

MEMO# 8085

July 24, 1996

NASD INTERPRETIVE GUIDANCE ON SCOPE OF CUSTOMER COMPLAINT RULE

1 NASD Conduct Rule 3070 (formerly, Article III, Section 50 of the NASD Rules of Fair Practice). July 24, 1996 TO: COMPLIANCE COMMITTEE No. 21-96 RE: NASD INTERPRETIVE GUIDANCE ON SCOPE OF CUSTOMER COMPLAINT RULE

In response to the request of a mutual fund principal underwriter and distributor, the NASD recently provided interpretive guidance on the applicability of its "customer complaint rule"¹ in the context of mutual fund operations. Copies of the request letter and the NASDs response are attached. The principal underwriter markets its funds on a wholesale basis to independent broker-dealers and banks, who sell the funds to the public. An affiliated company serves as transfer agent and shareholder servicing agent for the funds. The NASDs letter addresses the principal underwriters conclusion that "complaints relating to transfer agent activities are beyond the scope of the rule." According to the NASDs response, because the transfer agent is a separate legal entity that is not registered with the NASD, its activities, "including customer complaints, would not be subject to the NASDs jurisdiction and rules." The letter goes on to explain that the customer complaint rule requires the NASD member (i.e., the principal underwriter) to submit information to the NASD regarding ten "disclosure events" listed in the rule and customer complaints. It notes that, since the rule defines "customer" to exclude other broker-dealers and the principal underwriter in this case generally does not have contact with retail investors, the volume of customer complaints should be limited. As an example, the letter states that if the principal underwriter provides sales literature for its funds to retail broker-dealers, it may be subject to customer complaints regarding the materials when they are used by investors in connection with mutual fund transactions. The NASDs letter also indicates that for purposes of complying with the rule, member broker-dealers should distinguish between "written grievances" (which must be submitted to the NASD) and regular customer correspondence. The letter suggests that if a mutual fund distributor receives a written customer complaint involving a retail broker-dealer, it should forward the complaint to the retail broker-dealer and notify the customer of this action. The request letter encourages the NASD to provide further guidance to the industry on the customer complaint rule in the form of questions and answers. If there are other issues under the rule on which you would like the Institute to consider requesting NASD guidance, please call me at (202) 326-5822 by Friday, August 16th. Frances M. Stadler Associate Counsel Attachment

should not be considered a substitute for, legal advice.