

MEMO# 7925

June 4, 1996

NASD QUESTIONS AND ANSWERS ON ELECTRONIC COMMUNICATIONS

June 4, 1996 TO: DIRECT MARKETING COMMITTEE No. 16-96 SALES FORCE MARKETING COMMITTEE No. 18-96 SUBCOMMITTEE ON ADVERTISING No. 13-96 RE: NASD QUESTIONS AND ANSWERS ON ELECTRONIC COMMUNICATIONS

The National Association of Securities Dealers, Inc. recently published the attached "Ask the Analyst About Electronic Communications" column. Although the NASD has amended its Rules of Fair Practice specifically to address electronic communications, several commenters, including the Institute, had asked the NASD to provide further guidance to members with respect to certain issues. The column is intended to provide such guidance. The column, among other things, provides the NASD's views on several types of electronic communications. With respect to electronic bulletin boards, the NASD states that "[c]ommunications posted by members or their associated persons on electronic bulletin boards, and/or message boards, would be considered advertisements because such material can be viewed by anyone with access to these services." With respect to electronic mail, the NASD distinguishes between "group electronic mail," identical messages sent to multiple individuals, and "individual e-mail," personalized messages sent in lieu of written correspondence. The NASD considers group electronic mail to be "sales literature" and therefore subject to prior, written approval of a registered principal. For individual e-mail, the NASD believes that, if it pertains to the solicitation or execution of securities transactions, then the mail is subject to review and endorsement by a registered principal, which may occur after the correspondence has been sent. In addition, the sales literature filing requirements do not apply to individual e-mail transmissions. Finally, the NASD indicates that statements made by a member in a "chat room" would be analogous to oral statements made in a public forum, and therefore would not generally be considered to be correspondence, sales literature, or advertising under the Rules of Fair Practice. In addition to electronic mail issues, the NASD has addressed several other emerging and important issues, including the filing obligations of members who use Internet sites, the use by members of "broker-dealer use only" materials on the Internet, and the obligations of members when linking materials from other Internet sites to their sites. Alexander C. Gavis
Assistant Counsel Attachment