

MEMO# 8475

December 19, 1996

INSTITUTE LETTER ON NASD NOTICE ON SUITABILITY RESPONSIBILITIES

* See Memorandum to Advertising Subcommittee No. 31-96 and SEC Rules Committee No. 124-96, dated November 26, 1996. December 19, 1996 TO: ADVERTISING SUBCOMMITTEE No. 34-96 SEC RULES COMMITTEE No. 131-96 RE: INSTITUTE LETTER ON NASD NOTICE ON SUITABILITY RESPONSIBILITIES

As we previously informed you, NASD Regulation, Inc. recently published a Notice to Members concerning NASD members fair dealing and suitability responsibilities with respect to speculative and low-priced securities.* The Notice attempted to clarify that the NASDs suitability requirements apply only to securities that have been "recommended" by an NASD member. The Institute has sent the attached letter to the NASD Regulation staff stating its concern that the language of the Notice could potentially be misinterpreted to extend the NASDs 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. The letter argues that it would be inappropriate to interpret the language of the Notice in such a fashion and that the NASD Regulation staff should issue a clarification in order to eliminate any possibility of such a misinterpretation. Alexander C. Gavis Assistant Counsel
Attachment

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