

MEMO# 17065

February 6, 2004

INSTITUTE COMMENT LETTER ON PROPOSED REVISIONS TO RULE 22C-1 TO IMPOSE A HARD CUTOFF FOR FUND ORDERS

[17065] February 6, 2004 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 6-04 COMPLIANCE ADVISORY COMMITTEE No. 14-04 SEC RULES MEMBERS No. 16-04 SMALL FUNDS MEMBERS No. 10-04 UNIT INVESTMENT TRUST MEMBERS No. 5-04 RE: INSTITUTE COMMENT LETTER ON PROPOSED REVISIONS TO RULE 22C-1 TO IMPOSE A HARD CUTOFF FOR FUND ORDERS In December, the Securities and Exchange Commission published for comment proposed amendments to Rule 22c-1 under the Investment Company Act of 1940. The amendments would provide that, in order to receive the current price, an order to purchase or redeem fund shares must be received by the fund, its designated transfer agent, or a registered securities clearing agency (e.g., NSCC's Fund/SERV system) by the time the fund has established for calculating its net asset value, which is typically 4:00 p.m. Eastern Time, when the major U.S. stock exchanges close.¹ Attached is a copy of the Institute's letter on the proposal, which is briefly summarized below. The Institute's letter expresses support for the proposal. We encourage the Commission, however, to revisit the list of entities that, for pricing purposes, may receive orders on behalf of the fund if the Commission is able to assure itself that technology exists that would enable intermediaries to document, through unalterable means, the precise date and time that an order is received by the intermediary and ensure that orders received prior to the time the fund prices its securities are not cancelled once the fund's price is determined. Notwithstanding our support for the proposal, the Institute's letter recommends several modifications to provisions in the rule relating to transfer agents, conduit funds, and the definition of "order." With respect to transfer agents, the Institute's letter recommends that the proposal be revised to permit funds to designate one sub-transfer agent in addition to designating a primary transfer agent, subject to certain conditions. These conditions are that the designated sub- 1 See Institute Memorandum to Accounting/Treasurers Members No. 56-03, Operations Members No. 56-03, Pension Members No. 54-03, SEC Rules Members No. 182-03, and Small Funds Members No. 82-03 [16874], dated December 12, 2003, and Institute Memorandum to Unit Investment Trust Members No. 1-04 [16963], dated January 12, 2004, relating to SEC Release No. IC-26288 (Dec. 11, 2003), which is available on the SEC's website at: <http://www.sec.gov/rules/proposed/ic-26288.htm>. 2 transfer agent: (1) have a contractual agreement with the fund's designated transfer agent under which the sub-transfer agent is required (i) to receive on behalf of the fund's designated transfer agent all fund orders through one or more specified methods of

delivery and (ii) maintain a record of the date and time it receives trade information; (2) be registered with the Commission as a transfer agent (and, thereby, subject to the Commission's regulatory jurisdiction); and (3) be identified in the fund's registration statement as the fund's sub-transfer agent. As regards conduit funds, as proposed, the rule would provide an exception for conduit funds that rely on Section 12(d)(1)(E) of the Investment Company Act (i.e., master-feeder funds, insurance company separate accounts). The Institute's letter recommends that the Commission extend this proposed exception to funds that are within the same family of funds and that rely on Section 12(d)(1)(G) of the Investment Company Act. This recommendation is to avoid investor orders received by the acquiring fund before it prices its securities not being fully processed and invested in the acquired fund until the day following receipt of such orders. With respect to the rule's proposed definition of "order," we recommend that the rule or the adopting release address the following issues arising under the proposed definition: • An order may be expressed in terms of a percentage of fund shares or a percentage of the value of a fund account, rather than in terms of a "specific number" of shares or shares of a "specific value;" • Orders received before a fund prices its securities may be "enriched" (for example, by adding breakpoint or sales charge information) after pricing but only with respect to non-value information; • Funds continue to have the ability to reject orders, notwithstanding the provision in the rule that requires orders to be irrevocable in order to receive the current day's price; and • "In-kind" purchases of securities may receive the current day's price provided the purchaser irrevocably transfers to the fund, its designated transfer agent, or a registered clearing agency specified securities to be used for the purchase of shares of a specified fund for a specified account. In addition, the letter recommends that the Commission: (1) defer adoption of the proposed rule until such time as the legislative outlook becomes clearer, (2) provide a sufficiently lengthy transition period before funds must comply with the new requirements, and (3) encourage NSCC to build the systems necessary to accommodate in a single day exchanges involving different fund complexes. In addition, the Institute's letter recommends that the Commission affirm the ability of funds to continue to rely on a previously issued no-action letter relating to delayed exchanges under Section 11(a) of the Investment Company Act (i.e., Investment Company Institute (Pub. Avail. Nov. 13, 2002)). Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17065, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17065.

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