The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 11054

June 16, 1999

DRAFT COMMENT LETTER ON SEC PROPOSALS REGARDING THE REGULATION OF SECURITIES OFFERINGS ("AIRCRAFT CARRIER RULES")

1[11054] June 16, 1999 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 20-99 SEC RULES COMMITTEE No. 46-99 SMALL FUNDS COMMITTEE No. 5-99 SECURITIES OFFERINGS RULES TASK FORCE RE: DRAFT COMMENT LETTER ON SEC PROPOSALS REGARDING THE REGULATION OF SECURITIES OFFERINGS ("AIRCRAFT CARRIER RULES") _____ As you know, the Securities and Exchange Commission (“SEC”) has published for comment proposals which would implement major changes to the securities offerings process (“Aircraft Carrier Rules”). The deadline for submission of comments to the SEC is June 30, 1999. Attached is the Institute’s draft comment letter on the Proposals, which reflects the views provided thus far by members. The draft comment letter states that the Institute supports the Commission’s goals underlying the Proposals but is concerned that several of the Proposals could introduce inefficiencies in the offering process that could defeat the Commission’s objectives. To avoid those results, the Institute recommends that the Commission revise certain of the Proposals. In particular, the draft comment letter states, among other things, that: ! The Institute supports the Commission’s desire to make available increased information about the terms of a securities offering prior to an investor’s commitment to purchase. A pre-sale document should only be required, however, where such information is not readily accessible, such as for high-yield securities, asset-backed securities, and “novel” securities offerings. Please comment on the specific types of information that should be required in a pre-sale document for high-yield, asset-backed, and “novel” securities offerings. ! We support the Commission’s desire to encourage open communications. In particular, we support the bright-line safe harbor for communications by an issuer that take place during a specified time before the issuer files a registration statement. We are concerned, however, that subjecting communications during the offering period to “cross-liability” under Section 12(a)(2) of the Securities Act could render the safe harbor for those communications ineffective. We believe that the Commission’s goals could be achieved if it limited Section 12(a)(2) liability for “free writing” to the party making the communication. ! We support a registration system where an issuer would file a new registration statement for each offering on Form B. We are concerned, however, that registration on proposed Form B will not be broadly available to issuers. We believe that disqualifying an issuer from using Form 2B for not addressing comments on filings under the Exchange Act, or as a result of certain insiders or underwriters violating provisions of the federal securities laws, will unnecessarily render the form unavailable to many issuers. !

We recommend that the Commission not limit the ability to register resales of securities on Form B to issuers that are otherwise eligible to use that form. If the Commission nevertheless adopts this limit, it should, at the very least, permit its use in the case of resales by persons that are not affiliated with the issuer. ! We support the initiatives that increase the number of registered, as opposed to private or offshore, offerings. We have concerns, however, about the Proposals relating to registered Form B offerings to QIBs, particularly the Commission's blanket exclusion of investment advisers from purchasing securities in registered offerings made only to QIBs, and about the Commission's statements regarding the use of these offerings as conduits to the public market. We also believe that the Commission should not increase the threshold for determining whether an institution meets the QIB definition. ! We believe that if the Commission modifies the eligibility requirements for use of Form B as recommended in the comment letter, it may not be necessary to retain the Exxon Capital line of interpretive letters. However, if the eligibility to use Form B is limited in the manner proposed, we recommend that the Commission reconsider rescinding the Exxon Capital interpretations. ! We believe the fundamental changes suggested in the Proposals are unnecessary for the offer and sale of investment company securities. If the Commission nevertheless believes that similar changes should be considered for investment companies, careful consideration would need to be given on how such a system should be structured in light of the differences between investment companies and operating companies. If you have any comments on the Institute's draft comment letter, please contact the undersigned by phone at (202) 371-5408, by fax at (202) 326-5839, or by e-mail at aburstein@ici.org by Thursday, June 24. Ari Burstein Assistant Counsel Attachment

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