

MEMO# 7587

January 26, 1996

LEAD PLAINTIFF PROVISION IN THE SECURITIES LITIGATION REFORM ACT

1 See Memorandum to SEC Rules Members No. 82-95, dated December 28, 1995. January 26, 1996 TO: SEC RULES COMMITTEE No. 8-96 RE: LEAD PLAINTIFF PROVISION IN THE SECURITIES LITIGATION REFORM ACT

As we previously reported, Congress recently enacted the "Private Securities Litigation Reform Act of 1996."¹ Section 101 of the Act amended the Securities Act of 1933 and the Securities Exchange Act of 1934 to require that courts appoint a lead plaintiff to manage a shareholder class action. The Act establishes a rebuttable presumption that the lead plaintiff is the person who has moved to serve in this capacity, who has the largest financial interest in the relief sought by the class, and who satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. Since the enactment of Section 101, some commentators have asserted that an investment company may be under a duty to its shareholders to request appointment as lead plaintiff whenever it is a member of a plaintiff class. It is important to note, however, that the legislative history of the Act would clearly state that institutional investors are under no duty to serve as lead plaintiff in a class action. The Conference Report on the Act thus states, "[T]he most adequate plaintiff provision does not confer any new fiduciary duty on institutional investors -- and the courts should not impose such a duty" During the Senate floor debate on this provision, Senator Dodd, a key sponsor of the legislation, stated, "The bill merely gives each class member the opportunity to request service. In no way does it obligate any member to do so. Institutional . . . investors would continue to have the right simply to remain class members and not serve as lead plaintiff, and they may select that approach independent of any responsibility to the other class members or to anyone else The bill imposes no fiduciary or other obligation on institutions . . . to serve or not to serve as lead plaintiffs. Moreover, the court would have no authority to impose such an obligation" The SEC Rules Committee will discuss this issue at its next meeting on February 14, 1996. Attached is a copy of the relevant provision of Section 101 as enacted, the Conference Report, and the Senate floor debate on the lead plaintiff provision. Thomas M. Selman Associate Counsel Attachments

Source URL: <https://icinew-stage.ici.org/memo-7587>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.