

**MEMO# 11366**

November 1, 1999

# **ICI COMMENT LETTER ON PROPOSED AMENDMENTS TO NASD RULES GOVERNING COMMUNICATIONS WITH THE PUBLIC**

1 See Memorandum to Advertising Compliance Advisory Committee No. 17-99 and SEC Rules Committee No. 65-99, dated September 10, 1999, and Memorandum to Unit Investment Trust Committee No. 20-99 and Closed-End Investment Company Committee No. 29-99, dated September 15, 1999 (transmitting NASD Notice to Members - Request for Comment 99-79). 2 See Memorandum to Advertising Compliance Advisory Committee No. 21-99, SEC Rules Committee No. 82-99, Closed- End Investment Company Committee No. 37-99, and Unit Investment Trust Committee No. 28-99, dated October 20, 1999. [11366] November 1, 1999 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 22-99 SEC RULES COMMITTEE No. 89-99 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 40-99 UNIT INVESTMENT TRUST COMMITTEE No. 30-99 RE: ICI COMMENT LETTER ON PROPOSED AMENDMENTS TO NASD RULES GOVERNING COMMUNICATIONS WITH THE PUBLIC

The Institute recently filed with NASD Regulation, Inc. the attached comment letter on proposed amendments to NASD rules governing member communications with the public.<sup>1</sup> The letter is substantially similar to the draft letter circulated on October 20, 1999.<sup>2</sup> The Institute's comment letter generally supports NASDR's proposed amendments. In particular, it supports the proposed distinction between institutional and retail investors and, to ensure consistency in the application of the advertising rules, recommends that NASDR distinguish between institutional and retail materials when it issues interpretive guidance. The letter also recommends that the definition of "institutional investor" be expanded to include Certified Financial Planners and persons who hold other specified professional designations, and any qualified retirement plan that covers 100 or more participants. Additionally, it recommends that the definition of "institutional investor" include any entity or individual meeting a designated asset threshold (e.g., \$5 million or \$10 million) that is substantially lower than the proposed \$50 million level set forth in Rule 3110(c)(4). Noting that article reprints prepared by independent third parties do not raise the same concerns as materials prepared by a member or its affiliates, the letter recommends that such reprints only be subject to the content standards requiring sales material to be fair and balanced and not false or misleading. The letter opposes NASDR's proposal to mandate that "material information" appear in the main text of an advertisement, rather than in footnotes, and states that the current rule's more flexible approach is more appropriate in that it permits members to create advertisements that are readable, without being misleading. Finally, the letter also: (i) makes specific comments on several proposed changes to the content

standards; (ii) recommends that the provision governing public appearances be deleted; (iii) suggests modifications to the filing requirements for some materials; (iv) recommends that NASDR permit fund family rankings; and (v) provides several other, more technical comments. Doretha VanSlyke Zornada Assistant Counsel Attachment

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