

**MEMO# 18551**

February 16, 2005

## **INSTITUTE LETTER ON SEC PROPOSAL RELATING TO REGULATION M**

[18551] February 16, 2005 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 13-05 EQUITY MARKETS ADVISORY COMMITTEE No. 12-05 SEC RULES MEMBERS No. 27-05 RE: INSTITUTE LETTER ON SEC PROPOSAL RELATING TO REGULATION M The Institute has filed a comment letter with the Securities and Exchange Commission on proposed amendments to Regulation M relating to anti-manipulation rules concerning the offering of securities.<sup>1</sup> The most significant aspects of the comment letter are summarized below and a copy of the letter is attached. The letter strongly supports the goals of the proposal – promoting integrity, fairness and transparency in the securities offering process – and states that the proposal would provide investors with greater confidence when purchasing securities, especially in an initial public offering (“IPO”). The letter states, however, that the proposed amendment to Regulation M that would prohibit “penalty bids” would adversely impact the IPOs of closed-end funds. The letter notes that penalty bids are widely used by closed-end funds as a means to stabilize the market price of closed-end fund shares, making the use of penalty bids critical to the efficient public offering of such funds. The letter also discusses several unique attributes and structural characteristics of closed-end funds that differentiate such funds from operating companies and contribute to the importance of penalty bids. For these reasons, the letter recommends that the Commission continue to permit closed-end funds to use penalty bids, either (1) by adopting an approach similar to that proposed by the NYSE and NASD that would permit the use of penalty bids for all issuers, or (2) by creating a narrow exception for closed-end funds from a general prohibition. Ari Burstein Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 18551, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18551. <sup>1</sup> SEC Release Nos. 33-8511; 34-50831; and IC-26691 (December 9, 2004), 69 FR 75774 (December 17, 2004).