

MEMO# 8999

June 20, 1997

NASDR SOLICITS COMMENT ON PROPOSED CHANGES TO RULES GOVERNING CORRESPONDENCE WITH CUSTOMERS

1 NASD Notice to Members 97-37 (June 1997). June 20, 1997 TO: ADVERTISING SUBCOMMITTEE No. 22-97 SEC RULES COMMITTEE No. 63-97 RE: NASDR SOLICITS COMMENT ON PROPOSED CHANGES TO RULES GOVERNING CORRESPONDENCE WITH CUSTOMERS

NASD Regulation, Inc. is soliciting comment on proposed amendments to NASD Conduct Rule 2210 that would require written or electronic communications prepared for a single customer to meet certain of Rule 2210's content requirements. A copy of NASDR's notice soliciting comments is attached.¹ The proposal creates a new definition of "correspondence" which includes any written or electronic communication prepared for delivery to a single customer and not for dissemination to multiple customers or the general public. The proposal also would subject all correspondence to the general and specific substantive standards of paragraphs (d) and (f) of Rule 2210. Correspondence would not be subject to the recordkeeping requirements of paragraph (b) or the filing and review requirements of paragraph (c) of Rule 2210, since those requirements only apply to advertising and sales literature. Paragraph (d) of Rule 2210 contains general and specific standards for communications with the public. Under paragraph (d), correspondence would be subject to the general standards that such communications be based on principles of fair dealing and not omit material information, and not be exaggerated, unwarranted or misleading. Correspondence also would be subject to the specific standards of paragraph (d), which imposes a number of disclosure and other requirements on communications with respect to such matters as recommendations to buy or sell a security, promises of specific results or unwarranted claims, testimonials, periodic investment plans, comparisons, and other issues. Paragraph (f) of Rule 2210 contains general and specific standards for the disclosure of members' names. Under the proposal, correspondence would be subject to all of these standards, which include, among others, that names of members are set forth clearly and prominently, that names of members and non-member entities are clearly distinguished, that names do not imply the offering of a product not available from the company named, and that certain derivative, generic and doing business as names conform to certain standards. The proposal also would include "correspondence" within the category of "communications with the public," and thus would require all members' correspondence to conform to all applicable SEC rules. The amendments additionally would vest NASDR's Advertising Regulation Department, rather than its District Business Conduct Committees,

with the authority to require members to pre-file advertising and sales literature with the Department for review. NASDR has specifically requested comment as to whether its concerns over correspondence containing misleading or unwarranted statements are best addressed by a rule change or some other means, including supervision of correspondence. Comments on the proposal are due July 15, 1997. Please provide any comments that you may have on the proposal to Joe Savage at 202/326-5819 or savage@ici.org no later than Tuesday, July 1, 1997. Joseph P. Savage Assistant Counsel Attachment (in .pdf format)

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