

**MEMO# 18883**

May 23, 2005

# **INSTITUTE COMMENT LETTER ON IOSCO'S ANTI-MARKET TIMING REPORT**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18883] May 23, 2005 TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 11-05 RE: INSTITUTE COMMENT LETTER ON IOSCO'S ANTI-MARKET TIMING REPORT Attached is a comment letter to the International Organization of Securities Commissions (IOSCO) in response to its consultation on the obligations of funds and their operators with respect to market timing and late trading. The letter supports the three broad best practice standards outlined in IOSCO's report but expresses concerns over several statement made in the report. Our letter points out that the interests of fund operators and fund shareholders to eliminate market timing generally are aligned. The letter expresses concerns about statements in the report concerning the obligations of fund operators with respect to NAV accuracy, dilution, and agreements with distributors, and the extent to which external auditors can be expected to review fund compliance with anti- market timing obligations. Specifically, the letter states: • Fair value pricing represents a good faith estimate of a security's value and there is no "right" or "accurate" price for a fair-valued security. • Funds may not be able to impose legally enforceable duties on all intermediaries to comply with fund market timing policies and, even when funds can amend existing contracts with distributors, they cannot guarantee that all market timing transactions will be identified by distributors. Nor can they guarantee that no dilution ever will occur. • Funds should be expected to use a reasonable process to analyze the potential for market timing in a fund, devise an appropriate response that is implemented conscientiously, and periodically review these determinations. Mary S. Podesta Senior Counsel Attachment (in .pdf format)