

MEMO# 18698

March 24, 2005

DRAFT ICI COMMENT LETTER ON SEC SUPPLEMENTAL REQUEST FOR COMMENT ON PROPOSED CONFIRMATION AND POINT OF SALE DOCUMENTS

[18698] March 24, 2005 TO: 529 PLAN ADVISORY COMMITTEE No. 11-05 BROKER/DEALER ADVISORY COMMITTEE No. 9-05 OPERATIONS COMMITTEE No. 4-05 SEC RULES COMMITTEE No. 24-05 SMALL FUNDS COMMITTEE No. 8-05 TECHNOLOGY ADVISORY COMMITTEE No. 6-05 TRANSFER AGENT ADVISORY COMMITTEE No. 11-05 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 3-05 RE: DRAFT ICI COMMENT LETTER ON SEC SUPPLEMENTAL REQUEST FOR COMMENT ON PROPOSED CONFIRMATION AND POINT OF SALE DOCUMENTS

Last month, the Securities and Exchange Commission published for comment revised versions of its proposed confirmation and point of sale disclosure documents for transactions in covered securities.* Attached is a the Institute's draft comment letter on the proposal, which is briefly summarized below. Comments are due to the Commission by April 4th. Please provide any comments you have on the draft to either Tami Salmon (202-326-5825; tamara@ici.org) or Frances Stadler (202-326-5824; frances@ici.org) no later than Tuesday, March 29, 2004. SUMMARY OF COMMENTS ON THE POINT-OF-SALE DOCUMENT The Institute's letter expresses our support for the Commission's proposed point-of-sale disclosure document. It recommends that, unless a broker-dealer meets with an investor in person, the Commission utilize the Internet as the primary medium for delivery of the document. Under our proposal, broker-dealers would deliver the point-of-sale document by referring investors to the broker-dealer's website, where the document information would be posted. The letter discusses the advantages of Internet delivery, including that it would minimize the costs associated with the document and its delivery. The letter recommends that the Commission provide exceptions from the delivery requirements for institutional investors, unsolicited orders, and subsequent purchases. It also recommends that broker-dealers be permitted to document their compliance with the rule's * See SEC Release Nos. 33-8544, 34-51274, and IC-26778, dated March 1, 2005 ("the Supplemental Release"). A copy of the Supplemental Release is available on the SEC's website at: <http://www.sec.gov/rules/proposed/33-8544.pdf>. A copy of the attachments to the Commission's Supplemental Release is available at: <http://www.sec.gov/rules/proposed/33-8544.pdf>. 2 requirements through their supervisory procedures that are required by NASD Rule 3010. It also discusses the need for the Commission to provide a safe harbor to protect broker-dealers from unfair private actions relating to the point-of-sale disclosure documents. With respect to the contents of the

proposed point-of-sale disclosure document, in addition to some minor revisions, the Institute's letter recommends that: • The only hypothetical investment amount required on the form be \$1000; • The form delete the investor's actual investment amount from the document and replace this with narrative disclosure informing the investor to contact the broker-dealer for this information; and • The fund's management fees and other expenses be deleted from the form so that the only fees included on the form would be those related to sales and distribution (i.e., the sales load information and the distribution/12b-1 fee).

SUMMARY OF COMMENTS ON THE PROPOSED CONFIRMATION The Institute supports adoption of the proposed confirmation with certain modifications, which are consistent with our comments on the Commission's previous proposal. In particular, and in addition to minor revisions to the proposed contents of the confirmation, we recommend that the Commission delete the information relating to mutual fund fees and expenses, aside from the sales load information, as well as the conflict of interest information.

SUMMARY OF COMMENTS ON THE PROPOSED ADDITIONAL INFORMATION DISCLOSURE The Institute's letter also comments on the additional information disclosure added to the Commission's proposal, which a broker-dealer would be required to include on its website. The letter supports broker-dealers being required to provide additional information on their websites regarding their revenue sharing arrangements and differential compensation paid to representatives. We recommend, however, that dollar-specific information on a broker-dealer's revenue sharing arrangement be replaced with ranking information. This approach is consistent with the NASD's 2003 proposal that would require broker-dealers to disclose the nature of any revenue sharing payments received over the previous 12 months along with the name of each offeror that made such a payment, listed in descending order based upon the amount of compensation received from each offer.

PROPOSED FORM N-1A AMENDMENTS ON REVENUE SHARING The letter continues to support the Commission's approach to prospectus disclosure of revenue sharing arrangements. It recommends, however, that any additional details regarding these arrangements be set forth in the Statement of Additional Information or posted on a fund's website. It 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.

Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)