

MEMO# 18013

September 17, 2004

NASD SAMPLE BUSINESS CONTINUITY PLANNING DISCLOSURE

[18013] September 17, 2004 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 63-04 COMPLIANCE ADVISORY COMMITTEE No. 88-04 INTERNAL AUDIT ADVISORY COMMITTEE No. 11-04 OPERATIONS MEMBERS No. 32-04 SEC RULES MEMBERS No. 134-04 SMALL FUNDS MEMBERS No. 100-04 TECHNOLOGY ADVISORY COMMITTEE No. 24-04 UNIT INVESTMENT TRUST MEMBERS No. 37-04 RE: NASD SAMPLE BUSINESS CONTINUITY PLANNING DISCLOSURE As we previously informed you, the SEC recently approved NASD Rule 3510, which requires each NASD member to create and maintain a written business continuity plan (BCP).¹ Rule 3510 also requires that each member provide its customers a disclosure statement that summarizes how its business continuity plan addresses the possibility of a future significant business disruption and how the member plans to respond to events of varying scope. At a minimum, such disclosure must be made in writing to customers at account opening, posted on the member's website (if the member maintains a website), and mailed to customers upon request. To assist introducing firms in fulfilling their disclosure obligations to customers under Rule 3510, the NASD recently published a sample disclosure statement.² The sample disclosure cautions that NASD members must tailor their disclosure to reflect the member's particular situation and that Rule 3510's requirements may not be fulfilled through a "one-size-fits-all" disclosure document such as the sample disclosure document. It further cautions that using the sample "does not guarantee compliance with or create any safe harbor with respect to NASD 1 See Institute Memorandum to Closed-End Investment Company Members No. 29-04, Compliance Advisory Committee No. 46-04, Internal Audit Advisory Committee No. 5-04, Operations Members No. 21-04, SEC Rules Members No. 48-04, Small Funds Members No. 48-04, Technology Advisory Committee No. 11-04, and Unit Investment Trust Members No. 18-04 [No. 17455], dated May 3, 2004. See also NASD Notice to Members 04-37 (May 2004), which discusses Rule 3510 and which is available on the NASD's website at: <http://www.nasdr.com/pdf-text/0437ntm.pdf>. 2 The sample disclosure was created as an update to the NASD's "Business Continuity Template for Small Introducing Firms." The sample disclosure is available on the NASD's website at: http://www.nasdr.com/pdf-text/bcp_template_attachment.doc. The Business Continuity Template is available on the NASD's website at: http://www.nasdr.com/pdf-text/bcp_template.doc. 2 rules, other self-regulatory organization rules, the federal securities laws, or state laws." With these caveats as a backdrop, the sample may provide helpful guidance to NASD members, including members other than introducing firms, as to the type of disclosure the NASD would expect to see under Rule 3510. Tamara K. Salmon Senior Associate Counsel

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