

MEMO# 4490

February 8, 1993

SEC SOLICITS COMMENT ON NASD PROPOSAL TO AMEND RULE GOVERNING CASH AND NON-CASH COMPENSATION

February 8, 1993 TO: SEC RULES COMMITTEE NO. 12-93 UNIT INVESTMENT TRUST COMMITTEE NO. 7-93 BROKER/DEALER ADVISORY COMMITTEE NO. 6-93 RE: SEC SOLICITS COMMENT ON NASD PROPOSAL TO AMEND RULE GOVERNING CASH AND NON-CASH COMPENSATION _____ As you may recall, in 1991 the NASD proposed amendments to revise, simply and add a record-keeping requirement to Article III, Section 26 of its Rules of Fair Practice, which regulates cash and non-cash compensation received by members in connection with the sale of investment company securities. (See Memorandum to SEC Rules Committee No. 66-91, Unit Investment Trust Committee No. 39-91, Broker/Dealer Advisory Committee No. 38-91, dated November 20, 1991.) On February 3, 1993, the SEC published for public comment the NASD proposal (copy attached). The major provisions of the proposal are as follows: (a) NASD members must keep records of the amount and nature of all compensation, both cash and non-cash, received from offerors for the retail sale of investment company securities; 1. the term "offeror" is proposed to include an investment company, an adviser to an investment company, an underwriter and any affiliated person of such entities; 2. "cash compensation" is proposed to be defined to include payments received by a member in cash, by check and by electronic means, including loans and wholesale overrides; 3. "non-cash compensation" is everything which is not cash compensation, i.e., merchandise, gifts and prizes, and payment of travel expenses, meals and lodging; 4. gifts under \$100 (as defined in Subsection (l)(5)(a)) are excluded from the recordkeeping requirement; (b) associated persons of NASD firms are prohibited from receiving any compensation, cash or non-cash, for selling investment company securities except from the member with which the associated person is affiliated; (c) compensation in the form of securities of any kind is prohibited; and (d) prospectus disclosure of cash and non-cash compensation must be made in the current prospectus of the investment company. However, the following items of compensation may be accepted and are not required to be disclosed in the prospectus provided that they are not conditioned on sales or the promise of sales: 1. gifts by an offeror to associated persons of members, with the approval of the member, that do not exceed an annual amount per person fixed periodically by the Board of Governors, proposed to be \$100 per person; and 2. payments to members to defray the cost of educational and training meetings held at an appropriate business location, i.e., an office of the offeror or the member or a facility located in the vicinity of such an office. Similar proposals to amend Section 29 which deals with sales of variable contract insurance products have also been made. The comment period for the proposed amendments to the NASD Rules of Fair Practice governing cash and non-cash compensation expires on

February 24, 1993. Please provide me with your comments on the proposal no later than Wednesday, February 17, 1993. My direct telephone number is (202) 955-3517. Patricia Louie Associate Counsel Attachment

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