

MEMO# 8945

May 29, 1997

NASAA ADOPTS STATEMENT OF POLICY RELATING TO UNETHICAL PRACTICES IN CONNECTION WITH INVESTMENT COMPANY SECURITIES; INSTITUTE INDICATES INTENT TO OPPOSE STATE ADOPTION

May 29, 1997 TO: SEC RULES COMMITTEE No. 55-97 STATE LIAISON COMMITTEE No. 14-97
UNIT INVESTMENT TRUST COMMITTEE No. 34-97 SMALL FUNDS COMMITTEE No. 14-97 RE:
NASAA ADOPTS STATEMENT OF POLICY RELATING TO UNETHICAL PRACTICES IN
CONNECTION WITH INVESTMENT COMPANY SECURITIES; INSTITUTE INDICATES INTENT TO
OPPOSE STATE ADOPTION

The membership of the North American Securities Administrators Association ("NASAA") recently adopted a Statement of Policy relating to the offer and sale of investment company securities. As adopted, the Statement of Policy provides that any person who engages in any of the practices listed in the Statement of Policy would be deemed to have engaged in a dishonest or unethical practice in the securities industry, which, in turn, may subject such person to various administrative sanctions. Notwithstanding its adoption by the NASAA membership, until such time as the Statement of Policy is adopted by individual states by statute, rule or administrative policy, it has no force or effect. The Statement of Policy is divided into four substantive areas: Sales Load Communications; Recommendations; Disclosure; and Prospectus Delivery. In large part, with the exception of the section relating to prospectus delivery, the provisions of the Statement of Policy correspond to the requirements of the NASDR, as enunciated in NASD Notices to Members 93-87, 94-16, 94-94, and 95-80. When the Statement of Policy was published for public comment, the Institute submitted a letter to NASAA that largely supported its adoption. However, between the time the proposal was published for public comment and the time it was presented to the NASAA membership for adoption, it was substantially revised by adding definitions for the terms "recommend" and "solicitation", which revision was not based upon any public comments received. In the view of the Institute, the addition of these definitions, which are substantially different from the common industry usage of these terms, has so altered the Statement of Policy that the Institute has notified NASAA and each state securities commissioner that we intend to oppose its adoption by individual states so long as these definitions remain. A copy of the Statement of Policy as adopted by NASAA, along with the Institutes letter indicating our intent to oppose state adoption of the

Statement in its current form, are attached. Tamara K. Reed Associate Counsel
Attachments

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