

MEMO# 15379

November 25, 2002

SECOND DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSALS RELATING TO PROXY VOTING

[15379] November 25, 2002 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 46-02 INVESTMENT ADVISERS COMMITTEE No. 27-02 SEC RULES COMMITTEE No. 94-02 SMALL FUNDS COMMITTEE No. 19-02 RE: SECOND DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSALS RELATING TO PROXY VOTING Attached for your review is a revised draft Institute comment letter on the SEC's proposals relating to proxy voting by investment companies and investment advisers. This memorandum briefly highlights the significant changes that have been made to the comment letter from the first draft.¹ Introduction and Summary of Comments. In this section, we have added a paragraph that would emphasize that all of the Commission's objectives and all of the potential benefits to fund shareholders could be achieved by only adopting certain aspects of the proposals (requirement for written policies and procedures, disclosures of policies and procedures, and recordkeeping requirements) together with a requirement that fund directors approve a fund's (and its adviser's) proxy voting policies and procedures and oversee the implementation of those policies and procedures. The revised letter argues that it would not be necessary for the Commission to adopt proposals to require disclosure of actual votes cast and votes that are "inconsistent" with proxy voting policies and procedures to realize the Commission's objectives. Disclosure of Proxy Voting Policies and Procedures. In this section, the revised letter discusses in a more prominent manner that, as the Commission has proposed, the description of the proxy voting policies and procedures should appear only in a fund's statement of additional information and not in the prospectus. On the November 18, 2002 conference call to discuss the first draft letter, several members encouraged the Institute to recommend to the Commission that the description not be required in the SAI but that a fund's policies and procedures be attached as an exhibit to a fund's registration statement. We have discussed this issue with the Institute's Executive Committee, which agreed with the approach in our original draft to support the proposed SAI disclosure requirement. 1 Memorandum to Closed-End Investment Company Committee No. 44-02, Investment Adviser Committee No. 24-02, SEC Rules Committee No. 89-02, Small Funds Committee No. 16-02 (Nov. 5, 2002) (attaching the Institute's first draft). 2 Recordkeeping of Proxy Voting Materials. The Institute's revised letter specifically recommends that a recordkeeping requirement similar to the one proposed for investment advisers be imposed on funds whose advisers do not have the responsibility to vote proxies. This section also recommends additional modifications to the proposed recordkeeping requirements. Cost-Benefit. The revised letter expands on the costs of complying with the proposed requirements to disclose actual votes cast and votes that are "inconsistent" with proxy voting policies and procedures. This section now incorporates data from a study conducted

by Ernst and Young of eight Institute member firms. We will finalize this section shortly when the data from the study is complete. Disclosure of Votes Inconsistent with a Fund's Policies and Procedures. This section of the letter has been revised to include an expanded discussion about the lack of benefit and the potential harm to investors of such disclosure to fund shareholders. * * * * * We plan to submit the comment letter to the Commission on December 5, 2002. If you have any comments on the revised draft letter, please provide them by close of business on December 2, 2002 to the undersigned at (202) 326-5810 or at jchoi@ici.org or Amy Lancellotta at (202) 326-5824 or at amy@ici.org. As we have noted previously, we strongly encourage members to submit their own comment letters on these proposals. We would appreciate copies of letters submitted. Jennifer S. Choi Associate Counsel Attachment (in .pdf format)

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