

**MEMO# 16957**

January 12, 2004

## **DRAFT INSTITUTE COMMENT LETTER ON PROPOSED REVISIONS TO RULE 22C-1 TO IMPOSE A HARD CUTOFF FOR FUND ORDERS**

[16957] January 12, 2004 TO: ACCOUNTING/TREASURERS COMMITTEE No. 1-04 COMPLIANCE ADVISORY COMMITTEE No. 4-04 OPERATIONS COMMITTEE No. 1-04 PENSION COMMITTEE No. 4-04 SEC RULES COMMITTEE No. 2-04 SMALL FUNDS COMMITTEE No. 1-04 TRANSFER AGENT ADVISORY COMMITTEE No. 3-04 RE: DRAFT INSTITUTE COMMENT LETTER ON PROPOSED REVISIONS TO RULE 22c-1 TO IMPOSE A HARD CUTOFF FOR FUND ORDERS

As we previously advised you, the Securities and Exchange Commission has published for comment proposed amendments to Rule 22c-1 under the Investment Company Act of 1940.<sup>1</sup> As proposed, Rule 22c-1 would be revised to provide that, in order to receive the current price, an order to purchase or redeem fund shares must be received by the fund, its designated transfer agent, or a registered securities clearing agency (e.g., NSCC's Fund/SERV system) by the time the fund has established for calculating its net asset value, which is typically 4 p.m. Eastern Time, when the major U.S. stock exchanges close. Attached is a draft comment letter on the proposal, which is briefly summarized below. Comments on the proposal are due to the Commission by February 6th. Please provide comments on the draft letter to the undersigned no later than Friday, January 23rd by phone [(202) 326-5825], fax [(202) 326-5839], or e-mail [tamara@ici.org]. The Institute's letter expresses strong support for the proposal, but recommends several modifications to it. In particular, the draft letter recommends that the proposal be revised to permit funds to designate one sub-transfer agent in addition to designating a primary transfer agent, subject to certain conditions. These conditions are that the designated sub-transfer agent: (1) have a contractual agreement with the fund's designated transfer agent under which the sub-transfer agent is required (i) to receive on behalf of the fund's designated transfer agent all 1 See Institute Memorandum to Accounting/Treasurers Committee No. 38-03, Compliance Advisory Committee No. 107-03, Operations Committee No. 26-03, Pension Committee No. 46-03, SEC Rules Committee No. 102-03, Small Funds Committee No. 33-03, and Transfer Agent Advisory Committee No. 112-03 [No. 16873], dated December 12, 2003 relating to SEC Release No. IC-26288 (Dec. 11, 2003), which is available on the SEC's website at: <http://www.sec.gov/rules/proposed/ic-26288.htm>. 2 fund orders through one or more specified methods of delivery and (ii) maintain a record of the date and time it receives trade information; (2) be registered with the Commission as a transfer agent (and, thereby, subject to the Commission's regulatory jurisdiction); (3) be identified in the fund's registration statement as the fund's sub-transfer agent; and (4) annually certify to the

designated transfer agent that it is in compliance with the requirements of revised Rule 22c-1. With respect to the rule's proposed definition of "order," we recommend that the rule or the adopting release address the following issues arising under the proposed definition: • An order may be expressed in terms of a percentage of fund shares or a percentage of the value of a fund account, rather than in terms of a "specific number" of shares or shares of a "specific value;" • For an order to be complete, it must additionally identify with specificity the account(s) in which the specific trades are being made (new accounts would be excepted from this requirement); • Orders received before a fund prices its securities may be "enriched" (for example, by adding breakpoint or sales charge information) after pricing but only with respect to non-value information; • Funds continue to have the ability to reject orders, notwithstanding the provision in the rule that requires orders to be irrevocable in order to receive the current day's price; and • "In-kind" purchases of securities may receive the current day's price provided the purchaser irrevocably transfers to the fund, its designated transfer agent, or a registered clearing agency specified securities to be used for the purchase of shares of a specified fund for a specified account. In addition, the letter recommends that: the Commission encourage NSCC to build the systems necessary to accommodate in a single day exchanges involving different fund complexes; and, the adopting release confirm that funds may continue to rely on the Commission's 2002 no-action letter relating to delayed exchanges under Section 11(a) of the Investment Company Act. The Proposing Release requested comment on whether one year from adoption would provide funds an adequate period of time within which to transition to the rule's new requirements. In response, the Institute's draft letter states that one year would appear to be a sufficient amount of time, though the adequacy of this period will largely be dependent upon (1) the ability of NSCC's Fund/SERV to make changes necessary to accommodate the new rule and (2) regulatory certainty (i.e., no changes to the federal securities law that would impose different requirements on funds).

Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

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