

**MEMO# 8416**

November 26, 1996

## **DRAFT INSTITUTE LETTER ON NASD NOTICE ON SUITABILITY RESPONSIBILITIES**

\* NASD Notice to Members 96-60 (Sept. 1996). November 26, 1996 TO: ADVERTISING SUBCOMMITTEE No. 31-96 SEC RULES COMMITTEE No. 124-96 RE: DRAFT INSTITUTE LETTER ON NASD NOTICE ON SUITABILITY RESPONSIBILITIES

\_\_\_\_\_ The National Association of Securities Dealers, Inc. recently issued the attached Notice to Members in order to clarify its members fair dealing and suitability responsibilities to customers under the NASDs rules.\* The Notice indicates that the NASDs suitability requirements apply to securities that have been "recommended" by a member. In discussing what it means for a security to be recommended, the Notice contains language that could be interpreted to apply the suitability requirements to the public distribution of advertisements and sales literature by NASD members and to factual statements made by an employee or associated person of a fund in response to a telephone or electronic mail inquiry by an investor. At the October 30, 1996 meeting of the SEC Rules Committee, it was decided that the Institute should contact the NASD and recommend that the language of the Notice be revised to eliminate any possibility that it could be interpreted in such a fashion. We have contacted the NASD staff to apprise them of our views on this matter and have drafted the attached follow- up letter. If you have comments on the Institutes letter to the NASD, please contact the undersigned by Wednesday, December 11, 1996 at 202/326-5923 or at gavis@ici.com. Alexander C. Gavis Assistant Counsel Attachment

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