

**Securities Industry Association**

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November 10, 1997

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

Re: Notice To Members 97-58

Dear Ms. Conley:

The Securities Industry Association's ("SIA") Self-Regulation and Supervisory Practices Committee ("Committee") appreciates the opportunity to comment on NASD Regulation, Inc. ("NASDR") Notice To Members 97-58 regarding proposed interpretations designed to prohibit unregistered persons from communicating with members of the public to solicit the purchase of securities or related services, or to identify prospective customers. The Committee believes that the proposed Interpretation is wholly unnecessary in light of the myriad of federal, state, and self-regulatory organization ("SRO") regulations that govern licensing and telemarketing activity. We firmly believe that the majority of firms adequately train and supervise their registered and unregistered personnel and we respectfully suggest that NASDR deal with telemarketing abuses through swift and strict disciplinary actions against those who violate these rules before considering the imposition of new, burdensome rules on the entire industry.

New Interpretive Material 1031 (IM-1031) would require registration as a representative for all persons associated with a member who communicate with members of the public, except existing customers of the member, for the purpose of soliciting the purchase of securities or related services or identifying prospective customers. It would prohibit any member from engaging or using any unregistered person to communicate on behalf of the member with members of the public, except existing customers of the member, to solicit the purchase of securities or related services or identify prospective customers. In addition, the Interpretation states that persons who communicate with existing customers for the purpose of soliciting the purchase of securities or related services are not required to be registered provided that their communications are limited to: (1) extending invitations to firm-sponsored events at which any substantive presentations and account or order solicitation will be conducted by appropriately registered personnel; (2) inquiring whether the existing customer wishes to discuss investments with a registered person; and (3) determining whether the existing customer wishes to receive investment literature from the firm. According to the Notice, IM-1031 is not meant to restrict a member's administrative personnel, in the normal course of their duties, from contacting

customers regarding routine administrative matters.

In addition to contact with prospective customers, the proposal would severely restrict contact between unregistered personnel and existing customers. Such restrictions would impede established business practices and fail to address NASDR's stated concern—abusive cold calling practices. The Committee agrees that registration should be required for the purpose of soliciting the purchase of securities but believes that the nature and scope of the communication, and not the status of the recipient as a customer or non-customer, should determine whether registration is required.

Because it does not provide a definition of "administrative matters," the Notice would appear to require the registration of almost all firm personnel. Despite the qualifying language in the Interpretation italicized above, the Notice states that unregistered persons can contact existing customers for three limited purposes only. Operations, Customer Service, and other unregistered support personnel routinely contact members of the public for reasons other than the three outlined above. Subject to the limitations in IM-1031, these individuals would be required to be registered in order to do their jobs. Requiring registration of individuals who respond to customer inquiries or perform the mechanical function of collecting account documentation, recording an order, telephoning reports of executions, or reading quotations, or who provide customers with information regarding, for example, check disbursements, the timing of dividend payments, or other administrative or operational information, would serve valid purpose. Moreover, NASDR has pointed to no evidence that indicates abuses in connection with such communications.

The Interpretation is directed primarily to cold calling activity, i.e., the solicitation of persons who are not existing customers. During recent investigations including a review of sales practice activities of selected firms by the staffs of the NASD, the Securities and Exchange Commission, the New York Stock Exchange, and representatives of the North American Securities Administrators Association, NASDR discovered evidence of abusive cold calling practices, such as high pressure and aggressive sales pitches, often delivered by unregistered persons using specially designed scripts. According to the Notice, an absolute prohibition against cold calling prospective customers by unregistered persons would make violations much easier to detect, and thus would aid enforcement of the registration requirements.

Accordingly, the proposal would prohibit all contacts by unregistered persons with prospective customers, in addition to limiting the nature of the contacts unregistered persons could have with existing customers. In today's rapidly changing environment, new services and concepts such as financial planning, retirement planning, fee-based programs, asset allocation, etc. are frequently the subject of seminars and programs by full-service financial firms. Often unregistered personnel are employed to call prospective customers to invite them to these seminars and to follow-up afterwards.

The Committee believes it would be an unnecessary burden for firms to incur the cost of training and registering such individuals whose functions require no substantive knowledge.

The Committee acknowledges that an absolute prohibition on communications by unregistered persons with prospective customers would indeed make violations of current rules governing cold calling easier to detect. Nevertheless, we do not believe that appropriate contacts should

be curtailed simply to aid in regulatory enforcement efforts. The current policy and guidelines, which specify the very limited circumstances under which unregistered persons can contact prospective customers, have served the industry well. The content of the communication should determine whether registration is required and NASDR should strictly enforce those standards to address concerns about abusive cold calling practices.

Thank you for the opportunity to comment. If you have any questions, or would like to discuss the Committee's views further, please contact the undersigned or Judith Poppalardo, Vice President and Associate General Counsel, at 202-296-9410.

Sincerely,

R. Gerald Baker
Chairman
Self-Regulation and Supervisory Practices Committee

Footnotes:

¹ The Securities Industry Association ("SIA") is the trade association representing the business interests of about 750 securities firms in North America. Its members include securities organizations of virtually all types - investment banks, brokers, dealers and mutual fund companies, as well as other firms functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter markets, and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for 90% of securities firm revenue in the United States. This and other recent SIA comment letters can be found on SIA's Internet home page, <http://www.sia.com>.

² The Joint Regulatory Sales Practice Sweep Report, which is cited as one of the bases for this proposal, clearly states that the registered representatives selected for review were identified based on specific criteria formulated by the Working Group and, therefore, the findings of this project should not be viewed as representative of all brokerage firms. See Joint Regulatory Sales Practice Sweep, A Review of the Sales Practice Activities of Selected Registered Representatives and the Hiring, Retention, and Supervisory Practices of the Brokerage Firms Employing Them, March 1996.

³ See Notice To Members 88-50 and 85-48. The guidelines state that, as employees of the member, unregistered persons should not be compensated on any basis other than salary or hourly wage. The Committee agrees that transaction-based compensation should be prohibited but believes that other forms of compensation such as bonuses, benefits, and other award programs would be appropriate. See also Interpretation /01 to New York Stock Exchange Rule 10 and Interpretation /01 to New York Stock Exchange Rule 345. Broker-dealers, like all firms engaged in telemarketing, also are subject to the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 and Federal Trade Commission rules adopted thereunder (60 FR 43842), which govern cold calling activity.