

MEMO# 11230

September 10, 1999

NASDR REQUESTS COMMENT ON PROPOSED AMENDMENTS TO RULES GOVERNING COMMUNICATIONS WITH THE PUBLIC

1 NASD Notice to Members – Request for Comment 99-79 (Sept. 1999) (“Notice”). 2 NASD Regulation Request for Comment 98-81 (Oct. 1998). See Memorandum to Advertising Compliance Subcommittee No. 41-98, SEC Rules Committee No. 104-98 (transmitting Institute comment letter on 98-81). 3 NASDR has included as Attachment B to its Notice a new checklist for submitting comments in addition to, or in lieu of, other written comments. If members choose to use the checklist to comment, we would appreciate receiving a copy of it, in addition to any other written comments you may submit to the NASD. [11230]
September 10, 1999 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 17-99 SEC RULES COMMITTEE No. 65-99 RE: NASDR REQUESTS COMMENT ON PROPOSED AMENDMENTS TO RULES GOVERNING COMMUNICATIONS WITH THE PUBLIC

NASD Regulation, Inc. has issued a Notice to Members requesting comment on proposed amendments to its rules governing member communications with the public. 1 The Notice describes the proposals as “the most comprehensive set of amendments to the NASD advertising rules in recent history.” It further states that the proposed amendments are intended to enhance the effectiveness with which the advertising rules protect investors, and are based in part on suggestions the NASD received in response to its request for comment on whether any of its rules should be modernized, repealed as obsolete, or should distinguish between retail and institutional customers in their application. 2 According to the Notice, one of the most significant aspects of the proposal is to exempt all member firm communications to institutional investors from pre-use approval and NASDR filing requirements. A copy of the Notice is attached and summarized below. Comments on the proposal must be filed with NASDR by October 29, 1999. If you have any ideas or suggestions that you would like the Institute to consider including in its comment letter, please provide them to me by phone: 202/326-5819, fax: 202/326-5839, or e-mail: dvanslyke@ici.org no later than Tuesday, September 28, 1999. 3 Filing Requirements and Review Procedures The NASD’s proposal would create a separate category of advertisements and sales literature distributed solely to institutional investors, which would be exempt from Rule 2210’s pre-use approval and filing requirements, although such material would continue to be subject to the rule’s content and recordkeeping requirements. The proposal would define “institutional investor” as (1) any natural person or entity described in Rule 3110(c)(4) and (2) any NASD member or associated person of a

member. The proposal would also exempt from the pre-use approval and filing requirements all form letters and group e-mail sent to existing retail customers and to fewer than 25 prospective retail customers. Additionally, the proposal would exempt from Rule 2210's filing requirements third-party article reprints used as sales literature that have not been materially altered by the member, and press releases regarding investment companies that are made available only to members of the media. The Notice invites comment on whether mutual fund shareholder reports that are used as sales material and/or generic fund advertisements should be exempt from Rule 2210's filing requirements, and whether the backup filing requirement for sales material that contains rankings should be eliminated. Ranking Guidelines The NASD proposes several changes to the Ranking Guidelines contained in Interpretive Material 2210-3, including: (1) eliminating the requirement that certain disclosures appear in "close proximity" to any headline or other prominent statement that refers to a ranking; (2) modifying the current ranking requirement so that rankings would have to be based on the total return for short, medium, and long-term periods for investment companies in the same category; and (3) eliminating certain disclosure requirements applicable to investment company rankings that are based on subcategories of funds. The NASD solicits comment on whether the Ranking Guidelines should permit sales material to include rankings of entire fund families. Standards Applicable to Member Communications The NASD also proposes to substantially shorten and simplify the standards applicable to communications with the public that are contained in Rule 2210(d), including eliminating the distinction between general and specific standards and rewriting many of the standards in "plain English." Other Proposals Among additional amendments, the Notice proposes to simplify both the provisions concerning disclosure of member names and the requirements in Interpretive Material 2210-4 concerning the use of the NASD's name. Doretha VanSlyke Zornada Assistant Counsel Attachment

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