

MEMO# 11498

December 29, 1999

DRAFT COMMENT LETTER ON SEC FUND GOVERNANCE PROPOSALS

* See Memorandum to Closed-End Investment Company Committee No. 35-99, Director Services Committee No. 25-99 and SEC Rules Committee No. 79-99, dated October 19, 1999 and Memorandum to Small Funds Committee No. 15-99, dated October 22, 1999. [11498] December 29, 1999 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 51-99 DIRECTOR SERVICES COMMITTEE No. 27-99 SEC RULES COMMITTEE No. 112-99 SMALL FUNDS COMMITTEE No. 19-99 RE: DRAFT COMMENT LETTER ON SEC FUND GOVERNANCE PROPOSALS

Accompanying this cover memo is a draft of the Institute's comment letter on the SEC's fund governance proposals.* The draft letter is briefly summarized below. Please note that in several places within the letter, we have highlighted issues on which we are specifically seeking member input. We also welcome your comments on any other aspects of the draft letter. Please provide us with your comments on the draft letter by January 10th. To do so, you may contact Frances Stadler, Marguerite Bateman or Dore VanSlyke Zornada at the telephone numbers or e-mail addresses below. Frances 202/326-5822 frances@ici.org Marguerite 202/326-5813 bateman@ici.org Dore 202/326-5819 dvanslyke@ici.org The draft letter expresses general support for the Commission's proposals and their goal of strengthening the independence and effectiveness of independent fund directors, but expresses concerns with certain elements of the proposals including, in particular, the proposal relating to independent legal counsel and some of the proposed disclosure requirements. After a brief introduction and discussion of the respective characteristics of best practices and rules, the letter expresses the following positions. Proposed Amendments to Exemptive Rules The draft letter supports the SEC's general approach of tying reliance on selected exemptive rules to compliance with conditions designed to enhance the independence of a fund's independent directors. In particular, the letter: ! supports requiring a simple majority (as opposed to a two-thirds super-majority) of independent directors on the board; ! supports requiring that independent directors select and nominate other independent directors; and ! supports the concept of independent directors having independent counsel, but strongly objects to the manner in which the SEC proposes to accomplish this goal and suggests instead that the SEC adopt a process-based approach that would provide independent directors with greater latitude to obtain qualified independent counsel. Other Proposed Rules and Rule Amendments With respect to several other proposed rules and rule amendments, the letter: ! supports conditioning the ability to purchase joint insurance policies on the absence of any exclusion for bona fide claims against co-insureds; ! supports allowing funds with independent audit committees to forego the need for shareholder ratification of the selection of independent public accountants; and ! expresses appreciation for the SEC's intent to clarify a potential issue raised by

independent directors' ownership of index fund shares, but suggests that a rule such as that proposed by the SEC is not needed. Proposed Disclosure Requirements With respect to the proposed rule and form changes relating to disclosure, the letter: ! generally supports the SEC's proposal to require disclosure of certain basic information about directors in fund annual reports, SAs and proxy statements, and strongly supports the SEC's decision not to propose requiring this or other director information in the prospectus; ! generally supports the proposed disclosure of directors' ownership of funds in the fund complex, but recommends requiring such disclosure within prescribed dollar ranges of ownership rather than in specific dollar amounts; ! recommends that, in lieu of providing disclosure in the SA about directors' potential conflicts of interest, funds be required to maintain records, which would be available to the SEC, concerning independent directors' positions, interests, transactions and relationships with certain parties related to the fund and other specified entities; and ! recommends that the SEC narrow the scope of information about potential conflicts of interest that would have to be included in the records (for example, by revising the proposed definition of "immediate family member" for this purpose to cover only family members residing with the director or any dependents of the director), and requests that the SEC make these same changes to the disclosure of potential conflicts required in proxy statements. Frances M. Stadler Deputy Senior Counsel Attachment

Copyright © by the 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.