

**MEMO# 7743**

March 27, 1996

# **SEC REQUEST FOR COMMENTS ON PROPOSED NASD INTERPRETATION OF BROKER-DEALER SUITABILITY OBLIGATIONS**

1 See Memorandum to Investment Advisers Committee No. 46-95, SEC Rules Committee No. 122-95, Small Funds Committee No. 20-95, dated November 15, 1995. 2 Securities Exchange Act Release No. 36973, 61 Fed. Reg. 11655 (March 21, 1996). March 27, 1996 TO: INVESTMENT ADVISERS COMMITTEE No. 5-96 SEC RULES COMMITTEE No. 23-96 SMALL FUNDS COMMITTEE No. 3-96 RE: SEC REQUEST FOR COMMENTS ON PROPOSED NASD INTERPRETATION OF BROKER-DEALER SUITABILITY OBLIGATIONS

As we previously informed you, the Institute submitted a comment letter to the Securities and Exchange Commission on a proposed interpretation of the National Association of Securities Dealers, Inc., concerning a broker-dealers suitability obligations to institutional customers under the NASDs Rules of Fair Practice.<sup>1</sup> In the attached release, the Commission recently requested comment on a revised version of the NASDs proposal.<sup>2</sup> The comment period expires on April 22, 1996. Please provide your comments to me (at 202/326-5819) by Monday, April 8, 1996. The NASD's interpretation would provide guidance concerning the factors that a member should consider in determining the scope of its suitability obligations to institutional customers (e.g., the customer's ability to evaluate risk independently and the extent to which the customer is exercising independent judgment in evaluating the member's recommendations). The interpretation states that it is more appropriately applied to an institutional customer with at least \$10 million in securities under management. The Institute's letter had sought clarification that a member's suitability obligation and the guidance provided by the interpretation would apply identically with respect to all registered investment companies, regardless of the amount of assets that a particular investment company has under management. The release accompanying the reproposal states that the reference to \$10 million accounts is not intended to establish a definitive threshold that distinguishes capable from noncapable institutional customers, and the NASD does not intend to create a presumption either above or below that amount that the interpretation will apply to a particular institutional customer. Consequently, according to the NASD, the \$10 million threshold should not result in inadvertent discrimination against investment companies with less than \$10 million under management. Thomas M. Selman Associate Counsel Attachment

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.