

MEMO# 10729

February 16, 1999

LETTER TO NASD RECOMMENDING MODERNIZATION OF RULES

* See Memorandum to Advertising Compliance Advisory Committee No. 52-98, Closed-End Investment Company Committee No. 29-98 and SEC Rules Committee No. 130-98, dated December 28, 1998. [10729] February 16, 1999 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 6-99 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 5-99 SEC RULES COMMITTEE No. 12-99 RE: LETTER TO NASD RECOMMENDING MODERNIZATION OF RULES

As previously indicated, the NASD recently requested comments on whether any NASD rules should be repealed because they are obsolete or modernized in light of technological or industry developments, or whether particular rules should distinguish between retail and institutional customers in their application. The Institute has filed a comment letter responding to the NASD's request. The comment letter is very similar to the draft letter circulated to you earlier.* A copy of the final comment letter is attached, and it is summarized below.

General Recommendations The letter praises NASDR for undertaking a review of the NASD rules. It then makes general recommendations relating to: differentiation between institutional and retail customers; prospectus disclosure; and the NASD rulemaking process. In particular, the letter: ! expresses general support for the concept of differentiating between retail and institutional investors under NASD rules; ! recommends that the NASD refrain from adopting rules that have the practical effect of requiring disclosure to be made in mutual fund prospectuses and suggests that the SEC should be the exclusive source of fund prospectus disclosure requirements; and ! suggests that the NASD take steps to improve the effectiveness of the rulemaking process.

Specific Recommendations The letter then recommends specific changes to NASD rules in the areas of: advertising; confirmations; forwarding proxy materials; the corporate financing rule; selling concessions; and cash compensation. On these topics, the letter recommends, among other things, that the NASD: ! with respect to the advertising rules, distinguish between retail and institutional investors (and financial intermediaries), exempt certain items from the filing requirements, be flexible in applying rules and interpretations to the use of electronic media, and permit electronic filing of 2sales material; ! repeal NASD Conduct Rule 2230 (confirmations), because it is unnecessary in light of Securities Exchange Act Rule 10b-10 and the differences between the two rules may cause confusion; ! revise NASD Conduct Rule 2260 (forwarding proxy materials) to expand the categories of persons to whom NASD members may forward proxy and other materials on behalf of a beneficial owner of securities; ! revise NASD Conduct Rule 2710 (corporate financing rule) to exempt interval funds from its filing and review requirements; ! revise or interpret NASD Conduct Rule 2740 (selling concessions) to permit NASD members, in connection with a fixed price offering, to offer discounts to high volume purchasers through scheduled breakpoints in the stated public offering price; and ! move forward on efforts to more

effectively regulate cash compensation payments made in connection with the sale and distribution of investment company securities. Frances M. Stadler Deputy Senior Counsel
Attachment

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