

**MEMO# 17226**

March 16, 2004

# **ICI COMMENT LETTER ON SEC PROPOSAL REGARDING INVESTMENT ADVISER CODES OF ETHICS**

[17226] March 16, 2004 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 17-04 COMPLIANCE ADVISORY COMMITTEE No. 35-04 INVESTMENT ADVISER MEMBERS No. 7-04 SEC RULES MEMBERS No. 42-04 SMALL FUNDS MEMBERS No. 33-04 RE: ICI COMMENT LETTER ON SEC PROPOSAL REGARDING INVESTMENT ADVISER CODES OF ETHICS The Institute has prepared the attached comment letter on the Securities and Exchange Commission's proposed new rule, Rule 204A-1 under the Investment Advisers Act of 1940, which would require each registered investment adviser to adopt a code of ethics.<sup>1</sup> The letter is briefly summarized below. • The letter supports requiring each investment adviser's code of ethics to set forth a standard of business conduct that the adviser requires of all its supervised persons. • The letter recommends revising the proposal to require that each code of ethics include provisions reasonably designed to prevent misuse of material nonpublic information about the adviser's securities recommendations and client securities holdings and transactions (rather than provisions reasonably designed to prevent access to material nonpublic information about the adviser's securities recommendations and client securities holdings and transactions by persons who do not need such information to perform their duties). • The letter recommends revising the proposal to make the reporting obligations of directors, officers, partners, and employees of investment advisers more consistent with reporting obligations under Rule 17j-1 under the Investment Company Act of 1940. <sup>1</sup> See Memorandum to Closed-End Investment Company Committee No. 5-04, Compliance Advisory Committee No. 11-04, Investment Advisers Committee No. 2-04, SEC Rules Committee No. 11-04, and Small Funds Committee No. 8-04 [17015], dated January 28, 2004. <sup>2</sup> • The letter supports the Commission's decision to require reporting obligations with respect to holdings and transactions in certain affiliated mutual funds. • The letter supports requiring each supervised person to acknowledge receipt of the code of ethics and suggests permitting such acknowledgements to be in electronic form (in addition to written form, as proposed). • The letter generally supports the proposed recordkeeping requirements with respect to personal securities transactions but opposes requiring advisers to keep records of access persons' personal securities reports (and duplicate brokerage confirmations or account statements in lieu of those reports) electronically in an accessible computer database because the costs of such a requirement would greatly outweigh its benefits. The letter recommends that the Commission provide for a compliance date ranging from 9 to 12 months after adoption, depending on the nature of the new requirements. Dorothy M. Donohue 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 17226, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17226.

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