

MEMO# 8689

March 5, 1997

NASDR RESPONSE TO INSTITUTE LETTER ON SUITABILITY RESPONSIBILITIES

1 See Memorandum to Advertising Subcommittee No. 34-96 and SEC Rules Committee No. 131-96, dated December 19, 1996. 2 See Memorandum to Advertising Subcommittee No. 31-96 and SEC Rules Committee No. 124-96, dated November 26, 1996. March 5, 1997 TO: ADVERTISING SUBCOMMITTEE No. 11-97 SEC RULES COMMITTEE No. 25-97 RE: NASDR RESPONSE TO INSTITUTE LETTER ON SUITABILITY RESPONSIBILITIES

The Institute has received a response from the staff of NASD Regulation, Inc. to its letter regarding the suitability responsibilities of NASD members.¹ In that letter, the Institute had expressed concern that language in a recent NASD Notice to Members² could be misinterpreted to extend the NASD's suitability requirements to the distribution of advertisements and sales literature by investment companies and to factual statements made by an employee or associated person of an investment company in response to an inquiry by an investor. In their response, the NASDR stated that the Notice to members "was not meant to describe the content of communications that may result in a recommendation or to suggest that every statement that mentions a security would be considered a recommendation." With respect to the specific communications discussed in the Institute's letter, the NASDR stated that it understood that NASD members have adopted procedures designed to ensure that factual responses to investor inquiries do not constitute "recommendations" under NASD Rule 2310 and that, because the Notice was meant to clarify existing suitability obligations, it should not "necessitate a reappraisal of the adequacy of those procedures." The NASDR letter further states that a reference to an investment company or an offer of investment company shares contained in an "advertisement" or "sales literature" (as defined in NASD rules) would not by itself constitute a recommendation. A copy of the NASDR's letter is attached. Craig S. Tyle Vice President and Senior Counsel Attachment (in .pdf format)

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