MEMO# 2741

May 6, 1991

NASD REPROPOSAL TO AMEND RULE GOVERNING CASH AND NON-CASH COMPENSATION

May 6, 1991 TO: SEC RULES COMMITTEE NO. 26-91 UNIT INVESTMENT TRUST COMMITTEE NO. 21-91 CLOSED-END FUND COMMITTEE NO. 9-91 BROKER/DEALER ADVISORY COMMITTEE NO. 14-91 RE: NASD REPROPOSAL TO AMEND RULE GOVERNING CASH AND NON-CASH COMPENSATION ____ The NASD has reproposed amendments to Article III, Section 26 of its Rules of Fair Practice to revise, simplify and add a record-keeping requirement to this provision, which regulates cash and non-cash compensation received by members in connection with the sale of investment company securities. The NASD proposed similar amendments in July, 1989, but has not taken any subsequent action since the NASD Board wanted to further consider the issue of whether members should be prohibited from receiving non-cash sales incentives for the sale of investment company securities. (See Memorandum to SEC Rules Committee No. 35-89, Unit Investment Trust Committee No. 33-89, Closed-End Fund Committee No. 24-89 and Broker/Dealer Advisory Committee No. 31- 89, dated July 7, 1989). Attached is a copy of the NASD's reproposal. The attached reproposal would permit non-cash compensation to be paid for the distribution of investment company products, but would impose a new record-keeping requirement in connection with such compensation. The reproposal also would revise and simplify the prospectus disclosure rule governing dealer concessions. The major provisions of the reproposal include: (a) 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; (b) associated persons of NASD firms are prohibited from receiving any compensation, cash or non-cash, for selling investment company securities except from the member with which the associated person is affiliated; (c) compensation in the form of securities of any kind is prohibited; and (d) prospectus disclosure of cash and non-cash compensation must be made unless the compensation is not conditioned on sales or the promise of sales, and 1. monetary gifts are paid by offerors to associated persons of up to $100 per person per year; or 2. 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. The items included in paragraph (d) above are deemed to be compensation and, thus, would still be subject to the record- keeping requirement, even though they may not have to be disclosed in the prospectus. The NASD Investment Companies Committee is requesting comment on the burden imposed by this record-keeping requirement. The comment period for the reproposed amendments to the NASD Rule of Fair Practice governing cash and non-cash compensation expires on June 4, 1991. Please provide me with your comments on the reproposal by May 28, 1991. Amy B.R. Lancellotta Assistant General Counsel Attachment

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