

MEMO# 14635

April 12, 2002

NASD GUIDANCE ON ANTI-MONEY LAUNDERING COMPLIANCE PROGRAMS

[14635] April 12, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 9-02 CLOSED-END INVESTMENT COMPANY MEMBERS No. 14-02 COMPLIANCE ADVISORY COMMITTEE No. 33-02 MONEY LAUNDERING RULES WORKING GROUP No. 20-02 SEC RULES MEMBERS No. 25-02 SMALL FUNDS MEMBERS No. 10-02 TRANSFER AGENT ADVISORY COMMITTEE No. 33-02 UNIT INVESTMENT TRUST MEMBERS No. 10-02 RE: NASD GUIDANCE ON ANTI-MONEY LAUNDERING COMPLIANCE PROGRAMS The USA PATRIOT Act requires financial institutions, including broker-dealers and investment companies, to establish anti-money laundering compliance programs by April 24, 2002. As we previously informed you,¹ the Securities and Exchange Commission recently published for comment proposed NASD Conduct Rule 3011, which would prescribe minimum standards for anti-money laundering compliance programs established by NASD members.² Final action has not yet been taken on the NASD's rule proposal; any final rule must be approved by the SEC before becoming effective. In the meantime, the NASD has issued a Special Notice to Members to provide guidance to NASD member firms concerning anti-money laundering programs required by federal law.³ A copy of the Notice is attached. The Executive Summary indicates that the purpose of the Notice is "to provide guidance to assist members in developing [anti-money laundering] compliance programs that fit their business models and needs." It further states that the NASD

¹ See Memorandum to Broker/Dealer Advisory Committee No. 3-02, Closed-End Investment Company Members No. 7-02, Compliance Advisory Committee No. 17-02, SEC Rules Members No. 12-02, Small Funds Members No. 5-02, Transfer Agent Advisory Committee No. 15-02 and Unit Investment Trust Members No. 6-02, dated February 28, 2002; Memorandum to Money Laundering Rules Working Group No. 9-02, dated February 28, 2002.

² The Institute filed a comment letter recommending that Rule 3011 provide an exemption for broker-dealers who underwrite securities issued by registered investment companies ("funds") that have established an anti-money laundering program meeting the requirements of Section 352 of the USA PATRIOT Act (and any rule applicable to funds adopted thereunder). Our proposed exemption would apply only with respect to such broker-dealers' fund underwriting activities.

³ Special NASD Notice to Members 2-21 (April 2002) ("Notice"). 2 will update its guidance as new anti-money laundering rules that are still under development become final. While the NASD's guidance is specifically addressed to broker-dealers (possibly including fund principal underwriters), it also may be of interest to Institute members in connection with the development of fund anti-money laundering compliance programs. Of particular note, it lists examples of electronic databases that firms might consider using to verify customer identification information in accordance with new requirements under the USA PATRIOT Act.⁴ In addition, it discusses the respective responsibilities of introducing brokers and clearing brokers for anti-money laundering

compliance. This discussion may be instructive, at least as to the NASD's views, in analyzing situations where more than one financial institution (e.g., a fund principal underwriter and a retail broker-dealer) is involved in a fund transaction. 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 14635, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14635. Attachment (in .pdf format) 4 Section 326 of the Act requires the Treasury Department and the SEC jointly to propose rules establishing minimum standards for verifying customer identification in the account opening process. Implementing regulations for this purpose have not yet been proposed, but are required to take effect no later than October 26, 2002.

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