

MEMO# 9855

April 17, 1998

NASDR ADOPTS RULE AMENDMENTS REGARDING SUPERVISION, REVIEW AND RECORD RETENTION OF CORRESPONDENCE

1 See Letter from Alden S. Adkins, NASD Regulation, Inc. to Katherine A. England, Securities and Exchange Commission, dated April 7, 1998 (copy attached). 2 See Memorandum to SEC Rules Members No. 6-98 and Advertising Subcommittee No. 4-98, dated January 16, 1998. 3 See Memorandum to SEC Rules Members No. 11-98 and Advertising Subcommittee No. 7-98, dated February 12, 1998. [9855] April 17, 1998 TO: ADVERTISING SUBCOMMITTEE No. 14-98 SEC RULES COMMITTEE No. 34-98 RE: NASDR ADOPTS RULE AMENDMENTS REGARDING SUPERVISION, REVIEW AND RECORD RETENTION OF CORRESPONDENCE

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Regulation, Inc. recently declared effective amendments to National Association of Securities Dealers, Inc. Rules 3010 and 3110 to allow member firms to develop flexible supervisory procedures for the review of correspondence with the public.¹ The Securities and Exchange Commission had originally approved these amendments on December 31, 1997, and they were scheduled to go into effect on February 15, 1998.² NASDR postponed the effective date of the amendments in early February 1998, however, to allow NASDR to consider and address concerns regarding the amendments' effect on review of incoming correspondence and the scope of members' obligations to control the use of electronic communications systems that registered persons use to communicate with customers.³ After considering these concerns, NASDR has proposed to implement the amendments to Rules 3010 and 3110 immediately, with the exception of a provision requiring members to review all non-electronic incoming correspondence to registered representatives and related to members' investment banking or securities business. NASDR has proposed delaying the effective date of this provision until July 7, 1998. NASDR has stated that extension of the effective date of this provision will allow NASDR a further opportunity to consider comments on this issue. Prior to the effective date, however, members will be required to review and report customer complaints as required by NASD Rule 3070(a)(2); keep and preserve all customer complaints as required by NASD Rule 3110(d); and establish procedures for the review of incoming and outgoing written and electronic correspondence consistent with new NASD Rules 3010(d)(1) and (2). Among other things, the rule amendments require members' supervisory policies and procedures to prohibit registered representatives and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the member firm. For example, NASD expects members to prohibit correspondence with customers.⁴ The SEC may, however, summarily abrogate the rule

change if, within 60 days of filing, the SEC finds such action to be necessary, appropriate or in the public interest. from employeesG home computers or through third party systems unless the firm is capable of monitoring such communications. We understand from NASDR staff that these amendments, except for the provision regarding review of incoming non-electronic correspondence, became effective immediately upon filing with the SEC.⁴ The public will have an opportunity to submit comments to the SEC on the amendments once they have been published in the Federal Register. We expect that comments on these amendments will be due to the SEC within 21 days of their publication in the Federal Register. If you would like the Institute to comment on the amendments, please contact me (telephone: 202/326-5819, e-mail: savage@ici.org, or fax: 202/326- 5827) prior to April 24, 1998. Joseph P. Savage Assistant Counsel Attachment

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