

MEMO# 16667

October 14, 2003

INSTITUTE DRAFT COMMENT LETTER ON REVISED NASD BUSINESS CONTINUITY PLAN RULE PROPOSAL

[16667] October 14, 2003 TO: OPERATIONS COMMITTEE No. 22-03 SEC RULES COMMITTEE No. 82-03 SMALL FUNDS COMMITTEE No. 27-03 RE: INSTITUTE DRAFT COMMENT LETTER ON REVISED NASD BUSINESS CONTINUITY PLAN RULE PROPOSAL The Investment Company Institute has prepared a draft comment letter (attached) on the proposed amendments to a rule proposal issued by NASD related to business continuity plans.¹ Specifically, the Institute's draft letter comments on proposed NASD Rule 3510(e), which would require each NASD member firm to disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the firm plans to respond to events of varying scope.² The Institute's letter supports NASD's proposal but recommends that it be amended to clarify that the disclosure requirement would not apply to broker-dealers that do not hold cash or securities for their investors, such as mutual fund underwriters. The letter explains that fund underwriters typically do not open or hold shareholder accounts or process transactions in fund shares. Nor do they have custody of investor funds or securities or serve as a mechanism for investors to access their funds or securities. Thus, imposing the proposed disclosure requirement on these firms would not serve NASD's intended purpose, i.e., to enable investors to decide whether to place their funds and securities at the firm based on the quality of the firm's business continuity plan.³ Comments are due to the SEC by Friday, October 17th. If you have comments on the Institute's draft letter, please forward them to Barry Simmons at (202) 326-5923 (phone), at (202) 326-5827 (fax), or at bsimmons@ici.org (email), or Frances Stadler at (202) 326-5822 (phone), at (202) 326-5827 (fax), or at frances@ici.org (email) by Thursday, October 16th. Barry E. Simmons Associate Counsel Attachment (in .pdf format) 1 See Memorandum to Operations Committee No. 21-03, SEC Rules Committee No. 80-03, Small Funds Committee No. 26-03, and Unit Investment Trust Committee No. 33-03 (#16223), dated October 7, 2003. 2 At a minimum, such disclosure would have to be made in writing to customers at account opening, posted on the firm's Internet website (if it maintains a website), and mailed to customers upon request. 3 Of course, to the extent that a fund underwriter also maintains a retail business in which it does maintain custody of cash or securities for customers, then the disclosure requirement would apply.