

**MEMO# 4424**

January 15, 1993

# **NASAA ISSUES PROPOSED TELEPHONE TRANSACTIONS GUIDELINES FOR PUBLIC COMMENT**

January 15, 1993 TO: OPERATIONS COMMITTEE NO. 1-93 SEC RULES COMMITTEE NO. 5-93  
STATE LIAISON COMMITTEE NO. 1-93 TRANSFER AGENT ADVISORY COMMITTEE NO. 4-93  
RE: NASAA ISSUES PROPOSED TELEPHONE TRANSACTIONS GUIDELINES FOR PUBLIC  
COMMENT \_\_\_\_\_

As you may be aware, over the past several months, the Institute has been meeting and corresponding with the NASAA Investment Companies Committee regarding the legal basis for disclosure in mutual fund prospectuses which sets forth the extent to which the mutual fund and their affiliates will be held liable for acting upon instructions in connection with telephone redemptions or exchanges and the various safeguards most funds have implemented to protect investors against fraudulent transactions. Notwithstanding the foregoing efforts, the NASAA Committee recently published for public comment, the attached proposed "Guidelines for Telephone Transactions" ("proposed Guidelines"). The proposed Guidelines would require compliance with the following minimum standards and requirements if a fund disclaims liability for acting upon telephone instructions: (1) shareholders must elect the telephone service option, either in the application or a separate document; (2) the document in which the shareholder elects the telephone service must provide a space for the shareholder to either accept or reject the telephone service; (3) shareholders must be given the opportunity to select a personal password, identification number, or other form of identification, utilizing information that is not found on regular account statements or in fund correspondence to investors; (4) the fund must have adopted "reasonable" safety procedures, including, at a minimum, recording and maintaining the requests for telephone transactions and sending written confirmation of all telephone transactions to shareholders within five business days; and (5) the prospectus and the document in which the shareholder elects the telephone service must include a statement describing the fund's policy regarding exculpation from liability in the event of a fraudulent telephone transaction and a prominent statement that the investors bears the risk of loss. In our previous submissions to the NASAA Committee, the Institute objected to the requirement whereby shareholders must elect the telephone service primarily based upon the fact that as this service has become more widespread, fund groups have found that many investors who purchase shares of mutual funds expect that they will be able to make telephone exchanges or redemptions. For this reason, we noted, many fund groups offer this service automatically. The Institute has also objected to the provision which would grant the shareholder the ability to select a password or other form of identification. It is the Institute's belief that such a system could not be executed, monitored or controlled by the fund's transfer agent or servicing agent. Moreover, even if it were possible to implement

such a system, the costs of doing so would be prohibitive. In order to prepare our response to the NASAA Committee's proposed Guidelines, please provide us with information as to whether or not you believe a system could be implemented to allow individual investors to select a password or other form of identification. In addition, we would also appreciate receiving information with respect to the following: (1) cost estimates which would be incurred to offer the telephone transaction service to an existing base of shareholders; (2) general reaction as to how successful a mass mailing would be to existing shareholders, if such becomes necessary to re-acquire application type information in order to confer the telephone option, including an estimate of the percentage of responses; (3) information with respect to the extent to which problems and/or losses (if any) have occurred as a result of offering the telephone service; (4) general experience or reaction of shareholders for funds which have subsequently offered the telephone service automatically to shareholders, i.e., have investors declined to accept the service, used the service, etc.; and (5) information as to whether or not the failure to provide the telephone service would be a deprivation of a valuable service which enables shareholders to access their investment in mutual funds. It is the Institute's understanding that the NASAA Committee will be holding a public meeting to discuss the proposed Guidelines on the afternoon of Monday, March 8, 1993 in Palm Desert, California. Additional information with respect to this meeting will be sent as soon as the details have been finalized by NASAA. The deadline for written comments on the proposed Guidelines is tentatively scheduled for March 12, 1993 and should be sent directly to each member of the NASAA Committee (see attached list). However, in order to incorporate the above information and any comments you wish to be included in the Institute's comment letter, please provide me with the foregoing information by February 12, 1992. My direct telephone number is 202/955-3517 or you may fax your comments to me at 202/659-1519. We will keep you advised of developments. Patricia Louie Associate Counsel Attachments