

**MEMO# 18746**

April 5, 2005

# **ICI COMMENT LETTER ON SEC SUPPLEMENTAL REQUEST FOR COMMENT ON PROPOSED POINT OF SALE AND CONFIRMATION DISCLOSURE**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18746] April 5, 2005 TO: BROKER/DEALER ADVISORY COMMITTEE No. 11-05 OPERATIONS MEMBERS No. 5-05 SEC RULES MEMBERS No. 47-05 SMALL FUNDS MEMBERS No. 30-05 TECHNOLOGY ADVISORY COMMITTEE No. 7-05 TRANSFER AGENT ADVISORY COMMITTEE No. 12-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 4-05 UNIT INVESTMENT TRUST MEMBERS No. 3-05 529 PLAN MEMBERS No. 6-05 RE: ICI COMMENT LETTER ON SEC SUPPLEMENTAL REQUEST FOR COMMENT ON PROPOSED POINT OF SALE AND CONFIRMATION DISCLOSURE Last month, the Securities and Exchange Commission requested additional comment on point of sale and confirmation disclosure relating to mutual funds and other covered securities.\* The Institute's comment letter is attached and briefly summarized below. POINT OF SALE DISCLOSURE The Institute's letter states that we have continued to study point of sale disclosure over the past year and that our position and recommendations have evolved. It indicates that our continued support for requiring point of sale disclosure rests upon the Commission's ability to address effectively the many difficult challenges involved. The letter expresses concern that otherwise, the proposal could have the undesirable, albeit unintended, result of discouraging brokers from selling mutual funds and incentivizing them instead to sell other products not subject to point of sale disclosure requirements. To alleviate this concern, and to provide investors with timely and convenient access to the required information, the letter strongly recommends that the Commission designate the Internet as the primary medium for point of sale disclosure. Under our proposal, a broker would satisfy the disclosure obligation by referring the investor to the broker's website (or e-mailing a link) to obtain the required information. The letter recommends permitting investors \* See SEC Release Nos. 33-8544, 34-51274, and IC-26778, dated March 1, 2005 ("the Supplemental Release"). The Supplemental Release and related attachments are available on the SEC's website at: <http://www.sec.gov/rules/proposed/33-8544.pdf>. 2 who do not have access to the Internet, or who otherwise want to obtain the information in paper form, to request the disclosure in paper form. The letter recommends that the Commission refrain at this time from expanding the scope of the proposal beyond broker costs and conflicts. It encourages the Commission to undertake a wholesale reexamination of the mutual fund disclosure framework as a separate initiative. The letter also recommends that the Commission provide appropriate exceptions from the point of sale

requirements, particularly an exception for directly-sold funds. Other recommended exceptions would cover subsequent purchases, institutional orders, and unsolicited orders not involving a broker recommendation. The letter recommends several changes to the contents of the proposed point of sale disclosure, including that only a \$1,000 hypothetical investment amount (and not hypothetical investments of \$50,000 and \$100,000) be shown. It recommends revisions to the definition of “revenue sharing” for purposes of the conflict of interest disclosure, including limiting it to payments made in connection with the sale or distribution of fund shares.

**CONFIRMATION DISCLOSURE** The letter supports tailored mutual fund confirmations but recommends several changes to the Commission’s proposal. Among other things, it recommends deleting information about ongoing fund fees and expenses and broker conflicts of interest because these are redundant of information that investors will receive through other means either before or with the confirmation. As such, requiring such disclosure will impose costs without commensurate benefits for investors.

**INTERNET DISCLOSURE OF ADDITIONAL INFORMATION** The Institute’s letter supports requiring brokers to provide additional information about their compensation and any revenue sharing or differential compensation arrangements on their websites. It expresses concern with the level of detail proposed by the Commission and the substantial costs such detailed disclosure will entail. With respect to revenue sharing payments, the letter recommends that the Commission adopt an approach similar to that proposed by the NASD in 2003. In particular, instead of requiring disclosure of the dollar amount of revenue sharing payments, the Commission should require brokers to provide a list of the fund complexes from which it receives such payments, in descending order based on the amount of the payments.

**PROSPECTUS DISCLOSURE OF REVENUE SHARING ARRANGEMENTS** The letter continues to support the Commission’s proposal to require brief prospectus disclosure of the fact that a fund complex makes revenue sharing payments along with disclosure referring investors to their brokers for more specific information. It recommends that if the Commission determines that funds should be required to provide additional revenue sharing disclosure, it should address the appropriate level of detail of such disclosure. Any detailed or technical disclosure should be included in the Statement of Additional Information 3 or posted on a fund’s website. The letter also recommends that the Commission restate its incorporation by reference doctrine, reaffirming that information in the SAI is deemed to be included in the prospectus.

**UITs AND 529 PLANS** The letter expresses support for tailored point of sale and confirmation disclosure for UITs and 529 plans. Due to the unique nature of these securities and their distribution, however, the letter recommends that the Commission carve them out of the new requirements while it continues to explore separate point of sale and confirmation disclosure better suited for investors in these products.

**COMPLIANCE DATE** The letter recommends that the Commission work with the brokerage industry to develop an appropriate timetable for compliance with any new requirements, taking into account the systems and other changes necessitated both by the new requirements and by other recent and pending Commission initiatives.

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