

MEMO# 19673

February 2, 2006

DRAFT ICI COMMENT LETTER ON SEC PROPOSAL REGARDING INTERNET AVAILABILITY OF PROXY MATERIALS; CONFERENCE CALL FEB. 7TH

©2006 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. [19673] February 2, 2006 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 3-06 SEC RULES COMMITTEE No. 6-06 SMALL FUNDS COMMITTEE No. 2-06 RE: DRAFT ICI COMMENT LETTER ON SEC PROPOSAL REGARDING INTERNET AVAILABILITY OF PROXY MATERIALS; CONFERENCE CALL FEB. 7TH As we previously indicated, the Securities and Exchange Commission has proposed amendments to the proxy rules under the Securities Exchange Act of 1934 that would permit issuers to furnish proxy materials to shareholders electronically through a “notice and access” model.¹ The Institute has prepared a draft comment letter on the proposal. The draft letter is attached and summarized below. Comments on the proposal are due by February 13th. The Institute will hold a conference call on Tuesday, February 7th, at 3:30 p.m. Eastern time, to discuss the draft letter. The dial-in number for the call is 888-455-9642 and the pass code is 50797. Please send an e-mail to Abby Bair at abair@ici.org to let us know if you plan to participate on the call. If you are unable to participate on the call, please provide any comments to Frances Stadler at 202/326- 5822 or frances@ici.org, or Dorothy Donohue at 202/218-3563 or ddonohue@ici.org, before the conference call. The draft letter expresses strong support for the proposal, stating that it is an important step in the Commission’s ongoing efforts to take advantage of the Internet and other technological advances to make investors better informed. The letter points to the explosive growth in use of the Internet, particularly by mutual fund investors. It describes a recent Institute study which found that approximately 90 percent of fund investors have access to the Internet. Given such widespread use of the Internet by fund investors, the draft letter says that the time has come for the Commission to further expand funds’ ability to use the Internet for disclosure purposes. It recommends that the Commission adopt an “access equals delivery” model for mutual fund prospectuses similar to that adopted last year for operating company final prospectuses. The letter states that the Internet provides a unique tool for improving the

¹ See Memorandum to Closed-End Investment Company Committee No. 43-05, SEC Rules Committee No. 69-05 and Small Funds Committee No. 39-05 [19525], dated December 22, 2005.

² quality of mutual fund disclosure while meeting a variety of needs and preferences for different levels of information. It urges the Commission to pursue Chairman Cox’s goal of using technology to improve disclosure as part of a top-to-bottom review of the mutual fund disclosure regime.

The draft letter notes that, while investment companies have an interest in the proposal both as investors that vote proxies and as issuers of voting securities, the Institute's comments focus on the application of the proposal to investment companies as issuers. In summary, the letter makes the following comments: • The Commission should reconsider its decision not to permit use of the "notice and access" model for proxy materials for business combination transactions and for investment company shareholder reports. The anticipated benefits of the "notice and access" model for the materials covered by the proposal will be equal, if not even greater, in the case of these items. • To allow funds to realize the printing cost savings intended by the proposal, the Commission should expand the time period for responding to requests for paper copies of the proxy materials from two business days to five business days after the requests are received. • The Commission should permit issuers to include in or with the Notice of Internet Availability of Proxy Materials ("Notice") impartial explanatory information designed to help shareholders understand the significance of proxy solicitations and to anticipate general questions shareholders may have about proxy proposals and voting mechanics. This type of information may attract the interest of shareholders more effectively than the Notice on its own, and could promote greater participation in proxy voting. • The Commission should revise the proposal to permit intermediaries, rather than issuers, to decide whether to employ the "notice and access" model for their beneficial owner customers. This change would recognize that intermediaries are in the best position to determine which delivery method will best serve their customers. • To balance the interests of some shareholders in engaging in lower cost proxy solicitations against the potential burdens and costs for issuers and other shareholders, the Commission should adopt measures to ensure that electronic only proxy solicitations by investment company shareholders are bona fide solicitations. Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format)