

MEMO# 18911

June 2, 2005

DRAFT INSTITUTE LETTER ON SEC PROPOSED RULE DEFINING THE TERM "NRSRO"

©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. [18911] June 2, 2005 TO: SEC RULES COMMITTEE No. 38-05 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 21-05 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 9-05 FIXED-INCOME ADVISORY COMMITTEE No. 11-05 UNIT INVESTMENT TRUST COMMITTEE No. 8-05 RE: DRAFT INSTITUTE LETTER ON SEC PROPOSED RULE DEFINING THE TERM "NRSRO" As we previously informed you,¹ the Securities and Exchange Commission has published for comment a proposed new rule under the Securities Exchange Act of 1934 which would define the term "nationally recognized statistical rating organization" ("NRSRO").² The Institute has prepared a draft comment letter on the proposal. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the proposal are due to the SEC no later than June 9, 2005. If you have any comments on the draft letter, please contact the undersigned by phone at 202-371-5408 or by e-mail at aburstein@ici.org no later than June 7. The draft letter supports the proposal, as it would facilitate much needed competition among credit rating agencies and would codify substantive standards for being an NRSRO. The draft letter notes, however, that the proposal does not enhance the Commission's current regulatory structure and oversight of NRSROs and, in fact, may diminish the Commission's oversight by eliminating the need for credit rating agencies to seek no-action letters in order to be designated as an NRSRO. Given the reliance of many provisions of the securities laws on NRSRO ratings and the utilization of these ratings by investors in their investment decisions, the draft letter therefore recommends that, in addition to adopting a formal definition of "NRSRO," the Commission continue to require that credit rating agencies obtain NRSRO designation through the no-action process. At the same time, in order to facilitate competition

¹ Memorandum to SEC Rules Members No. 52-05, Closed-End Investment Company Members No. 22-05, Money Market Funds Advisory Committee No. 7-05, Fixed-Income Advisory Committee No. 9-05 and Unit Investment Trust Members No. 6-05, dated April 22, 2005 [18798].

² SEC Release Nos. 33-8570; 34-51572; and IC-26834 (April 19, 2005) ("Release"). The Release can be found on the SEC's website at <http://www.sec.gov/rules/proposed/33-8570.pdf>.

² among credit rating agencies, the draft letter recommends that the Commission institute several changes to the current no-action process. Specifically, the draft letter supports the establishment of a time period under which Commission staff would act on credit rating agency no-action requests for NRSRO status. Establishing a time period to serve as a goal for Commission staff action would address concerns regarding the current length of time necessary to obtain a no-

action letter and would facilitate the designation of credit rating agencies as NRSROs. In addition, the draft letter supports allowing credit rating agencies that confine their activities to limited sectors of the debt market or to limited geographic areas to be deemed an NRSRO. The draft letter states that these changes would significantly improve the current no-action process and facilitate competition for credit rating agencies, while at the same time ensure that there is the minimum amount of NRSRO oversight necessary to ensure adequate investor protections and an efficient NRSRO process. The draft letter notes that the transparency of the ratings process, and of the procedures in place to ensure that this process operates smoothly, is very important to investors. The draft letter therefore recommends that the Commission consider, as an additional factor for assessing whether a credit rating agency meets the third component of the proposed NRSRO definition, the level of disclosure of these factors to users of their ratings. The draft letter states that the public disclosure of these factors would allow investors a continuous opportunity to appraise the NRSROs' independence, their capabilities as NRSROs and their unique operations. Ari Burstein Associate Counsel Attachment (in .pdf format)

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