

MEMO# 15325

November 14, 2002

SEC STAFF ISSUES FAVORABLE RESPONSE TO ICI LETTER ON DELAYED EXCHANGES

[15325] November 14, 2002 TO: COMPLIANCE ADVISORY COMMITTEE No. 99-02 DIRECTOR SERVICES COMMITTEE No. 8-02 INTERNATIONAL MEMBERS No. 28-02 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 51-02 OPERATIONS MEMBERS No. 31-02 SEC RULES MEMBERS No. 99-02 SMALL FUNDS MEMBERS No. 49-02 TRANSFER AGENT ADVISORY COMMITTEE No. 97-02 RE: SEC STAFF ISSUES FAVORABLE RESPONSE TO ICI LETTER ON DELAYED EXCHANGES The Institute recently sent a letter to the Securities and Exchange Commission's Division of Investment Management requesting that the staff confirm that funds may institute exchange policies under which exchange transactions would be executed on a specified delayed basis (e.g., the next business day after the exchange request is received). The Institute argued that delaying an exchange transaction can help to deter harmful market timing, and that some funds and fund shareholders may find this approach to be more targeted than, and thus preferable to, other alternatives such as the imposition of redemption fees or the outright suspension of exchange privileges. The Institute further asserted that delayed exchange policies are consistent with the requirements of and policies underlying the Investment Company Act of 1940. We are pleased to report that the staff has issued a response letter in which it agrees with the Institute's view that a fund may, consistent with Section 11(a) of the 1940 Act, make an exchange offer on a specified delayed basis, so long as the offer is fully and clearly disclosed in the fund's prospectus.¹ The staff's letter notes that the Institute did not request the staff's views on whether funds may make exchange offers pursuant to which only the net asset value of the fund into which an exchange is made (i.e., the purchase side of the exchange) will be calculated. ¹ In a footnote, the staff expresses its expectation that funds will provide existing shareholders with a separate written notice before implementing a delayed exchange policy. ² on a delayed basis. According to the letter, the staff questions whether such an exchange offer would be consistent with the 1940 Act. Copies of both letters are attached. Robert C. Grohowski Associate Counsel Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments, please visit our members website (<http://members.ici.org>) and search for memo 15325, or call the ICI Library at (202) 326-8304 and request the attachments for memo 15325. Attachment no. 1 (in .pdf format)

should not be considered a substitute for, legal advice.