

MEMO# 19408

November 29, 2005

NASD MEMBER ALERT REGARDING BROKERS' RESPONSIBILITIES WITH RESPECT TO SALES OF MUTUAL FUND SHARES AND DEALER AGREEMENTS

©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. [19408] November 29, 2005 TO: BOARD OF GOVERNORS No. 59-05 BROKER/DEALER ASSOCIATE MEMBERS No. 12-05 COMPLIANCE MEMBERS No. 24-05 EQUITY MARKETS ADVISORY COMMITTEE No. 42-05 INVESTMENT ADVISER MEMBERS No. 24-05 SEC RULES MEMBERS No. 121-05 SMALL FUNDS MEMBERS No. 95-05 RE: NASD MEMBER ALERT REGARDING BROKERS' RESPONSIBILITIES WITH RESPECT TO SALES OF MUTUAL FUND SHARES AND DEALER AGREEMENTS The NASD has issued a Member Alert regarding brokers' responsibilities with respect to sales of mutual fund shares and dealer agreements.* The Member Alert reminds members that fund sales must be consistent with the federal securities laws, disclosure provided to customers (including the fund prospectus), and any applicable dealer agreement. The Member Alert notes that dealer agreements should adequately delineate the responsibilities of the parties in a manner reasonably designed to help ensure that the mutual fund sales and distribution process protects investors. It also reminds members that a failure to adhere to obligations under the terms of a dealer agreement might be inconsistent with just and equitable principles of trade and therefore a violation of NASD Conduct Rules, particularly if the failure results in financial harm to investors. The Member Alert states that recent enforcement actions by the SEC and the NASD involving breakpoint discounts, late trading, and market timing of funds highlight the importance of brokers' compliance with the federal securities laws and undertakings in dealer agreements in the sales of mutual funds. The Member Alert urges members to review their mutual fund dealer agreements and implement appropriate procedures reasonably designed to ensure that they comply with their obligations under those agreements. Jane G. Heinrichs Associate Counsel * NASD Reminds Members of Their Responsibilities Regarding Sales of Mutual Fund Shares and Dealer Agreements, Member Alert (November 22, 2005), available on the NASD's website at http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_015562.

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