

MEMO# 18860

May 18, 2005

CFA INSTITUTE ASSET MANAGER CODE OF PROFESSIONAL CONDUCT

©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. [18860] May 18, 2005 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 29-05 COMPLIANCE MEMBERS No. 1-05 EQUITY MARKETS ADVISORY COMMITTEE No. 22-05 INTERNATIONAL MEMBERS No. 15-05 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 8-05 INVESTMENT ADVISER MEMBERS No. 10-05 SEC RULES MEMBERS No. 64-05 SMALL FUNDS MEMBERS No. 44-05 RE: CFA INSTITUTE ASSET MANAGER CODE OF PROFESSIONAL CONDUCT The CFA Institute's CFA Centre for Financial Market Integrity ("CFA Centre") has issued a final Asset Manager Code of Professional Conduct ("Code").¹ The Code "is meant to apply, on a global basis, to firms . . . who manage client assets as separate accounts or pooled funds (including collective investment schemes, mutual funds, and fund of funds)." The final document begins with an introduction that discusses the genesis and purpose of the Code. Following the introduction are six "General Principles of Conduct" that describe responsibilities of asset management firms to their clients (e.g., act in a professional and ethical manner at all times). The main body of the Code covers six areas: (1) loyalty to clients; (2) investment process and actions; (3) trading; (4) compliance and support; (5) performance and valuation; and (6) disclosures. For each of these areas, the Code includes a series of directives regarding specific conduct in which firms "must" (or must not) engage. Attached to the Code is Appendix A – Recommendations and Guidance. The appendix "provides guidance explaining the Code and includes further recommendations and illustrative examples to assist Managers seeking to implement the Code." The final Code reflects many of the Institute's comments on an exposure draft that the CFA Centre published for comment late last year.² For example, the Institute expressed concern about the mandatory nature of the Code and related guidance. The introduction to the final

¹ The Code is available at http://www.cfainstitute.org/cfacentre/positions/pdf/asset_manager_code.pdf. ² See Institute Memorandum to Chief Compliance Officer Committee No. 15-05, Compliance Advisory Committee No. 14-05, Equity Markets Advisory Committee No. 13-05, Closed-End Investment Company Members No. 14-05, Investment Adviser Members No. 4-05, Investment Adviser Associate Members No. 4-05, SEC Rules Members No. 29-05, Small Funds Members No. 16-05, and International Members No. 6-05 [18490], dated February 17, 2005. ² Code clarifies that the Code is voluntary. In addition, unlike in the exposure draft, the guidance is set forth in a separate appendix, making clear that it is not part of the Code. An introduction to the appendix explains that the examples therein are not meant to be exhaustive, and acknowledges that the policies and procedures needed to support the Code will be dependent on the particular circumstances of each firm and the legal and regulatory environment in which the firm operates. It further indicates that the appendix

highlights issues for managers to consider as they develop their own internal policies and procedures. In addition, several substantive provisions of the Code and guidance have been revised in response to concerns raised by the Institute and other commenters. For example, Section C.3 of the Code originally stated that managers must use commissions generated from client trades only to pay for investment-related products or services that directly benefit the client. Similarly, the accompanying guidance provided that “any benefits offered in return for commissions must directly benefit the client whose assets produced them.” The Institute’s comment letter pointed out that U.S. law recognizes that such products and services can benefit a group of client accounts and the investment process overall. We further commented that in most cases, it is virtually impossible to tie benefits directly to individual client accounts. The final version of Section C.3 responds to these concerns. It states that managers must use commissions generated from client trades only to pay for investment-related products or services that “directly assist the manager in its investment decision-making process and not in the management of the firm.” In addition, the guidance has been revised to state that “any benefits offered in return for commissions must benefit the Manager’s clients.” Frances M. Stadler Deputy Senior Counsel

Copyright © by the 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.