

MEMO# 10349

October 1, 1998

NASD NOTICE TO MEMBERS DESCRIBING NEW NON-CASH COMPENSATION RULES

1 See Memorandum to Closed-End Investment Company Members No. 22-98, SEC Rules Members No. 58-98 and Unit Investment Trust Members No. 15-98, dated July 29, 1998. 2 NASD Notice to Members 98-75 (September 1998). 3 See Memorandum to Closed-End Investment Company Members No. 26-97, SEC Rules Members No. 66-97 and Unit Investment Trust Members No. 35-97, dated September 10, 1997. The only difference is that, as the Institute had suggested, the NASD revised the proposal to clarify that an NASD member may contribute to a non-cash compensation arrangement of a non-member, if that arrangement complies with the conditions of the rules. [10349] October 1, 1998 TO: SALES FORCE MARKETING COMMITTEE No. 19-98 RE: NASD NOTICE TO MEMBERS DESCRIBING NEW NON-CASH COMPENSATION RULES

We recently informed you that the Securities and Exchange Commission had approved the NASD's proposed amendments to its rules governing non-cash compensation.¹ As was anticipated, the NASD has issued a Notice to Members that describes the amended rules and how they will be implemented, and sets forth the text of the rules.² A copy of the Notice is attached. The amended rules are nearly identical to the proposed version the SEC published for comment last year.³ As previously indicated, the rules prohibit, with certain exceptions, NASD members and persons associated with members from directly or indirectly paying or receiving any non-cash compensation in connection with the sale of investment company securities. The exceptions are: (1) gifts of up to \$100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or comparable entertainment; (3) payment or reimbursement for training and educational meetings held by a broker-dealer or mutual fund for the associated persons of broker-dealers, if certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons and sales incentive programs of mutual funds for the associated persons of an affiliated broker-dealer, subject to certain conditions; and (5) contributions by a non-member or other member to a broker-dealer's permissible in-house sales incentive program, or by a member to a non-member's permissible in-house sales incentive program. Under the amended rules, both cash and non-cash compensation arrangements (with certain exceptions) are subject to recordkeeping requirements. The records must include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received. The attached Notice states that records regarding the "nature" of non-cash compensation should indicate whether the compensation was received in connection with a sales incentive program or a training and education meeting. According to the Notice, records for a training and education meeting, for example, should demonstrate that the meeting complied with the requirements of the rules (i.e., they should include date and location, the fact that attendance is not conditioned

on the achievement of a previously specified sales target, etc.). Only cash compensation arrangements are subject to prospectus disclosure requirements. The amended rules will become effective on January 1, 1999. As of that date, any new sales incentive programs must comply with the new requirements. Existing sales incentive programs that are ongoing as of January 1, 1999 may continue under the old rules for no more than six months from that date. Non-cash sales incentives or awards earned by registered representatives under existing programs may be received by the registered representative for a period of up to 12 months following the six- month implementation period. Frances M. Stadler Deputy Senior Counsel

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