

**MEMO# 11000**

May 20, 1999

## **DRAFT COMMENT LETTER ON NASDR DAY TRADING RULES PROPOSAL**

\*See Memorandum to Advertising Compliance Advisory Committee No. 10-99 and SEC Rules Committee No. 31-99, dated April 29, 1999. [11000] May 20, 1999 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 11-99 SEC RULES COMMITTEE No. 40-99 RE: DRAFT COMMENT LETTER ON NASDR DAY TRADING RULES PROPOSAL

As we previously advised you, in April 1999, the NASD published a Notice to Members requesting comment on two rules designed to address investor protection concerns that arise in connection with day trading.% These rules would apply whenever a member firm recommends an intra-day trading strategy to a customer. The Notice states that a member "would be recommending a day trading strategy . . . if it affirmatively promoted day trading through advertising, training seminars, or direct outreach programs" and an individual engaged in day trading. Because this interpretation is far broader than the NASDR's current interpretation of "recommendation" and could inappropriately be applied to other NASDR rules, the Institute has drafted the attached comment letter to express our concerns with it. In addition to noting that this interpretation is broader than the current interpretation, the Institute's letter notes that it also seems inconsistent with the view previously expressed in a 1997 letter from NASDR to the Institute in which it affirmed that, with respect to investment companies, NASDR's suitability requirements are not triggered by the distribution of advertisements and sales literature. The Institute's letter requests that NASDR clarify that the 1997 view remains the current view of NASDR on this issue. Comments are due to NASDR by May 31, 1999. Please provide your comments on the Institute's comment letter to the undersigned by phone (202/326-5825) or fax (202)326-5839 no later than Thursday, May 27, 1999. Tamara K. Reed Associate Counsel  
Attachment

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