August 4, 1998

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549
Mail-Stop 10-1

Re: **SR-NASD-98-29, Amendment No. 2**
Proposed Rule Change Relating to the Application of NASD Conduct Rule 2210 to Member Correspondence

Dear Ms. England:

This letter summarizes and responds to the comment letter submitted by the Investment Company Institute ("ICI") in response to publication by the Securities and Exchange Commission ("SEC") of the proposed rule change referenced above. In addition, pursuant to Rule 19b-4, NASD Regulation, Inc. is hereby amending the proposed rule change, as noted below:

1. The ICI stated that the proposed rule change is unnecessary because: (i) new amendments relating to the review and supervision of correspondence require members to give heightened scrutiny of correspondence and give NASD Regulation, Inc. ("NASD Regulation") new grounds for sanctioning members that fail to adequately supervise their registered representatives' ("RR") correspondence, and (ii) the isolated cases of misuse of correspondence are not sufficient grounds for adopting the new rules, especially given that existing rules are sufficient to deal with abuses when they do arise.

Response: The NASD disagrees with the ICI's analysis of the recent amendments to Conduct Rules 3010 and 3110 relating to correspondence. These Rules provide member firms with greater flexibility in devising procedures for the review and supervision of outgoing correspondence. By contrast, the proposed change to Rule 2210 addresses the substantive content standards with which correspondence must comply.

Regarding the second point, NASD Regulation believes the proposed rule change is necessary because no existing NASD rules clearly provide specific standards that apply to correspondence. The proposed rule change removes this uncertainty and provides unambiguous standards that members can apply consistently and by which the NASD can provide guidance and bring enforcement actions as necessary.

2. The ICI requested clarification on whether the proposed rule change would subject correspondence to the SEC's advertising rules.

Response: NASD Conduct Rule 2210(e) provides that all member communications with the public must conform to "applicable" SEC rules. We understand that the SEC does not apply Rules 134, 135a and 482 under the Securities Act of 1933 and Rule 34b-1 under the Investment Company Act of 1940 to correspondence, and NASD Regulation does not intend that the proposed rule change would effect the treatment of correspondence under these rules. Should members desire further clarification of the applicability of SEC rules to correspondence, they should direct their inquiry to SEC staff.

3. The ICI has requested that NASD Regulation limit the application of the proposed rule to correspondence made "in connection with the offer or sale of any security."

Response: NASD Regulation disagrees with the suggested change, because the proposed limitation would deprive investors of important protection. The suggested limitation would prevent applying the rule in various situations in which the content standards should apply, such as correspondence about the member's services or generic, investment-related discussions. The NASD does not apply Rule 2210 to back office responses about customer accounts and does not intend to apply the proposed rule to such correspondence. In addition, we note that because of the nature of the standards being applied - e.g., prohibitions on: exaggerated or unwarranted claims, predictions or projections of investment results, inappropriate characterizations of tax free or tax exempt income or returns - they will generally apply, as a practical matter, in the context of offers or sales.

4. The ICI has requested that the requirement in subparagraph (d)(1)(A) to Rule 2210 for members to provide a "sound basis" for communication with the public be revised to apply only to advertisements and sales literature.

Response: NASD Regulation disagrees with the suggested change. The "sound basis" requirement does not mandate specific disclosure, but only requires that statements that are made provide a sound basis for an investment decision. The "sound basis" requirement supports the broader requirements in subparagraph (d)(1)(A) that communications be based on fair dealing and good faith. The "sound basis" requirement also supports the prohibition in subparagraph (d)(1)(A) against members omitting material information if the omission would make the correspondence misleading. Finally, NASD Regulation relied on retaining the requirements in subparagraph (d)(1)(A) in its decision to not require compliance with specific disclosure requirements.

5. The ICI has suggested deleting the phrase "or a single customer" in the third sentence of subparagraph (d)(1)(D)(ii) to Rule 2210. The ICI has also suggested revising subparagraph (d)(2)(L) to Rule 2210 as follows (additions are underlined):

> If taxes are payable upon redemption, that fact must be disclosed in advertisements and sales literature. References in advertisements and sales literature to tax free/tax exempt current income must indicate which income taxes apply and which do not unless income is free from all applicable taxes.

Response: NASD Regulation agrees and hereby amends the proposed rule change to incorporate the suggested changes to subparagraphs (d)(1)(D)(ii) and (d)(2)(L).

Very truly yours,

John M. Ramsay
Vice President and Deputy General Counsel
NASD Regulation, Inc.