

MEMO# 17455

May 3, 2004

SEC APPROVES NASD RULES RELATING TO BUSINESS CONTINUITY PLANNING

[17455] May 3, 2004 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 29-04 COMPLIANCE ADVISORY COMMITTEE No. 46-04 INTERNAL AUDIT ADVISORY COMMITTEE No. 5-04 OPERATIONS MEMBERS No. 21-04 SEC RULES MEMBERS No. 64-04 SMALL FUNDS MEMBERS No. 48-04 TECHNOLOGY ADVISORY COMMITTEE No. 11-04 UNIT INVESTMENT TRUST MEMBERS No. 18-04 RE: SEC APPROVES NASD RULES RELATING TO BUSINESS CONTINUITY PLANNING The Securities and Exchange Commission ("SEC") recently announced its approval of the NASD's proposed rule changes relating to business continuity planning.¹ A copy of the Release is attached. By way of background, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder, the NASD on August 7, 2002 filed with the SEC proposed rule changes that would require every member to establish and maintain a business continuity plan ("BCP") and to provide the NASD with certain emergency contact information.² Thereafter the NASD submitted numerous amendments. The Release confirms approval of NASD amendments 6, 7 and 8. Specifically, the rules will require NASD member firms to establish written plans and address general areas of business continuity. The new rules require each NASD member's BCP, at a minimum, to address various aspects of business continuity planning. As a result, while the new rules envision a planning process, they do not, except with respect to customer access to funds and securities, dictate the content of the plans that result from that process. The important requirements for members of the NASD include the following: • The member's obligation to disclose a summary of its BCP to its customers. • A discussion of how the member intends to respond to events of varying scope. • A discussion of how the member will assure its customers' prompt access to their funds and securities in the event that the member is unable to operate. • A listing of designated emergency persons and their contact information. ¹ See SEC Release No. 34-49537 (April 7, 2004) ("the Adopting Release"). ² See SEC Release No. 34-46443 (August 30, 2002). ³ Effective dates of the new rules differ according to NASD member status. Institute members are encouraged to pay particular attention to the section in the notice that discusses the effectiveness of the new rules.⁴ Additionally, footnote 21 of the Release states in relevant part "this provision would permit a member that is a subsidiary of another entity to satisfy its obligations under the rules by participation in a corporate-wide BCP of the parent, even if the parent were not itself a member. However, the parent company's BCP would be required to comply with the requirements of the BCP rule and would have to be available to NASD....upon request."⁴ Please contact me at 202/326-5869 or salmon@ici.org or Barry E. Simmons at 202/326-5923 or bsimmons@ici.org if you have any questions. Peter G. Salmon Barry E. Simmons Director - Operations & Technology Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17455, or call the ICI

Library at (202) 326-8304 and request the attachment for memo 17455. 3 Adopting Release at p. 4. 4 For additional background information see letter from Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated September 30, 2002.

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