

**MEMO# 15331**

November 5, 2002

## **DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSALS RELATING TO PROXY VOTING; CONFERENCE CALL SCHEDULED FOR NOVEMBER 18, 2002**

[15331] November 5, 2002 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 44-02 INVESTMENT ADVISERS COMMITTEE No. 24-02 SEC RULES COMMITTEE No. 89-02 SMALL FUNDS COMMITTEE No. 16-02 RE: DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSALS RELATING TO PROXY VOTING; CONFERENCE CALL SCHEDULED FOR NOVEMBER 18, 2002 Attached for your review is a draft Institute comment letter on the SEC's proposals relating to proxy voting by investment companies and investment advisers.<sup>1</sup> This memorandum briefly summarizes the draft comment letter. In the letter, please note that we have highlighted issues on which we are specifically seeking member input. The draft letter expresses general support for certain aspects of the proposals and strongly opposes others. In particular, the letter supports the proposals (1) to require funds to disclose their proxy voting policies and procedures in their registration statements; (2) to require investment advisers (including advisers to funds) to adopt policies and procedures designed to ensure that proxies are voted in the best interests of their clients; (3) to require investment advisers to disclose to their clients how they may obtain information on how the advisers voted their proxies; (4) to require investment advisers to describe to clients their proxy voting policies and procedures and furnish a copy to clients on request; and (5) to require advisers to maintain certain records regarding proxy voting. (We specifically request comment from members whether the letter should recommend that the disclosure of proxy voting policies and procedures should be in the prospectus rather than in the Statement of Additional Information.) The letter strenuously objects to the proposals that would require funds to disclose actual votes cast and votes that are inconsistent with a fund's proxy voting policies and procedures. In support of our opposition to the proposal to disclose proxy votes, the letter argues that there is no evidence that information about actual votes cast would be of interest, or be of any benefit, to fund shareholders or necessary to address conflicts of interest. The letter takes the view that it would be inappropriate for the Commission to single out the mutual fund industry in order to achieve other, broader policy goals. In addition, the letter discusses the harm of disclosing this type of information, which would include the substantial costs of 1 Memorandum to Closed-End Investment Company Members No. 44-02, Investment Adviser Members No. 39-02, SEC Rules Members No. 79-02, and Small Funds Members No. 37-02 (Sept. 24, 2002). 2 disclosure, the loss of the ability for funds to vote confidentially, and the politicization of the proxy voting process. With respect to the disclosure of votes that are inconsistent with a fund's proxy voting policies and procedures, the Institute's letter argues that, depending on how "inconsistent

votes” are interpreted, funds may have to incur substantial costs in complying with this requirement. The letter notes that these votes will have to be accompanied by disclosure explaining the vote in question. Finally, the letter argues that the proposal would defeat the Commission’s purpose in proposing the disclosure requirements by discouraging funds from adopting specific policies and discouraging funds from using their judgment in the proxy voting process. A conference call has been scheduled for Monday, November 18 at 3:00 p.m. (Eastern time) to discuss the draft comment letter. Please notify Stephanie Holly at (202) 326-5184 if you plan to participate on the call. If you do not plan to participate on the call, please provide your comments on the draft letter by November 18 to the undersigned at (202) 326- 5810 or at [jchoi@ici.org](mailto:jchoi@ici.org) or Amy Lancellotta at (202) 326-5824 or at [amy@ici.org](mailto:amy@ici.org). Conference Call Dial In Information Number: 888-455-3618 Pass Code: Proxy Voting Call Leader: Amy Lancellotta Jennifer S. Choi Associate Counsel Attachment (in .pdf format)

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