

MEMO# 8841

April 30, 1997

INSTITUTE COMMENT LETTER ON NASD PROPOSALS CONCERNING REFERRAL FEES AND CUSTOMER CONFIDENTIALITY

* See Memorandum to SEC Rules Committee No. 35-97 and Bank Mutual Fund Task Force, dated March 31, 1997 (NASDR proposals); Memorandum to SEC Rules Committee No. 41-97 and Bank Mutual Fund Task Force, dated April 18, 1997 (draft comment letter). April 30, 1997 TO: SEC RULES COMMITTEE No. 45-97 BANK MUTUAL FUND TASK FORCE RE: INSTITUTE COMMENT LETTER ON NASD PROPOSALS CONCERNING REFERRAL FEES AND CUSTOMER CONFIDENTIALITY

The Institute has filed the attached comment letter with NASD Regulation, Inc. concerning NASDRs proposals to restrict the payment of referral fees to unregistered third parties and restrict NASD members ability to share customer confidential financial information with other entities.* With respect to referral fees, the final comment letter is substantially similar to the draft previously circulated to you. It recommends that proposed Rule 2460 be revised to: (1) permit referral fees in certain limited circumstances (consistent with the Interagency Statement); (2) incorporate a specific exception for fees that meet the requirements of the "cash solicitation rule" under the Investment Advisers Act; and (3) make clear that the rule applies only to payments to natural persons. With respect to confidential financial information, the comment letter suggests that NASD members should be permitted to share information with their affiliates without providing an opportunity for the customer to object. The letter argues that this is consistent with the expectations and desires of customers, and that providing an opportunity to object would involve costly systems changes. The letter further notes that recent amendments to the Fair Credit Reporting Act permit affiliated entities (as well as non-affiliates) to share freely so- called "experience information." It recommends that, in the absence of any specific, compelling rationale, NASDR should not impose requirements that are inconsistent with new federal standards for the treatment of confidential financial information. The letter suggests that if NASDR is not inclined to follow these recommendations regarding confidential financial information, it should clarify various aspects of proposed Rule 3121, such as that members could obtain a single, blanket written consent from a customer to share information with non-affiliates. Frances M. Stadler Associate Counsel Attachment (in .pdf format)

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