

MEMO# 16160

June 4, 2003

NASD PROPOSAL TO REQUIRE CEO AND CHIEF COMPLIANCE OFFICER CERTIFICATION OF COMPLIANCE POLICIES AND PROCEDURES

[16160] June 4, 2003 TO: COMPLIANCE ADVISORY COMMITTEE No. 42-03 SEC RULES COMMITTEE No. 52-03 SMALL FUNDS COMMITTEE No. 19-03 RE: NASD PROPOSAL TO REQUIRE CEO AND CHIEF COMPLIANCE OFFICER CERTIFICATION OF COMPLIANCE POLICIES AND PROCEDURES The National Association of Securities Dealers has published for comment a proposal to amend NASD Rule 3010 to require each member to designate a Chief Compliance Officer (CCO) who, jointly with the member's Chief Executive Officer (CEO), would be required to certify annually that the member has in place adequate compliance and supervisory policies and procedures.¹ In addition, NASD has proposed adoption of Interpretive Material (IM) 3010-1 to provide further guidance regarding the required certification. The NASD's proposal is briefly summarized below. Comments on the proposal are due to the NASD no later than Friday, July 11th. Persons with comments they would like the Institute to consider including in its comment letter should provide them to the undersigned no later than Friday, June 20th. Comments may be submitted by phone (202-326-5825) or e-mail (tamara@ici.org). PROPOSED NASD RULE 3010(C), REQUIRED ANNUAL CERTIFICATION As proposed, NASD Rule 3010(c) would be revised to require the CEO and CCO to certify jointly that:² • The member, based on the types of businesses in which it engages and the nature of its activities, has in place adequate compliance and supervisory policies and procedures reasonably designed to comport with applicable NASD rules, MSRB rules, and federal securities laws and rules; 1 See NASD Special Notice to Members 03-29, Certification by Chief Executive Officer and Chief Compliance Officer (June 2003) (the "Notice"). A copy of the Notice is available through NASD's website at <http://www.nasdr.com>. 2 Appendix A to the Notice contains the wording of the required annual certification. 2 • The CEO and CCO have consulted with or otherwise relied on those employees, officers, outside consultants, lawyers and accountants as they consider appropriate, in order to attest to the statements made in the certification; and • The member has reviewed and will continue to review the adequacy of its compliance and supervisory policies and procedures on a periodic basis as necessary based upon the member's business, any changes to such business, or changes in the rules, laws, or regulations applicable to the member. According to the Notice, this proposal seeks to "facilitate development of an ethical culture of compliance within firms by elevating the status of the [CCO] and by compelling periodic and significant consultation between senior business and compliance personnel." As such, the rule is intended to promote corporate ethics and public trust, enhance investor protection, and bolster the integrity of the NASD's

members and markets. PROPOSED IM-3010-1, INTERPRETIVE GUIDANCE ON THE REQUIRED CERTIFICATION Proposed IM-3010-1 is intended to articulate the philosophy behind proposed Rule 3010(c) and delineate important limitations to the obligations and liabilities associated with the required certification. In particular, the IM would delineate that: • The certification is intended to require a regular review by each member of its compliance and supervisory policies and procedures in light of the nature of its business and the laws and rules that are applicable to such business and to take such action as may be appropriate; • The CCO is not necessarily responsible for the execution of the each compliance and supervisory policy and procedure and the signatories to the certification are certifying as to adequacy, but not necessarily as to the implementation, of the member's compliance supervisory policies and procedures; • The scope of the requirement to have adequate policies and procedures is defined by the nature and extent of regulation attendant to each member's line of business; and • No liability will accrue to the signatories to the certification under the rules of the NASD or interpretation of such rules as a consequence of their certification provided that at the time of the certification they (1) have a reasonable basis for the certification and (2) certify in a manner that comports with high standards of commercial honor and just and equitable principles of trade. Tamara K. Salmon Senior Associate Counsel

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