

MEMO# 16503

September 5, 2003

DRAFT ICI COMMENT LETTER ON SEC PROPOSAL TO REQUIRE DISCLOSURE RELATED TO DIRECTOR NOMINATIONS AND SHAREHOLDER COMMUNICATIONS

URGENT/ACTION REQUESTED [16503] September 5, 2003 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 47-03 SEC RULES COMMITTEE No. 71-03 RE: DRAFT ICI COMMENT LETTER ON SEC PROPOSAL TO REQUIRE DISCLOSURE RELATED TO DIRECTOR NOMINATIONS AND SHAREHOLDER COMMUNICATIONS As we previously informed you, the Securities and Exchange Commission recently proposed for comment enhancements to existing disclosure requirements regarding the operation of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with directors.* The proposed new disclosure requirements would apply to all proxy statements issued in connection with the election of directors, including investment company proxy statements. A draft of the Institute's comment letter on the proposal is attached, and it is summarized below. Comments on the proposal must be submitted to the SEC by September 15, 2003. As we previously informed you, we will be having a conference call to discuss the draft letter on Tuesday, September 9th at 4:00 p.m. (Eastern Standard Time). The dial-in number for the call is 888-928-9529. The pass code is proxy proposal/Dorothy Donohue. If you are unable to participate on the conference call, please provide me with any comments that you have on the attached draft letter no later than the close of business on September 10th by phone at (202/218-3563), fax (202/326-5827), or email (ddonohue@ici.org). The draft letter generally supports the Commission's proposal. It states that the Institute does not believe that there is any reason for the Commission to distinguish investment companies from other issuers in the general application of the proposed disclosure requirements. The letter makes several minor comments that focus primarily on tailoring certain aspects of the proposal to investment companies as issuers. Interested Persons. Under the proposal, an investment company would be required to disclose whether or not the members of its nominating committee are "interested persons" of the investment company as defined in Section 2(a)(19) of the Investment Company Act of 1940, * See Memorandum No. 16432, "SEC Proposal to Require Disclosure Related to Director Nominations and Shareholder Communications," dated August 12, 2003. 2 rather than "independent" as defined under the listing standards of a national securities exchange or national securities association, as in the case of operating companies. The draft letter strongly supports this aspect of the proposal. Disclosure of Changes in Procedures. The proposing release requests comment on whether the Commission should require disclosure in the next Form 10-Q, Form 10-QSB, or Form 8-K of any changes made during the year to any procedure for shareholders to recommend

director nominees. The draft letter points out that unlike operating companies, investment companies generally are not required to file quarterly reports or reports on Form 8-K. Accordingly, the draft letter states that if the Commission adopts such a requirement, it should clarify that investment companies may disclose any changes in their procedures on Form N-CSR. Commission's Role Regarding Procedures for Shareholder Communications with Directors. The proposing release requests comment on whether the Commission should provide guidance on what it views as appropriate procedures for issuers to implement with regard to shareholder communications with directors. The draft letter states the Institute's belief that investment companies and their boards are in the best position to determine the most appropriate procedures for their own organizations and that, therefore, it would not be necessary for the Commission to set forth guidance regarding what it views as appropriate procedures for shareholder communications with investment company boards. Process for Determining Which Communications Will Be Sent to Directors. Under the proposal, if all shareholder communications are not sent directly to board members, a registrant would be required to describe its process for determining which communications will be relayed to board members, including identification of the department "within the registrant" that is responsible for making this determination. The draft letter points out that almost all investment companies are externally managed and, thus, do not have their own employees. Accordingly, the draft letter recommends that the Commission modify the proposed requirement with respect to investment companies to reflect that their processes for handling communications between shareholders and directors may permit personnel from investment company service providers to determine which communications should be relayed to investment company board members. Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)