

MEMO# 16683

October 20, 2003

ICI COMMENT LETTER ON NASD CASH COMPENSATION DISCLOSURE PROPOSAL

[16683] October 20, 2003 TO: BOARD OF GOVERNORS No. 55-03 CLOSED-END INVESTMENT COMPANY MEMBERS No. 82-03 SEC RULES MEMBERS No. 144-03 UNIT INVESTMENT TRUST MEMBERS No. 38-03 RE: ICI COMMENT LETTER ON NASD CASH COMPENSATION DISCLOSURE PROPOSAL As previously indicated, NASD recently proposed amendments to Rule 2830 to require point-of-sale disclosure of revenue sharing and differential cash compensation arrangements relating to the sale or distribution of investment company securities.¹ The Institute has filed a comment letter with NASD on the proposal. A copy of the letter is attached and it is summarized below. The letter expresses support for NASD's proposal, noting that disclosure of revenue sharing payments along the lines NASD has proposed would help investors assess and evaluate a broker-dealer's recommendation to purchase fund shares and that disclosure concerning differential cash compensation arrangements would put investors on notice that a registered representative may have additional incentives for favoring one fund over another. The letter makes several comments on the proposal that generally are designed to facilitate NASD members' compliance and to respond to questions raised by NASD. In particular, the letter: • recommends that NASD clarify that broker-dealers may provide generic disclosure about the types of revenue sharing payments they receive and are not required to describe each payment by each offeror; • recommends that NASD clarify the timing requirements for determining which revenue sharing payments must be disclosed, when they must be disclosed, and how frequently the disclosure must be updated; • recommends that NASD clarify that revenue sharing payments by all offerors in connection with the sale or distribution of funds in a single fund complex should be aggregated for purposes of the required list and that the list identify the 1 See Institute Memorandum to Board of Governors No. 49-03, Closed-End Investment Company Members No. 74-03, SEC Rules Members No. 126-03 and Unit Investment Trust Members No. 30-03 [16566], dated September 22, 2003. 2 sponsor/primary adviser of those funds, rather than each offeror; • expresses agreement with NASD's decision not to propose requiring disclosure of the actual dollar amounts of cash compensation payments made to broker-dealer firms because it is not necessary in order to accomplish the goals of the proposal; • supports the concept of a de minimis threshold below which disclosure of revenue sharing payments would not be required and suggests that this threshold be one percent or less of the aggregate cash compensation payments received by a broker-dealer during the relevant period; • recommends that NASD revise the proposed requirements for when disclosure of differential cash compensation arrangements would have to be made and indicates that the disclosure should be required at or before the time a customer purchases shares of a fund that is the subject of a differential cash compensation arrangement; • opposes expanding the definition of "differential cash compensation" to include circumstances where a

registered representative receives identical payout ratios for the sale of different funds but the sale of one results in higher compensation because the gross dealer concession is greater in absolute dollars; • supports the application of similar requirements to products other than investment companies that involve revenue sharing or differential cash compensation arrangements, as there does not appear to be any sound policy basis for singling out investment companies; and • recommends deleting the existing cash compensation prospectus disclosure requirement from Rule 2830 because it would provide little additional benefit once the other elements of NASD's proposal are implemented and, in any event, the SEC should be solely responsible for determining the appropriate contents of fund registration statements. Frances M. Stadler Deputy Senior Counsel 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 16683, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16683. Attachment (in .pdf format)

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