

MEMO# 17823

July 28, 2004

DRAFT ICI LETTER ON PROPOSED SEC REGULATIONS S-AM CONCERNING SHARING INFORMATION WITH AFFILIATES FOR MARKETING

[17823] July 28, 2004 TO: SEC RULES COMMITTEE No. 64-04 SMALL FUNDS COMMITTEE No. 42-04 COMPLIANCE ADVISORY COMMITTEE No. 76-04 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 30-04 INVESTMENT ADVISERS COMMITTEE No. 10-04 TRANSFER AGENT ADVISORY COMMITTEE No. 65-04 UNIT INVESTMENT TRUST COMMITTEE No. 20-04 PRIVACY ISSUES WORKING GROUP No. 3-04 RE: DRAFT ICI LETTER ON PROPOSED SEC REGULATIONS S-AM CONCERNING SHARING INFORMATION WITH AFFILIATES FOR MARKETING As we previously informed you, in accordance with recent changes to federal law (i.e., the addition to the Fair Credit Reporting Act of a new Section 624), the Securities and Exchange Commission has published for comment a new regulation, Regulation S-AM, that would impose specific regulatory requirements on financial institutions that share certain consumer information with an affiliate if the information is used by such affiliate to make or send marketing solicitations.* In response to the Commission's request for comment, on July 20th the Institute held a conference call to elicit members' views on the proposal. Based upon the consensus of members during this call, the Institute has prepared the attached draft letter, which is briefly summarized below. Comments on the proposal must be filed with the Commission no later than Friday, August 13th. Please provide any comments on the draft letter to Jane Heinrichs no later than Friday, August 6th by phone [(202) 371-5410], fax [(202) 326-5839], or e-mail [jheinric@ici.org]. * See Institute Memorandum to SEC Rules Committee No. 60-04, Small Funds Committee No. 39-04, Compliance Advisory Committee No. 70-04, Closed-End Investment Company Committee No. 26-04, Investment Advisers Committee No. 8-04, Unit Investment Trust Committee No. 16-04, Transfer Agent Advisory Committee No. 61-04, and Privacy Issues Working Group No. 2-04 [17762], dated July 13, 2004, summarizing Commission Release Nos. 34- 49985, IC-26494, and IA-2259 Limitations on Affiliate Marketing (Regulation S-AM), July 8, 2004, (the "Release"). A copy of the Release is available on the SEC's website at: <http://www.sec.gov/rules/proposed/34-49985.htm>. 2 In summary, the Institute's letter supports the Commission's proposal to place the responsibility for providing the requisite notice and opt-out right to consumers on the financial institution that shares consumer information with an affiliate, rather than on the affiliate. The letter additionally recommends that:

- The Commission's adopting release clarify the Commission's intent to construe the meaning of the term "affiliate" under Reg. S-AM consistently with this term under Reg. S-P;
- The Commission clarify that proposed Reg. S-AM governs the use of eligibility information for marketing solicitation purposes and that its application is not dependent upon the

medium used to make such solicitation; • The constructive sharing of eligibility information that is lawful under the FCRA not be prohibited by proposed Reg. S-AM; • Proposed Reg. S-AM be revised to permit the use of oral notices and opt-outs; and • The Commission provide a transition period for mandatory compliance with Reg. S-AM that will allow firms to coordinate the delivery of any notices required by Reg. S-AM with the 2005 annual privacy notices required under Reg. S-P. Each of these recommendations is discussed in detail in the Institute's letter. Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

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