

**MEMO# 8378**

November 7, 1996

# **NASD CASH AND NON-CASH COMPENSATION DISCLOSURE PROPOSAL**

1 NASD Notice to Members 96-68 (October 1996). November 7, 1996 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 37-96 SALES FORCE MARKETING COMMITTEE No. 38-96 SEC RULES COMMITTEE No. 120-96 UNIT INVESTMENT TRUST COMMITTEE No. 45-96 RE: NASD CASH AND NON-CASH COMPENSATION DISCLOSURE PROPOSAL

The NASD has published for comment a proposal concerning disclosure of cash and non-cash compensation paid in connection with the sale of investment company securities. A copy of the NASD's Notice to Members describing the proposal is attached<sup>1</sup> and it is summarized below. Comments on the NASD proposal must be filed by December 2, 1996. If there are issues you would like the Institute to consider addressing in its comment letter, please call me at (202) 326-5822 by Thursday, November 21st. The NASD proposal would amend the existing prospectus disclosure requirements governing cash compensation in certain respects. For example, it would broaden the scope of the disclosure requirement to cover both cash and non-cash compensation. In addition, the definition of "cash compensation" would be expanded to add any "finders fee, administrative fee, marketing support fee, contribution to non-cash or cash incentive arrangements, and any other payment or expense reimbursement" received by a member in connection with the sale and distribution of investment company securities "or for providing services to the offeror." The proposal also would revise the format of the required prospectus disclosure. Funds would be required to include as a footnote to, or in the narrative following, the prospectus fee table a statement that: "In addition to the compensation itemized above, certain broker/dealers and/or their salespersons may receive certain compensation for the sale and distribution of the securities or for services to the fund." In addition, following the fee table or in the Statement of Additional Information, funds would have to provide: (1) a brief description of all categories of additional compensation arrangements (e.g., finders fees, administrative fees, etc.); (2) the identity of the party making the payment(s); and (3) if possible, the basis upon which payments are calculated (e.g., as a percentage of sales, a fixed dollar amount, etc.). If a fund chooses to include this information in the SAI, the prospectus would have to include a statement cross-referencing the SAI. The proposal would retain existing exclusions from the disclosure requirement for compensation arrangements between principal underwriters of the same security and between the principal underwriter of a security and the sponsor of a unit investment trust utilizing that security as an underlying investment. Frances M. Stadler Associate Counsel Attachment

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.