

**MEMO# 18338**

December 15, 2004

## **SUPPLEMENTAL ICI COMMENT LETTER ON PROPOSED AMENDMENTS TO FORM N-1A RELATING TO SALES LOADS**

[18338] December 15, 2004 TO: BROKER/DEALER ADVISORY COMMITTEE No. 31-04 OPERATIONS MEMBERS No. 37-04 SEC RULES MEMBERS No. 175-04 SMALL FUNDS MEMBERS No. 129-04 TRANSFER AGENT ADVISORY COMMITTEE No. 84-04 RE: SUPPLEMENTAL ICI COMMENT LETTER ON PROPOSED AMENDMENTS TO FORM N-1A RELATING TO SALES LOADS Last January, the Securities and Exchange Commission proposed new rules under the Securities Exchange Act of 1934 that would govern the contents of mutual fund confirmations and require a new point-of-sale disclosure document that would be provided to an investor prior to effecting a mutual fund transaction.<sup>1</sup> The Commission also proposed amendments to Form N-1A that would inform investors of the possibility that an investor's actual sales load might differ from that disclosed in the prospectus due to rounding in the calculation. The Commission proposed to require funds to inform investors of this possible sales load discrepancy, in part, by disclosing in their prospectuses the range of possible sales loads an investor might pay.<sup>2</sup> At the time the Institute filed its comment letter on the Commission's proposal, fund groups had little experience with producing the type of information that would comprise the proposed "range" of actual sales loads.<sup>3</sup> Accordingly, our letter did not comment on that portion of the proposal. More recently, however, as funds have begun computing investors' actual sales loads, some member firms have provided us with anecdotal information relating to 1 See Institute Memorandum to Broker/Dealer Advisory Committee No. 3-04, Operations Members No. 6-04, SEC Rules Committee No. 14-04, Small Funds Members No. 8-04, and Transfer Agent Advisory Committee No. 14-04, [Nos. 17047 and 17048] dated Feb. 3, 2004, which summarized SEC Release Nos. 33-8358, 34-49148, and IC-26341 (Jan. 29, 2004), 69 Fed. Reg. 6438 (Feb. 10, 2004) The SEC's release is available on the Commission's website at: <http://www.sec.gov/rules/proposed/33-8358.htm>. 2 The Commission also proposed to add narrative disclosure to the prospectus fee and sales load tables explaining the possible discrepancy between an investor's actual sales charge rate and that disclosed in the prospectus. The Institute supports this proposed amendment to Form N-1A. 3 See Letter from Amy B.R. Lancellotta, Acting General Counsel, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated April 14, 2004. 2 the potential ranges of actual sales loads that might be required to be disclosed under the Commission's proposal.<sup>4</sup> Based upon this information, we understand that, because the proposed disclosure of ranges would have to take into account all possible sales loads that might be paid by an investor, regardless of how remote their likelihood, these ranges may be quite broad. The upper and lower boundaries of these ranges likely

would not reflect the experience of a typical investor. As such, this information would not be meaningful to investors nor would it assist them in making informed investment decisions. Accordingly, the Institute has filed the attached supplemental comment letter with the Commission recommending that the Commission not require disclosure of this range information. The Institute's letter expresses our continuing support for other portions of the Commission's proposal that will provide investors meaningful information about their sales loads. The letter also encourages the Commission to adopt its new disclosure regime, including the new mutual fund confirmation, point-of-sale disclosure document, and other revisions to Form N-1A, as soon as practicable. Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format) 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 18338, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18338. 4 As part of the voluntary implementation of the recommendations of the Joint NASD/Industry Task Force on Breakpoints, members have been computing investors' actual sales loads in order to disclose them on confirmations issued by broker-dealers. According to anecdotal information provided by member firms, on any given day, approximately fifty percent of transactions result in a sales charge rate that is the same as that disclosed in the prospectus. For the remaining fifty percent, while approximately half of these investors paid a sales charge rate that was higher and half paid a sales charge rate that was lower than that disclosed in the prospectus, the rate paid by most of these investors did not differ materially from that disclosed in the prospectus.

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