

MEMO# 6495

December 22, 1994

SEC APPROVES AMENDMENTS TO NASD'S FREE-RIDING AND WITHHOLDING INTERPRETATION

December 22, 1994 TO: CLOSED-END FUND MEMBERS No. 46-94 COMPLIANCE COMMITTEE No. 25-94 INVESTMENT ADVISER MEMBERS No. 60-94 SEC RULES MEMBERS No. 91-94 UNIT INVESTMENT TRUST MEMBERS No. 46-94 RE: SEC APPROVES AMENDMENTS TO NASD'S FREE-RIDING AND WITHHOLDING INTERPRETATION

In June 1993, the National Association of Securities Dealers, Inc. proposed amendments to the Free-Riding and Withholding Interpretation of its Board of Governors under Article III, Section 1 of the NASD's Rules of Fair Practice (the "Interpretation"). These amendments were recently approved by the Securities and Exchange Commission. A copy of the Commission's release is attached. The purpose of the Interpretation is to protect the integrity of the markets by ensuring that NASD members make a bona fide public distribution of "hot issue" securities and neither withhold such securities for their own benefit nor use the securities to reward other persons in a position to direct future business to the member. "Hot issues" are defined as securities of a public offering that trade at a premium in the secondary market when such trading commences. The Interpretation restricts the ability of members to sell hot issue securities to the accounts of specified categories of persons including, among others, senior officers of registered investment companies, registered investment advisory firms, and any other persons within such organizations whose activities influence or include the buying or selling of securities. Investment companies registered under the Investment Company Act of 1940 are expressly excluded from the categories of persons to whom member firms are prohibited from selling hot-issue securities. The Interpretation has been amended to reflect changes in the marketplace since it was first adopted and to clarify the language in the Interpretation to facilitate understanding of its application. Of particular interest to investment companies is the change to exempt from the categories of restricted persons individuals associated with broker-dealers whose business is limited to investment company securities because such persons "are not in a position to sell, distribute, or withhold hot issue securities." The release clarifies that "The modification applies only to a person associated with such a limited broker-dealer, and not to the broker-dealer itself, as it is inappropriate for any NASD member to purchase a hot issue security for its own account, regardless of the extent of its securities business." Amy B.R. Lancellotta Associate Counsel Attachment

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