

MEMO# 19204

October 3, 2005

DRAFT ICI LETTER ON EXEMPTION FOR SEC-REGISTERED FUNDS AND ADVISERS UNDER THE NEW PUBLIC UTILITY HOLDING COMPANY ACT

©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. [19204] October 3, 2005 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 32-05 INVESTMENT ADVISERS COMMITTEE No. 9-05 SEC RULES COMMITTEE No. 52-05 UNIT INVESTMENT TRUST COMMITTEE No. 15-05 RE: DRAFT ICI LETTER ON EXEMPTION FOR SEC-REGISTERED FUNDS AND ADVISERS UNDER THE NEW PUBLIC UTILITY HOLDING COMPANY ACT Last month, President Bush signed into law H.R. 6, the Energy Policy Act of 2005. Among other things, the Energy Policy Act repeals the Public Utility Holding Company Act of 1935 (1935 Act). It enacts the Public Utility Holding Company Act of 2005 (2005 Act), which transfers regulatory authority over public utility holding companies from the Securities and Exchange Commission to the Federal Energy Regulatory Commission (FERC) and state agencies. The 2005 Act will take effect February 8, 2006. The FERC recently proposed rules to implement the 2005 Act. Like the 1935 Act, the 2005 Act and the proposed rules would potentially subject SEC-registered investment companies and investment advisers to regulation as public utility holding companies. For example, a fund or adviser that owned, with power to vote, 10 percent or more of the outstanding voting securities of a public utility or public utility holding company would itself be considered a public utility holding company. Under the 2005 Act and the proposed rules, holding companies will be subject to requirements to maintain and make available to FERC certain books and records deemed relevant to the costs incurred by a public utility or natural gas company and necessary or appropriate to protect utility customers with respect to jurisdictional rates. The FERC has requested comment on whether it should “exempt classes of transactions involving mutual fund passive investors or other passive investors from the new federal books and records access requirements.” In the attached draft comment letter, the Institute recommends that the FERC exempt SEC-registered investment companies and investment advisers that make passive investments in utility companies. The letter states that it is highly unlikely that the share holdings of these passive institutional investors would have any effect on utility rates. To limit the exemption to passive investments, the Institute suggests that the FERC model the exemption on Securities 2 Exchange Act Rule 16a-1(a)(1), which provides an exclusion from the reporting and short-swing profit recovery requirements of Section 16 of that Act for certain passive institutional investors (including SEC-registered investment companies and investment advisers). Comments on the proposed rules are due on October 14th. If you have any

comments on the draft letter, please provide them to me by phone (202/326-5822) or email (frances@ici.org) by Friday, October 7th. Frances M. Stadler Deputy Senior Counsel
Attachment Attachment (in .pdf format)

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