

MEMO# 8457

December 12, 1996

INSTITUTE COMMENT LETTER ON NASD CASH AND NON-CASH COMPENSATION DISCLOSURE PROPOSAL

December 12, 1996 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 39-96 SEC RULES COMMITTEE No. 130-96 UNIT INVESTMENT TRUST COMMITTEE No. 47-96 RE: INSTITUTE COMMENT LETTER ON NASD CASH AND NON-CASH COMPENSATION DISCLOSURE PROPOSAL

The Institute has filed the attached comment letter on the NASDs proposal concerning disclosure of cash and non-cash compensation received in connection with the sale of investment company securities. The letter makes several recommendations related to the scope of the proposal, the location and content of required disclosures and the effective date of the disclosure requirements, as described below. With respect to the scope of the proposal, the letter suggests that: (1) payments to non-NASD members (e.g., banks, financial planners, retirement plan service providers) should be covered; (2) payments by an investment company should be excluded because they already must be disclosed; and (3) in the case of payments for services, the NASD should clarify that the disclosure requirement is triggered only where compensation is received for providing services to an investment company, not to another offeror (e.g., the investment adviser). With respect to the location and content of required disclosures, the letter makes the following recommendations: (1) the prescribed prospectus legend should not be tied to the fee table, because it may create a misleading impression that cash compensation payments are shareholder or fund expenses; (2) disclosure of the specific identity of the person(s) making payments (e.g., the investment adviser, underwriter or administrator) in each particular type of arrangement is immaterial to investors and should not be required; and (3) the NASD should clarify the proposed requirement to disclose the basis on which payments are calculated "where possible." Finally, the letter recommends that in connection with adopting any new disclosure requirements, the NASD provide a sufficient transition period to allow investment companies to incorporate any necessary changes in the context of regular annual prospectus updates and without the need to "sticker." Frances M. Stadler Associate Counsel Attachment