

MEMO# 7807

April 24, 1996

SEC REQUEST FOR COMMENT ON NASD RULES CONCERNING BANK BROKER-DEALER ACTIVITIES

1 Securities Exchange Act Release No. 3698, 61 Fed. Reg. 11913 (March 22, 1996).² See Memorandum to Bank Investment Management Members No. 10-95, SEC Rules Committee No. 28-95, and Subcommittee on Advertising No. 3-95, dated February 23, 1995. April 24, 1996 TO: BANK AND TRUST ADVISORY COMMITTEE No. 11-96 RE: SEC REQUEST FOR COMMENT ON NASD RULES CONCERNING BANK BROKER-DEALER ACTIVITIES

The National Association of Securities Dealers, Inc., recently filed with the Securities and Exchange Commission its proposed rules governing member sales activities on bank premises. In the attached release, the Commission requests public comment on the proposed rules.¹ We are pleased to report that the NASD's proposal reflects many of the Institute's comments on an earlier NASD proposal.² The comment period for the proposed rules expires on May 21, 1996.

1. Written Agreement The proposed rules would require that an NASD member operating on bank premises enter into a written agreement with the bank, which must stipulate that: C supervisory personnel of the member and staff of the Commission and NASD may inspect the books and records and other relevant information maintained by the member on the bank's premises; C unregistered bank employees will not receive any compensation conditioned upon whether a referral results in a transaction; and C the member will notify the bank if any associated person of the member who is also employed by the bank is terminated for cause by the member.

-2- 2. Bank Premises Wherever possible, the member's services would have to be conducted in a physical location distinct from the bank's deposit-taking area. The proposed rules would not apply in trust areas and other parts of a bank that do not generally provide access to the public without an appointment. The rules would apply, however, to broker-dealer services provided via telephone to customers who are on bank premises even if no broker-dealer personnel are on the premises. The NASD believes that it may be particularly difficult to distinguish between bank and broker-dealer activities when banks conduct business from kiosks or desks in public places (e.g., supermarkets).

3. Interagency Disclosures A member would have to provide risk disclosures similar to those required by the federal bank agencies* Interagency Statement on Retail Sales of Nondeposit Investment Products and make reasonable efforts to obtain a written customer acknowledgment of these disclosures, when a customer's account is opened by the member on bank premises.

4. Confidential Information A member could use confidential financial information provided by a bank, with the customer's prior written consent. "Confidential financial information" would be defined generally to exclude customer names, addresses, and telephone numbers and information available from unaffiliated credit bureaus in the ordinary course of business. A member

would not be able to use a customer list sorted by the bank according to information that would be confidential if it pertained to an individual customer (e.g., lists of customers with expiring certificates of deposit or net worth over \$100,000).

5. Joint Statements and Other Member Communications All member communications regarding a customer's securities transactions would have to indicate that the broker-dealer services are provided by the member and make the Interagency Statement disclosures. The rules would permit the use of joint account statements of the member and bank, but the member would have to distinguish uninsured securities from the bank's FDIC-insured products. The NASD intends to review the entire contents of all joint sales material to determine if the context within which the member's material appears complies with the NASD's advertising rules. Sales materials issued by the member that relate only to its services would be deemed to be the member's materials and would have to indicate prominently the member's identity. The bank could be referenced in a "nonprominent manner" to identify the location where broker-dealer services are available and, where appropriate, to disclose a material relationship between the member and the bank, such as when the member is affiliated with a bank that serves as adviser to a mutual fund.

-3- 6. Compensation/Referral Fees The member would not be permitted to provide compensation to bank employees who are not registered with an NASD member. According to the release accompanying the proposed rules, the NASD's long-standing position has been that if an unregistered individual receives a series of regular, ongoing payments from a member, the recipient is required to register as an associated person. Moreover, an NASD member may not compensate bank employees for referrals through indirect payments to the bank. We will keep you informed of developments.

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