

**MEMO# 15078**

August 27, 2002

# **NASD NOTICE TO MEMBERS RELATING TO THE REGULATION OF IPO ALLOCATIONS AND DISTRIBUTIONS**

[15078] August 27, 2002 TO: SEC RULES MEMBERS No. 70-02 COMPLIANCE ADVISORY COMMITTEE No. 66-02 CLOSED-END INVESTMENT COMPANY MEMBERS No. 38-02 INVESTMENT ADVISER MEMBERS No. 34-02 RE: NASD NOTICE TO MEMBERS RELATING TO THE REGULATION OF IPO ALLOCATIONS AND DISTRIBUTIONS The NASD has issued a Notice to Members<sup>1</sup> requesting comment on new NASD Rule 2712 and amendments to existing NASD Rule 2710 relating to the allocation and distribution of IPOs. In particular, the proposal would expressly prohibit the allocation of IPO shares as consideration or inducement for the payment of excessive compensation for other services provided by the NASD member. In addition, the proposal would prohibit the solicitation of aftermarket orders for the allocation of IPO shares (“tie-in agreements”). The proposal also would prohibit the allocation of IPO shares to an executive officer or director of a company on the condition that the officer or director send the company's investment banking business to the NASD member, or as consideration for investment banking services previously rendered. Finally, the proposal would prohibit the imposition of a penalty on registered representatives whose retail customers have “flipped” IPO shares when similar penalties have not been imposed with respect to syndicate members. The proposal would require NASD members to adopt procedures reasonably designed to ensure that the requirements and prohibitions in the new rule are followed. The proposal would not mandate specific procedures that would apply to all members but rather would permit members to tailor the required procedures to their particular corporate structure and the nature of their underwriting and distribution activities. Ari Burstein Associate Counsel 1 NASD Notice to Members 02-55 (August 2002). The Notice to Members can be found on NASDR’s website at <http://www.nasdr.com/pdf-text/0255ntm.pdf>. Comments on the proposal are due to the NASD no later than September 9, 2002.