

MEMO# 19024

July 18, 2005

DRAFT INSTITUTE COMMENT LETTER ON NASD PROPOSAL ON SALES CONTESTS AND NON-CASH COMPENSATION

©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. [19024] July 18, 2005 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 25-05 SEC RULES COMMITTEE No. 43-05 SMALL FUNDS COMMITTEE No. 23-05 UNIT INVESTMENT TRUST COMMITTEE No. 11-05 RE: DRAFT INSTITUTE COMMENT LETTER ON NASD PROPOSAL ON SALES CONTESTS AND NON-CASH COMPENSATION In June, the NASD proposed for comment rules changes that would replace existing rules governing non-cash compensation arrangements and sales contests with a new rule that would (1) extend current prohibitions on non-compensation to cover the sale and distribution of any security or type of security and (2) prohibit all product-specific cash and non-cash "sales contests," as defined by the proposed new rule.* The Institute's draft letter on the proposal is attached and briefly summarized below. Comments on the NASD's proposal are due no later than August 5, 2005. Please provide any comments on the Institute's draft comment letter no later than Friday, July 29th, 2005 to either Tamara Salmon (e-mail: tamara@ici.org; phone: 202-326-5825) or Frances Stadler (e-mail: frances@ici.org; phone: 202-326-5822). SUMMARY OF THE INSTITUTE'S DRAFT COMMENT LETTER The Institute's draft comment letter supports the proposal. It recommends the following changes or clarifications:

- Definition of "Preconditioned on the Achievement of a Sales Target" – The NASD proposes to define this term based on what criteria an associated person understands in advance will be used to determine attendance at training and educational meetings. The Institute's letter recommends revising this definition to condition it on what the broker-dealer communicates to its associated persons, rather than on what associated persons understand. * See ICI Memorandum to Closed-End Investment Company Committee No. 23-05, SEC Rules Committee No. 40-05, Small Funds Committee No. 21-05, and Unit Investment Trust Committee No. 9-05 [18965], dated June 22, 2005 (summarizing NASD Notice to Members 05-40 (June 2005)).
- 2 • Regional Meetings – The NASD proposes to limit attendance at regional training and education meetings to those associated persons who work within that region. The letter recommends eliminating this limitation.
- Contributions to a Non-Cash Compensation Arrangement – The NASD proposes to delete an existing provision that permits non-member companies or other NASD members to contribute to a non-cash compensation arrangement between a member and its associated persons, and members to contribute to a non-cash compensation arrangements of a non-member. In response to the NASD's request for comment, the letter recommends that the proposed rule continue to permit outside contributions because they provide broker-dealers greater flexibility in supporting their arrangements without diminishing investor protection.

- Interpretive Positions – The letter recommends that, when the NASD adopts the new rule, it clarify that its interpretations under the existing rules relating to promotional/logo items of nominal value, arrangements related to specific divisions within a broker- dealer, and President’s Club memberships, will continue to apply.
- Compliance Examinations – The letter recommends that the NASD train its examination staff regarding the language of the new rule and its interpretation to avoid instances in which the examination staffs’ interpretations are in conflict with those published by the NASD, as has been occurring with the existing rule.

Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

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