MEMO# 19115

August 23, 2005

SEC APPROVES NASD PROPOSAL RELATING TO RULE 2790

[19115] August 23, 2005 TO: INTERNATIONAL MEMBERS No. 27-05 INTERNATIONAL INVESTING SUBCOMMITTEE No. 9-05 RE: SEC APPROVES NASD PROPOSAL RELATING TO RULE 2790 The Securities and Exchange Commission has approved a proposed rule change filed by the NASD relating to Rule 2790.1 Most significantly, the SEC approved the portion of the proposed rule change clarifying the scope of the exemption from the rule for foreign investment companies. Because the proposed rule change did not directly address the provision in the rule that provides an exemption if no person owning more than 5% of the shares of the foreign investment company is a "restricted person," the SEC agreed with the NASD that comment letters filed on the proposed rule change2 expressing concern regarding the 5% threshold were not germane to the current proposal. The SEC, however, stated that it understands that the NASD intends to continue to consider the concerns raised by commenters regarding the 5% limitation and urged the NASD to continue in discussions with the industry in order to determine whether additional amendments to the rule are appropriate. Ari Burstein Associate Counsel 1 Securities Exchange Act Release No. 52209 (August 4, 2005), 70 FR 46557 (August 10, 2005). The approval order can be found on the SEC's website at http://www.sec.gov/rules/sro/nasd/34-52209.pdf. 2 See Memorandum to International Members No. 20-05 and International Investing Subcommittee No. 3-05, dated June 22, 2005 [18966].