

MEMO# 18838

May 6, 2005

DRAFT ICI COMMENT LETTER ON NASD PROPOSAL TO REQUIRE PRE-USE FILING OF CERTAIN SALES MATERIAL; YOUR COMMENTS REQUESTED BY MAY 12TH

©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. [18838] May 6, 2005 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 3-05 SEC RULES COMMITTEE No. 32-05 SMALL FUNDS COMMITTEE No. 17-05 UNIT INVESTMENT TRUST COMMITTEE No. 6-05 RE: DRAFT ICI COMMENT LETTER ON NASD PROPOSAL TO REQUIRE PRE-USE FILING OF CERTAIN SALES MATERIAL; YOUR COMMENTS REQUESTED BY MAY 12TH The Institute has prepared the attached draft comment letter on NASD's Notice to Members 05-25. The Notice seeks comment on requiring pre-use filing of an initial advertisement or piece of sales literature concerning a type of security that a NASD member has not previously offered. The Notice also seeks comment on requiring pre-use filing of all television, video, radio, or similar broadcasts of 15 seconds or longer.* Comments on the proposal must be filed with NASD by Friday, May 20th. Please provide your comments on the draft letter by Thursday, May 12th to Dorothy Donohue by phone (202.218-3563) or email (ddonohue@ici.org). The draft letter is summarized below. In addition, we specifically request your input on several issues as noted in bold. • The draft letter does not object to pre-use filing of mutual fund television and radio advertisements, provided that funds are permitted to use these advertisements within a reasonable period of time (e.g., 10 business days) after filing. We specifically request your views on the appropriateness of the 10 business day period. Also, can we explain why the provision permitting filing of storyboards does not adequately address our concerns? • The draft letter recommends not requiring pre-use filing of fund generic advertisements and video advertisements. How frequently do funds use generic television and radio advertisements? Are there other examples of video * See Memorandum to Advertising Compliance Advisory Committee No. 1-05, SEC Rules Committee No. 28-05, Small Funds Committee No. 13-05, and Unit Investment Trust Committee No. 4-05 [18770], dated April 13, 2005. 2 advertisements that we can provide? Should we seek clarification on the distinction between television and video advertisements? • The draft letter recommends making the compliance date the second calendar quarter end after the adoption of any final rule changes. • The draft letter recommends not requiring pre-use filing of advertisements and sales literature for products that the member has previously offered but now is offering to a new class of investors. • The draft letter requests NASD to confirm in any subsequent release that NASD members will not be required to pre-file advertisements and sales literature each time they bring a new mutual fund to market.

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