The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 15500

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FEDERAL REGULATORS SUBMIT REPORT TO CONGRESS ON ANTI-MONEY LAUNDERING AND INVESTMENT COMPANIES

[15500] January 2, 2003 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 1-03 MONEY LAUNDERING RULES WORKING GROUP No. 1-03 UNIT INVESTMENT TRUST COMMITTEE No. 1-03 RE: FEDERAL REGULATORS SUBMIT REPORT TO CONGRESS ON ANTI-MONEY LAUNDERING AND INVESTMENT COMPANIES As you know, Section 356(c) of the USA PATRIOT Act calls for a report to Congress containing recommendations for effective regulations to apply the record keeping and reporting requirements of the Bank Secrecy Act (BSA) to investment companies.1 On December 31, 2002, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission submitted this report. The report, a copy of which is attached, is briefly summarized below. The report summarizes the basic goals of the BSA, the stages of money laundering, and the money laundering risks generally associated with various types of investment companies. The report then makes the following recommendations: • Mutual funds: The report recommends requiring mutual funds to file suspicious activity reports, but otherwise makes no recommendations for anti-money laundering regulations other than those that have already been proposed or adopted. • Closed-end funds: The report notes that closed-end funds typically do not have an account relationship with their investors and, as a result, are not in a position to detect and prevent money laundering. For these reasons, the report concludes that closed-end funds “do not appear to present a risk of money laundering that would be effectively addressed by subjecting them to additional regulation,” and recommends that BSA regulatory requirements not be extended to closed-end funds.2 This is consistent with recommendations made by the Institute to Treasury and SEC staff regarding closed-end 1 For purposes of the report, an investment company is defined broadly to include those entities listed in the definition of the term in the Investment Company Act of 1940 (the 1940 Act), entities that would be investment companies under the 1940 Act but for the exceptions provided in certain sections of the 1940 Act, and certain other pooled investment vehicles that are not subject to the 1940 Act because they do not invest primarily in securities. 2 The report notes that if the SEC were to liberalize the circumstances in which interval funds may make repurchase offers, it may reconsider whether to apply BSA requirements to interval funds. 2 funds. • Unit investment trusts: The report concludes that UITs are effectively covered by the extension of anti-money laundering requirements to broker-dealers and insurance companies, and that applying a second layer of anti-money laundering rules to the UITs would not appreciably decrease their risk of being used for money laundering. The report therefore recommends

no new AML regulations for UITs. This is consistent with recommendations made by the Institute to Treasury and SEC staff regarding UITs. • Unregistered investment companies: The report notes that, of the unregistered investment companies, hedge funds may be the most susceptible to abuse by money launderers because of the liquidity of their interests and their structure. The report therefore recommends, in addition to the rule already proposed that would require certain unregistered investment companies to adopt AML programs, that unregistered investment companies be required to establish customer identification and verification programs. The report also discusses commodity pools, private equity and venture capital funds, real estate investment trusts (REITs), and personal holding companies. Robert C. Grohowski Associate Counsel Attachment Attachment (in .pdf format)
