

MEMO# 11368

November 1, 1999

ICI COMMENT LETTER ON NASDR PROPOSED SALESPERSON COMPENSATION RULES

* See Memorandum to Board of Governors No. 58-99, Closed-End Investment Company Committee No. 28-99, SEC Rules Committee No 63-99, and Unit Investment Trust Committee No. 19-99, dated September 7, 1999. [11368] November 1, 1999 TO: BOARD OF GOVERNORS No. 66-99 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 39-99 SEC RULES COMMITTEE No. 88-99 UNIT INVESTMENT TRUST COMMITTEE No. 29-99 RE: ICI COMMENT LETTER ON NASDR PROPOSED SALESPERSON COMPENSATION RULES

As we previously advised you, in September, NASDR requested comment on three proposed rules relating to salesperson compensation.* These three proposals would: (1) prohibit single security sales contests; (2) prohibit the payment of higher payout ratios to salespersons for the sale of proprietary investment company products; and (3) require disclosure of accelerated payout arrangements for salespersons who change firms. In response to NASDR's request, the Institute filed the attached comment letter, which addresses the first two of these proposals and is summarized below. Regulating Single Security Sales Contests The Institute's letter notes that, while we support the policy objectives behind this proposal, with respect to investment company securities it seems illogical and confusing to have the regulation of sales contests depend solely upon the form of compensation to be awarded. To provide for the uniform regulation of compensation arrangements involving investment company securities, the Institute's letter recommends that the provisions of Rule 2830(l)(5)(D), which regulate non-cash compensation paid by a member to its associated persons, be extended to apply to cash compensation arrangements, but only where (1) the arrangement involves payment of cash compensation to an associated person who has direct contact with investors and directly effects customer transactions and (2) the compensation arrangement, if based on production, is based on production over a period of less than one year. The first condition would tailor the rule so as not to disrupt compensation arrangements that do not result in the "point-of-sale" incentives that NASDR seeks to address in the proposal; the second condition would ensure that the revised rule not apply to annual compensation arrangements, which are not the subject of the concerns articulated by NASDR in its proposal. The Institute's letter also notes that our recommendation regarding comparable regulation of cash and non-cash compensation arrangements is consistent with comments filed by the Institute with NASDR on previous NASDR proposals in this area. Prohibiting Disparate Payout Ratios With respect to NASDR's proposed rule that would prohibit the payment of disparate payouts for proprietary and non-proprietary investment company products, the Institute's letter notes that, while we

support the goals of this proposal, we are concerned that it is unworkable as currently drafted. We therefore recommend that NASDR defer action on this proposal at this time. We additionally note that our recommendations with respect to the "single security sales contest" proposal would, by substantively regulating certain compensation arrangements without regard to the nature of the compensation or whether the securities are proprietary or non-proprietary products, address many of the concerns that the differential payout proposal seeks to address. Regulation of Cash Compensation Paid to Broker-Dealer Firms Finally, the Institute urges NASDR to improve the disclosure to provided by a broker-dealer to its customers relating to the compensation the broker-dealer firm (as opposed to the individual representatives) receives in connection with the sale of investment company securities. Tamara K. Reed Associate Counsel Attachment

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