

MEMO# 1251

July 7, 1989

NASD REPROPOSES AMENDMENTS CONCERNING CASH AND NON-CASH CONCESSIONS IN CONNECTION WITH THE RETAIL SALE OF INVESTMENT COMPANY SECURITIES

-1- July 7, 1989 TO: SEC RULES COMMITTEE NO. 35-89 UNIT INVESTMENT TRUST COMMITTEE NO. 33-89 CLOSED-END FUND COMMITTEE NO. 24-89 BROKER/DEALER ADVISORY COMMITTEE NO. 31-89 RE: NASD REPROPOSES AMENDMENTS CONCERNING CASH AND NON-CASH CONCESSIONS IN CONNECTION WITH THE RETAIL SALE OF INVESTMENT COMPANY SECURITIES

As you will recall, the National Association of Securities Dealers, Inc. (NASD) proposed amendments to the NASD Rules of Fair Practice on March 1, 1988 that generally would have prohibited NASD members from accepting non-cash sales compensation in connection with the distribution of investment company and variable contract products. A copy of the 1988 proposal is attached. In the attached Notice to Members No. 89-51, the NASD has repropose amendments to Article III, Section 26 of the Rules of Fair Practice. The reproposal would permit non-cash compensation to be paid for the distribution of investment company products, but would require recordkeeping concerning non-cash concessions and would revise and simplify the prospectus disclosure rule governing dealer concessions. The major provisions of the proposed amendments to Article III, Section 26 include: (1) NASD members must keep records of the amount and nature of all compensation, cash and non-cash, received from offerors for the retail sale of investment company securities; (2) associated persons of NASD firms are prohibited from receiving any compensation, cash or non-cash, for selling investment company securities except from the member which the associated person is affiliated; (3) compensation in the form of securities of any kind is prohibited; and (4) prospectus disclosure of cash and non-cash compensation must be made unless the compensation is -2- not conditioned on sales or the promise of sales, and a. monetary gifts are paid by offerors to associated persons of up to \$100 per person per year; or b. compensation is paid to NASD members to defray the costs associated with training or educational meetings held at locations appropriate to the purpose of such meetings. Finally, the proposed amendments would specifically exclude from the provisions of the rule compensation arrangements between an NASD member firm and its own associated persons. The NASD has requested comments by August 4, 1989. If you have comments that you would like to have included in the Institute's letter, please submit them to the undersigned by July 28, 1989. Robert L. Bunnan, Jr. Assistant General Counsel Attachments

Copyright © by the 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.