIRECT MARKETING COMMITTEE No. 27-95 SALES FORCE MARKETING COMMITTEE No. 30-95 SEC RULES MEMBERS No. 42-95 UNIT INVESTMENT TRUST MEMBERS No. 33-95 RE: SEC APPROVES NASD RULE CHANGE TO REQUIRE ""DO NOT CALL"" LISTS

The Securities and Exchange Commission recently approved an amendment to Article III, Section 21 of the NASDGs Rules of Fair Practice relating to cold calling. As amended, the provision will require NASD members that engage in telephone solicitation to market products and services to maintain a centralized list of persons who do not wish to receive telephone solicitations from that member or its associated persons. A copy of the SEC's release approving the rule change is attached. The rule change became effective upon its approval by the SEC. The attached release notes that the FCC adopted rules in 1992 pursuant to the Telephone Consumer Protection Act that require a person or entity making a telephone solicitation to maintain a do-not-call list.¹ It further explains that under the Telemarketing and Consumer Fraud and Abuse Prevention Act adopted in August 1994, the SEC is required to adopt rules, or to require self-regulatory organizations such as the NASD to adopt rules, to effect the purposes of the legislation.² The release indicates that SEC Chairman Arthur Levitt sent a letter to the NASD and other SROs in August 1994 urging the adoption of rules similar to the FCC's cold calling rule. In discussing the SEC's approval of the rule proposal, the release states that the SEC believes the NASD rule change "is a good first step in the effort to protect against abusive cold calling," and that it "is consistent with the Prevention Act as well as the FCC rules concerning restrictions on telephone solicitations." The rule change will add a new subparagraph (g) to Article III, Section 21 of the NASD Rules of Fair Practice, as follows: Cold Call Requirements (g) Each member shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons. The NASD has not defined the term "telephone solicitation" for this purpose. A member of the NASD staff informally advised the Institute that the NASD intends to provide flexibility to its members in designing procedures to comply with the new provision. Frances M. Stadler Associate Counsel Attachment

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