



**Investment  
Program  
Association**

Suite 1040  
1140 Connecticut Avenue, NW  
Washington, DC 20036

202.775.9750  
202.331.8446 FAX  
www.ipa-dc.org

**Board of Trustees:** June 22, 2005

**Jack Hollander**  
Atlas America, Inc  
Chairman of the Board

**Martel Day**  
Inland Securities  
Corporation  
Treasurer

**Christopher Davis**  
Investment Program  
Association  
President

**Larry Goff**  
CNL Securities Corp

**Kimberly Springsteen**  
Commonwealth Capital  
Securities Corp.

**Frit, Jakobi**  
GEMISYS Corporation

**Judith Fryer**  
Greenberg Traurig, LLP

**Patricia Palmer**  
ICON Capital Corp

**Anne Rabbit**  
Phoenix American  
Financial

**Kyle Kerbawy**  
The Bank of New York

**Louisa Quarto**  
W. P. Carey & Co. LLC

**Special Broker/Dealer  
Representatives to the  
Board of Trustees:**

**David Fred**  
JMG Advisors Network

**Van Standke**  
Lincoln Financial  
Advisors Corporation

**Scott Chinner**  
Questar Capital  
Corporation

**Mr. Jonathan G. Katz**  
Secretary  
Securities and Exchange Commission  
450 5<sup>th</sup> Street, N.W.  
Washington, D.C. 20549-0609

**Re: Amendments Nos. 1 and 2 Relating to NASD Rule 2790 (File No. SR-NASD-2004-165)**

**Dear Mr. Katz:**

I am writing this letter on behalf of the members of the Investment Program Association ("IPA"). The IPA is the national association representing the interests of investors in non-traded direct participation programs ("DPPs") including non-traded real estate investment trusts ("REITs"), limited liability companies and partnerships. Members include most of the major program sponsors offering such investment opportunities in real estate, energy and equipment leasing. The IPA is pleased to have this opportunity to comment on the National Association of Securities Dealers, Inc.'s ("NASD") proposed rule change to NASD Rule 2790 ("Rule 2790").

The IPA applauds the NASD's exclusion of DPPs and REITs from the definition of "new issue" for purposes of Rule 2790, as provided in Amendments 1 and 2 to Rule 2790 and as filed with the Securities and Exchange Commission ("SEC"). We agree with the reasoning in the NASD's statement of purpose that, because at the time of their initial public offerings they have no invested assets, DPP and REIT securities offerings generally will not open at a premium. Thus, like closed-end investment companies, the inclusion of DPPs and REITs in the definition of "new issue" would do little to further the purpose of Rule 2790. We therefore strongly agree with the NASD that the inclusion of DPPs and REITs within the scope of Rule 2790 would not provide any significant safeguards to investors in these programs but it would rather have a detrimental effect on the ability of DPPs and REITs to raise capital necessary for operations.

The IPA asks that the SEC approve Amendments 1 and 2 of the NASD's proposed rule change to Rule 2790.

Sincerely yours,

Rosemarie A. Thurston  
Partner, Alston & Bird, LLP  
Chair, IPA Legal and Regulatory Affairs Committee

