MEMO# 8798

April 14, 1997

INSTITUTE COMMENTS ON NASAA PROPOSAL RELATING TO SALES PRACTICES

April 14, 1997 TO: SEC RULES COMMITTEE No. 38-97 STATE LIAISON COMMITTEE No. 7-97 RE: INSTITUTE COMMENTS ON NASAA PROPOSAL RELATING TO SALES PRACTICES ____ On March 11, 1997, the NASAA Sales Practices Committee published for comment proposed rules that would define dishonest or unethical practices in connection with the offer or sale of investment company securities. A copy of the NASAA proposal is attached. (As you may recall, while the National Securities Markets Improvement Act of 1996 preempts state registration of investment company shares, it expressly preserves the authority of states to investigate and bring enforcement actions "with respect to fraud or deceit" in connection with the offer of sale of such shares.) The Institute has filed the attached comment letter with the Committee. While the Institute’s letter expresses our overall support for the Committee’s proposal (which is, in large part, consistent with the requirements of NASDR), we recommend changes to various provisions in the proposal to ensure its conformity with the NASDR’s requirements. As noted in our letter, it is critical that conduct that is acceptable in one jurisdiction or to one regulatory body not be found by another to be deficient or unacceptable. Towards this end, the Institute’s letter recommends that the Committee revise its proposal to: Limit the applicability of the proposal to situations in which there is a recommendation or solicitation made to purchase or sell a mutual fund (or other investment company product); Clarify that mutual funds with a 12b-1 fee may be referred to as "no load" if such fee does not exceed 25 basis points (Section A(2)); Only require the disclosure of breakpoints or sales charge discounts if relevant to the transaction (Section A(3)); Delete the provision that seems to discourage diversification of funds and that would make the determination of suitability contingent upon whether an investor owns one or more than one fund (Section (B)); Limit the prohibition about sharing with investors information in dealer-use-only material to instances in which the only source of such information is the dealer-use- only material (Section C(5)); and Delete the Prospectus portion of the proposal as contrary to the existing securities laws and precedents, or, alternatively, substantially revise it to carefully tailor it to the specific concern discussed by the Committee in its accompanying Analysis -- instances in which there is a material discrepancy between the oral representations made to an investor and those contained in the prospectus (Section D). Each of these recommendations is discussed in detail in the Institute’s letter. Tamara Cain Reed Associate Counsel Attachments (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource

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