

MEMO# 8821

April 18, 1997

DRAFT COMMENT LETTER ON NASDR PROPOSALS CONCERNING REFERRAL FEES AND CUSTOMER CONFIDENTIAL FINANCIAL INFORMATION

* See Memorandum to SEC Rules Committee No. 35-97 and Memorandum to Bank Mutual Fund Task Force, dated March 31, 1997. April 18, 1997 TO: SEC RULES COMMITTEE No. 41-97 BANK MUTUAL FUND TASK FORCE RE: DRAFT COMMENT LETTER ON NASDR PROPOSALS CONCERNING REFERRAL FEES AND CUSTOMER CONFIDENTIAL FINANCIAL INFORMATION

As we previously indicated,* NASD Regulation, Inc. recently proposed a new Rule 2460 that would restrict the payment of referral fees to unregistered third parties for the referral of retail business. Simultaneously, NASDR proposed new Rule 3121, which would impose restrictions on NASD members ability to share customers personal financial information with other entities. The proposed rules, which would apply to all NASD members, are intended to replace provisions governing these matters that previously were contained in the NASDs bank broker-dealer rule proposal. Attached for your review is a draft comment letter concerning both proposals. Comments on the proposals must be filed by April 30th. Please contact me at (202) 326-5822 or by e-mail to frances@ici.org by Friday, April 25th if you have comments on the attached draft letter. The draft comment letter states that the Institute is pleased that the new rule proposals address some of the concerns expressed in our comment letter on the NASDs bank broker- dealer rule proposal, but that we recommend several changes to make the new rules workable. With respect to proposed Rule 2460 (referral fees), the draft letter makes three recommendations. First, consistent with the NASDs historic informal position and the Interagency Statement on Retail Sales of Nondeposit Investment Products, the rule should permit members to pay referral fees in certain limited circumstances. Second, the rule should contain an exception for payments that comply with the "cash solicitation rule" under the Investment Advisers Act (Rule 206(4)-3). Third, the rule should be revised specifically to apply only to payments made to natural persons. With respect to proposed Rule 3121, the draft letter recommends that the rule apply prospectively to new customers but not retroactively to existing customers. It suggests that NASDR clarify that for purposes of releasing confidential financial information to non-business affiliates, NASD members may obtain a single, blanket written consent from each customer. The draft letter also seeks clarification that the release to a non-business affiliate of 2a list containing only customers names, addresses and telephone numbers would not trigger the proposed rules disclosure and consent requirements. Finally,

the letter proposes that NASD members be permitted to provide the required disclosures either in the account opening document or in a separate document. The Request for Comment on proposed Rule 3121 notes that the proposed rule goes beyond the requirements of the Fair Credit Reporting Act concerning the use and release of confidential financial information. The Institute considered, but preliminarily has decided against, opposing NASDRs imposition of different requirements. We believe that such a recommendation could be viewed as inconsistent with our position that all NASD members should be subject to the same standards regarding confidential financial information. We further note that NASD rules already impose some restrictions on the use of customer information and, therefore, it may be difficult to argue that there is no need for NASDR involvement in this area. Please let us know if you feel that our letter should oppose NASDR requirements that go beyond those of the Fair Credit Reporting Act and, if so, how we should address these matters. Frances M. Stadler Associate Counsel Attachment (in .pdf format)

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