

**MEMO# 13724**

July 12, 2001

## **NASDR PROPOSAL ON REQUIRED DISCLOSURES FOR SECURITIES RECOMMENDATIONS**

[13724] July 12, 2001 TO: SEC RULES COMMITTEE No. 56-01 ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 10-01 INVESTMENT ADVISERS COMMITTEE No. 17-01 RE: NASDR PROPOSAL ON REQUIRED DISCLOSURES FOR SECURITIES RECOMMENDATIONS NASD Regulation ("NASDR") has issued a Notice to Members<sup>1</sup> requesting comment on a proposed amendment to NASD Rule 2210, Communications with the Public, that would increase the disclosures required when an NASD member recommends a security in written advertisements and sales literature and that would require similar disclosures for recommendations made by an associated person during a "public appearance." A copy of the Notice to Members is attached and the most significant aspects of the proposal are summarized below. Disclosures In Advertisements And Sales Literature Currently, Rule 2210 does not require an NASD member firm to disclose ownership interest in a recommended equity security. Instead, the rule only requires a member to disclose if an officer, partner or the member firm itself owns options, rights or warrants to purchase any of the recommended issuer's securities. The proposed amendments, however, would require, among other things, that the NASD member disclose that the person or persons responsible for a recommendation, or any discretionary account managed by such person or persons, has a financial interest in any security of the recommended issuer, and the nature of the financial interest. The proposal specifically notes that this aspect of the proposed rule would apply to portfolio managers of investment companies and other discretionary accounts, however, only in those instances where those managers are also associated persons of an NASD member. In addition, the proposal would require NASD member firms to disclose if they own five percent or more of the total outstanding shares of any class of securities of the recommended issuer. The proposal notes that the five percent threshold is consistent with Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 and that since those filings are public, the information should be readily available to associated persons who must disclose this 1 NASD Notice to Members 01-45 (July 2001). 2 information during public appearances. The Notice to Members requests comments as to whether a lower threshold, or no threshold at all, would be more appropriate. Disclosures During Public Appearances The proposed amendment would require associated persons to provide disclosures similar to those in advertisements and sales literature when a security is recommended during a "public appearance." 2 In particular, the amendment would require associated persons who make recommendations during public appearances to disclose (1) that the associated person, or any discretionary account managed by such person, has a financial interest in any security of the recommended issuer, and the nature of the financial interest, (2) that the NASD member owns five percent or more of the total

outstanding shares of any class of equity securities of the recommended issuer, and (3) that the recommended issuer is a client of the NASD member with which the person is associated. The Notice to Members specifically seeks comment on whether disclosures in a public appearance should be broader or should include more of the disclosures required for advertisements and sales literature. Comments on the proposal are due to the NASDR by August 15, 2001. If you have any comments that you would like the Institute to include in its letter on the proposal, please contact the undersigned by phone at 202-371-5408, by fax at 202-326-5839, or by e-mail at [aburstein@ici.org](mailto:aburstein@ici.org) no later than July 24. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format) 2 The proposal defines public appearance as "participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity."

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