

MEMO# 19796

March 3, 2006

SEC Publishes for Comment NASD Proposal to Require Principal Pre-Use Approval of Retail Correspondence; Your Comments Requested by March 9th

©2006 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. [19796] March 3, 2006 TO: SEC RULES COMMITTEE No. 12-06 SMALL FUNDS COMMITTEE No. 7-06 ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 2-06 UNIT INVESTMENT TRUST COMMITTEE No. 3-06 RE: SEC PUBLISHES FOR COMMENT NASD PROPOSAL TO REQUIRE PRINCIPAL PRE-USE APPROVAL OF RETAIL CORRESPONDENCE; YOUR COMMENTS REQUESTED BY MARCH 9TH As we previously advised you, last May, the NASD published for comment a proposal to amend NASD Rule 2211 to require a registered principal to pre-approve correspondence sent to 25 or more existing retail customers within a 30 calendar-day period.¹ The Institute filed a comment letter in support of the proposal.² The proposal published by the SEC, which is almost identical to the one originally published by the NASD, is summarized below.³ Comments on the proposal must be filed with the SEC by Tuesday, March 21st. The Institute plans on filing a letter supporting the proposal similar to our comment letter on the NASD's May 2005 proposal. If you have any comments you would like us to consider including in such a letter, please contact me no later than March 9th by phone (202.218-3563) or email (ddonohue@ici.org). The NASD currently does not require correspondence to existing customers to be pre-approved by a registered principal. Rather, it is subject to the supervision and review requirements of Rule 3010(d). Under the proposal, a registered principal would be required to pre-approve correspondence that is not solely and exclusively clerical or ministerial in nature and that is sent to 25 or more existing retail customers within a 30 calendar-day period.⁴ The Release states that non-clerical correspondence with such a wide distribution often will constitute a solicitation to purchase or sell a security or to use a brokerage service. The Release further states that registered principal pre-use approval would better ensure that this material complies with the applicable standards of the advertising rules before reaching current or prospective customers. Because many firms already require registered principal pre-use approval of such correspondence, the NASD believes that the benefits of

the proposed requirement outweigh any additional burdens. Dorothy M. Donohue Associate Counsel 4 Correspondence is defined to include any written letter or electronic mail message distributed by a member to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period.

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