

MEMO# 8493

December 23, 1996

SEC APPROVES NASD TELEMARKETING RULE CHANGES

1 Release No. 34-38009 (Dec. 2, 1996); 61 Fed. Reg. 65625 (Dec. 13, 1996). December 23, 1996 TO: COMPLIANCE ADVISORY COMMITTEE No. 37-96 DIRECT MARKETING COMMITTEE No. 38-96 SALES FORCE MARKETING COMMITTEE No. 47-96 SEC RULES MEMBERS No. 85-96 UNIT INVESTMENT TRUST COMMITTEE No. 49-96 RE: SEC APPROVES NASD TELEMARKETING RULE CHANGES

The Securities and Exchange Commission recently approved a proposal by the NASD to amend its telemarketing rules. A copy of the adopting release¹ is attached and the changes are summarized below. The rule changes became effective on December 2, 1996. New NASD Conduct Rule 2211(a) prohibits an NASD member, or person associated with a member, from making outbound telephone calls to any residence for the purpose of soliciting sales of securities or related services at any time other than between 8 a.m. and 9 p.m. at the called persons location, without that persons prior consent. In addition, subparagraph (b) of the rule provides that when making any outbound telemarketing call, a member or associated person must disclose the identity of the caller and the member firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services. Calls to "existing customers" are exempted from the time-of-day and disclosure requirements under certain circumstances, as are calls to a broker or dealer. In addition, NASD Conduct Rule 3110 is amended to 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 ("demand draft") without that persons express written authorization. In its comment letter on the proposal, the Institute expressed concern that this provision unintentionally could prohibit certain electronic or telephonic mutual fund transactions, such as telephone exchanges (which entail oral instructions to redeem shares of one fund and purchase shares of another fund). We are pleased to report that, as the Institute requested, NASD Regulation, Inc. has clarified that "electronic or telephonic mutual fund transfers initiated by existing mutual fund shareholders do not involve telemarketing and, therefore, Rule 3110 does not apply" to them. ²The foregoing rule changes will be the subject of an NASD Notice to Members in January. The text of the rules, which does not appear in the attached SEC release, will be included in the Notice to Members. We will circulate the Notice to you when it becomes available. Frances M. Stadler Associate Counsel Attachment Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8493.

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