

MEMO# 7841

May 7, 1996

DRAFT INSTITUTE COMMENT LETTER ON NASD BANK BROKER-DEALER RULES

1 See Memorandum to Bank Investment Management Members No. 5-96, SEC Rules Committee No. 22-96, and Subcommittee on Advertising No. 4-96, dated March 26, 1996. May 7, 1996 TO: BANK INVESTMENT MANAGEMENT MEMBERS No. 7-96 SEC RULES COMMITTEE No. 33-96 SUBCOMMITTEE ON ADVERTISING No. 6-96 RE: DRAFT INSTITUTE COMMENT LETTER ON NASD BANK BROKER-DEALER RULES

As we previously reported, the NASD recently filed with the Securities and Exchange Commission revised rules governing member sales activities on bank premises.¹ Attached is a draft Institute comment letter on the proposal. The comment period for the proposed rules expires on May 21, 1996. Please provide your comments on the Institutes draft letter to me (at 202/326-5819) by Friday, May 17th. The Institutes letter states that the revised proposal reflects an attempt to resolve many of the conflicts between the NASDs original proposal and other regulatory requirements, an effort that the Institute strongly supports. Nevertheless, the Institute is concerned that the revised proposal still would be inconsistent with the bank agencies Interagency Statement, with existing NASD interpretations, and with the current practices of financial institutions and NASD members. First, the referral fee prohibitions in the NASDs proposal apparently would conflict with the NASDs long-standing position that a member may pay certain small, fixed referral fees to unregistered persons. Moreover, while the NASDs proposal would seem to permit the bank to pay to its unregistered personnel referral fees that are not conditioned on whether the referral results in a transaction, the Proposing Release implies that banks could not pay any type of referral fee, a prohibition that would conflict with the Interagency Statement. Finally, the Institute continues to question why the NASD needs to adopt referral fee prohibitions specific to the bank channel. Second, the NASD proposal would prohibit members from using confidential financial information provided by a bank unless the customer has provided prior written approval to release the information. While the NASD has restricted the use of customer information obtained by a member in a special fiduciary capacity, it has never prohibited use of customer lists properly obtained from a nonmember in the member's normal solicitation activities. Moreover, the use of customer lists alone should have little bearing on whether a bank customer will be confused by the uninsured nature of securities products. Any concerns about a banks potential misuse of confidential financial information are properly the subject of bank regulation and financial privacy laws. Finally, the NASDs proposal would impose the unnecessarily burdensome requirement that financial institutions obtain written approval from every customer for release of confidential information and that NASD members confirm that approval has been given. The Institutes letter also requests clarification that the proposal would not apply to bank premises where

retail deposits are not taken, to customer communications by telephone or computer with a registered representative, and in supermarkets or other similar places. We also ask for clarification that the disclosures and customer acknowledgment required by the proposal can be provided on an application to open an account with a member and that the proposal would permit a reference in broker-dealer sales material to "a material relationship between the member or a product and the financial institution." Thomas M. Selman
Associate Counsel Attachment

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