MEMO# 15770

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PCAOB PROPOSAL FOR ESTABLISHMENT OF ACCOUNTING SUPPORT FEE

[15770] March 19, 2003 TO: ACCOUNTING/TREASURERS COMMITTEE No. 11-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 16-03 SEC RULES COMMITTEE No. 23-03 UNIT INVESTMENT TRUST COMMITTEE No. 7-03 RE: PCAOB PROPOSAL FOR ESTABLISHMENT OF ACCOUNTING SUPPORT FEE The Public Company Accounting Oversight Board (the “Board”) has proposed rules to establish the accounting support fee required under the Sarbanes-Oxley Act (the “Act”) to fund the Board’s activities.1 We are pleased to report that, consistent with recommendations submitted by the Institute, the proposed rules assess investment company issuers accounting support fees at a substantially reduced rate.2 Comments on the proposed rules are due by Friday, April 4. If you have any comments on the proposal, please contact the undersigned by Monday, March 31 at 202/326-5851 or smith@ici.org. A. Issuers Subject to the Accounting Support Fee Once each year, the Board will compute the accounting support fee. The accounting support fee will be equal to the Board’s budget for that year, as approved by the SEC, less the amount of registration fees collected from public accounting firms during the preceding year. In order to allocate the accounting support fee among issuers, the Board proposes that all issuers be divided into four classes: 1. All issuers whose average, monthly U.S. equity market capitalization during the preceding calendar year, based on all classes of common stock, is greater than $25 million (“Equity Issuer Class”); 1 Proposal For Establishment of Accounting Support Fee, PCAOB Release No. 2003-002 (March 14, 2003) (the “Proposing Release”). The Proposing Release is available at http://www.pcaobus.org/pcaob1/Rules/Release2003-002.pdf. 2 The Institute recommended that registered investment companies be assessed accounting support fees at ten percent of the rate at which operating companies are assessed. See Memorandum to Accounting/Treasurers Committee No. 57-02, Closed-End Investment Company Committee No. 58-02, SEC Rules Committee No. 109-02, Unit Investment Trust Committee No. 34-02, dated December 23, 2002. 2 2. Registered investment companies and issuers that have elected to be regulated as business development companies whose average, monthly market capitalization (or net asset value), during the preceding calendar year, is greater than $250 million (“Investment Company Issuer Class”); 3. All issuers that (i) have a basis, under a Commission rule or pursuant to other action of the Commission or its staff not to file audited financial statements, (ii) are employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act of 1933 or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2 (“Issuers Permitted Not to File Audited Financial Statements”); and 4. All other issuers (i.e., issuers that do not fall in classes one, two or three) (“All Other Issuers Class”). In the case of an investment company with multiple series, the net asset value of all series in the company would be aggregated to determine whether the $250 million threshold has been exceeded. A company’s status

as an issuer within the classes will be determined as of the date on which the amount of the annual accounting support fee is set. Companies that are not issuers on that date will not be required to pay any fee during the year. The Proposing Release indicates that unit investment trusts that have not filed or updated a registration statement that became effective during the preceding year are included in the Issuers Permitted Not to File Audited Financial Statements class. We understand unit investment trusts often update their registration statement with audited financial statements during the first several years of their existence so that the sponsor can make a secondary market in the trust's shares. These trusts would fall in the second class of issuers. However, other unit investment trusts, depending on their circumstances, may not file an updated registration statement. These trusts would fall in the third class of issuers and would pay no accounting support fee. B. Allocation of the Accounting Support Fee to Issuers The accounting support fee will be allocated among the issuers in the four classes in the following manner: 1. Each company in the Equity Issuer Class and the Investment Company Issuer Class will be allocated an amount equal to the accounting support fee, multiplied by a fraction. The numerator of the fraction will be the issuer's average monthly market capitalization during the preceding calendar year. The denominator will be the sum of the average monthly market capitalizations of all Equity and Investment Company Issuers. For purposes of this allocation, however, the market capitalization of an investment company issuer will be ten percent of the investment company's net asset value. 2. All issuers in the other two classes – Issuers Permitted Not to File and All Other Issuers – will be allocated a share of zero. Issuers will be required to pay their allocated shares of the accounting support fee, rounded to the nearest hundred. Accordingly, issuers whose shares of the accounting support fee are less than $50 will have their shares rounded to zero and will not be assessed a fee. We estimate that, 3 under the proposal, investment company issuers would pay an accounting support fee of $300 or $400 per billion in fund net assets. C. Notice of Allocation and Collection of Amount Due After the annual accounting support fee is determined, the Board will send a notice to each issuer to which a share of the fee has been allocated. Notices will be sent either electronically or by first class mail to the address shown on the issuer's most recent periodic report filed with the SEC. We understand that the Board plans to send fee notices to issuers in the next several months. Payment will be due on the 30th day after transmittal, after which interest will accrue at a rate of six percent per annum. If an issuer has not paid its share of the accounting support fee by the 60th day after a notice was sent, the Board may send a second notice by certified mail. If payment has not been made after the 90th day, the Board may report the issuer's non-payment to the SEC. According to the Proposing Release, failure to pay is a violation of Section 13(b)(2) of the Securities Exchange Act of 1934. In addition, under the rule proposal no registered public accounting firm may sign an unqualified opinion (or issue a consent) with respect to an issuer's financial statements if that issuer has outstanding any past due share of the accounting support fee. D. Collection of Fees for FASB Under the Act, the standard-setting body designated by the Commission to establish accounting principles is also authorized to collect an accounting support fee from public companies to cover its budget. The Board's proposed rules recognize that, as contemplated in the Act, the standard-setting body could designate an agent to assess and collect its fees and the Board could be that agent. If that occurs, the Board's assessment and collection of the standard- setting body's fees will be governed by the same rules as apply to the Board's fees. If the Board is designated as the standard-setting body's agent, issuers would receive one notice representing their combined fee due and would make one payment. The standard-setting body, however, is not required by the Act to use the Board as its collection agent or to use its allocation formula. The accounting-standard setting body (presumably the FASB) cannot collect accounting support fees until it is officially designated as such by the Commission. The

Commission has not yet designated the FASB as the accounting standard-setting body.
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