

MEMO# 11327

October 20, 1999

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

* See Memorandum to Advertising Compliance Advisory Committee No. 17-99, SEC Rules Committee No. 65-99, Unit Investment Trust Committee No. 20-99, and Closed-End Investment Company Committee No. 29-99 (transmitting NASD Notice to Members – Request for Comment 99-79). [11327] October 20, 1999 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 21-99 SEC RULES COMMITTEE No. 82-99 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 37-99 UNIT INVESTMENT TRUST COMMITTEE No. 28-99 RE: DRAFT ICI COMMENT LETTER ON PROPOSED AMENDMENTS TO NASD RULES GOVERNING COMMUNICATIONS WITH THE PUBLIC

Attached for your review is a draft of the Institute's comment letter on NASD Regulation, Inc.'s proposed amendments to its rules governing member communications with the public.* The proposed amendments would create a separate category of advertisements and sales literature distributed solely to institutional investors that would be exempt from Rule 2210's pre-use approval and filing requirements and some of its content requirements. Among other things, the proposed amendments also would: (i) exempt from the pre-use approval and filing requirements form letters and group e-mail to existing retail customers and fewer than 25 prospective retail customers; (ii) exempt from the filing requirements article reprints and certain press releases regarding investment companies; and (iii) simplify the standards applicable to member communications. Comments on the proposed amendments must be filed with NASDR by Friday, October 29th. Please provide your comments on the draft letter to me (by phone at 202/326-5819; fax at 202/326-5839; or e-mail at dvanslyke@ici.org) or Frances Stadler (by phone at 202/326-5822; fax at 202/326-5827; or e-mail at frances@ici.org) by the close of business on Tuesday, October 26th. The Institute's draft comment letter generally supports NASDR's proposed amendments. In particular, we support NASDR's proposed distinction between retail and institutional investors and, to ensure consistency in the application of the advertising rules, recommend that NASDR distinguish between institutional and retail materials when it issues interpretive guidance. We also recommend that the definition of "institutional investor" be expanded to include Certified Financial Planners and any qualified retirement plan that covers 100 or more participants. In addition, because article reprints prepared by independent third parties do not raise the same concerns as materials prepared by a member or its affiliates, we request that such reprints only be subject to the content standards requiring sales material to be fair, balanced and not false or misleading. We also: (i) have specific

comments on several proposed changes to the content standards; (ii) recommend that the provision governing public appearances be deleted; (iii) suggest modifications to the filing requirements for some materials; (iv) recommend that NASDR permit fund family rankings; and (v) provide several other, more technical comments. We are interested in receiving members' comments on all aspects of our draft comment letter. We also have several specific questions, as noted below: ! NASDR's proposed definition of "institutional investor" includes, among other things, "any other entity or individual with total assets of at least \$50 million." Do members think the \$50 million threshold is appropriate or too high? A member suggested that the Institute consider recommending that NASDR's definition incorporate the entities (but not the natural persons) that fall within the definition of "accredited investor" under Regulation D of the Securities Act, which has a \$5 million threshold for entities. We request members' views on this suggestion. ! Does NASDR's backup filing requirement for sales materials that contain rankings place a cost burden on members? If so, how (e.g., do filing fees apply) and how great is the burden? ! The draft letter recommends that NASDR exempt shareholder reports from the filing requirements. As a fallback position, we recommend that NASDR require members to file shareholder reports only if they contain marketing material that goes beyond SEC regulatory requirements and, if such marketing material is in the president's letter, that members only be required to file the letter. Do members agree with this fallback position? (see page 8 of the attached draft letter). Doretha VanSlyke Zornada Assistant Counsel Attachment