

MEMO# 18974

June 27, 2005

ICI COMMENT LETTER ON SEC REVIEW OF FUND GOVERNANCE REQUIREMENTS

©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. [18974] June 27, 2005 TO: BOARD OF GOVERNORS No. 31-05 CLOSED-END INVESTMENT COMPANY MEMBERS No. 37-05 SEC RULES MEMBERS No. 83-05 SMALL FUNDS MEMBERS No. 62-05 RE: ICI COMMENT LETTER ON SEC REVIEW OF FUND GOVERNANCE REQUIREMENTS The Institute today filed a comment letter with the Securities and Exchange Commission concerning the Commission's plan to consider at a June 29th meeting the fund governance matters that the Court of Appeals for the District of Columbia Circuit recently remanded to it.* The letter notes that, under the Administrative Procedure Act and the court's decision, the Commission has a statutory obligation to consider whether a proposed regulation will promote efficiency, competition, and capital formation, including by quantifying potential costs. It recommends that the Commission invite additional public comment and collect additional data to assure a thoughtful and deliberative process. To assist the Commission in fulfilling its responsibilities, the letter identifies in an Appendix certain foreseeable elements of the cost of complying with the two governance requirements. It states that these cost elements are wide-ranging, that evaluation of the costs is a complex undertaking, and that total compliance costs may be substantial. The letter urges the Commission to make a complete and detailed analysis of these costs, and offers to assist the Commission in quantifying them by collecting specific cost information relative to the governance requirements from Institute members. The letter then addresses the Commission's obligation to consider alternatives to the requirement that each fund have an independent chairman, including the disclosure alternative discussed in the court's decision. It recommends that the Commission also carefully consider another alternative: requiring the chairman of the board to be elected annually by both a majority of the board as a whole and a majority of the independent directors. The letter states * These matters are (1) the costs imposed by requiring registered investment companies to have boards that consist of at least 75% independent directors and an independent chairman and (2) reasonable alternatives to the independent chairman requirement. See Memorandum to Board of Governors No. 30-05, Closed-End Investment Company Members No. 35-05, SEC Rules Members No. 80-05 and Small Funds Members No. 58-05 [18962], dated June 22, 2005 (describing the court's decision). 2 that, to fully satisfy its obligations, the Commission should consider other reasonable alternatives as well. Frances M. Stadler Deputy Senior 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 18974, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18974.

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