MEMO# 8112

August 2, 1996

NASD INTERPRETATION AND PROPOSED RULE CHANGE CONCERNING TELEMARKETING

1 NASD Notice to Members No. 44-96 (July 1996) and SEC Release No. 34-37475 (July 24, 1996). August 2, 1996 TO: COMPLIANCE COMMITTEE No. 22-96 DIRECT MARKETING COMMITTEE No. 22-96 SALES FORCE MARKETING COMMITTEE No. 25-96 SEC RULES COMMITTEE No. 87-96 UNIT INVESTMENT TRUST COMMITTEE No. 33-96 RE: NASD INTERPRETATION AND PROPOSED RULE CHANGE CONCERNING TELEMARKETING

____ The NASD has issued an interpretation of Rule 2110 (formerly Article III, Section 1 of the NASD Rules of Fair Practice), and has proposed changes to certain other rules, in both cases related to telemarketing activities. The interpretation and the proposed rule change are summarized below. Copies of the NASD Notice to Members announcing the interpretation and proposed rule change and of the SEC release soliciting comments on the proposed rule change are attached.1 Comments on the proposed NASD rule change must be filed with the SEC by Tuesday, August 20th. If there are issues you would like the Institute to consider addressing in a comment letter, please call the undersigned at (202) 326-5822 by Friday, August 16th. NASD Interpretation The Notice to Members describes NASD Rule 2110 as the NASDs "most fundamental ethical rule." It provides that an NASD member, in the conduct of its business, "shall observe high standards of commercial honor and just and equitable principles of trade." The Notice states that the NASD has determined that "it is inherent in and implied by Rule 2110 that it is contrary to high standards of commercial honor and just and equitable principles of trade for members and their associated persons to engage in communications with customers that constitute threats, intimidation, the use of profane or obscene language, or calling a person repeatedly on the telephone to annoy, abuse, or harass the called party." According to the Notice, members and their associated persons engaging in these activities will be subject to NASD disciplinary action. Proposed Rule Change The NASD also has proposed changes to its rules to impose time limitations and disclosure obligations on members with respect to telemarketing calls and to impose restrictions on the use of demand drafts to pay for securities. The proposed provisions are similar to rules adopted by the FTC, pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, that are designed to prohibit deceptive and abusive telemarketing acts and practices. Under that Act, the SEC is required to adopt (or to require self-regulatory organizations to adopt) telemarketing rules substantially similar to those promulgated by the FTC, unless it finds that: (1) the federal securities laws or rules provide substantially similar protection from abusive or other deceptive telemarketing practices or (2) promulgation of such rules is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets. Proposed Rule 2211(a) would prohibit an NASD member or person associated with a member from making outbound calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time (at the called persons residence). Proposed Rule 2211(b) would require a member or associated person making such calls to disclose promptly and in a clear and conspicuous manner the following information: (1) the identity of the caller and the member firm; (2) the telephone number or address at which the caller may be contacted; and (3) that the purpose of the call is to solicit the purchase of securities or related services. Proposed Rule 2211(c) provides an exemption from paragraphs (a) and (b) for calls to "existing customers" under certain circumstances and calls to a broker or dealer. An "existing customer" is defined as "a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account." In addition, proposed Rule 3110(g)(2) would prohibit a member or person associated with a member from obtaining from a customer or submitting for payment a check, draft or other form of negotiable paper drawn on a customers checking, savings, share, or similar account without express written authorization, which may include the customers signature on the negotiable instrument. Proposed Rule 3110(g)(3) would require that any such authorization be maintained for three years. In its release soliciting comments on the proposed rule change, the SEC requests, in particular, comments on whether the proposal satisfies the above-described requirements of the Telemarketing and Consumer Fraud and Abuse Prevention Act. Frances M. Stadler Associate Counsel Attachments

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