

MEMO# 20147

June 30, 2006

Draft ICI Letter to The Securities and Exchange Board of India on the Application of India's AML Rules to Foreign Institutional Investors

©2006 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. ACTION REQUESTED [20147] June 30, 2006 TO: AML COMPLIANCE WORKING GROUP No. 16-06 RE: DRAFT ICI LETTER TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ON THE APPLICATION OF INDIA'S AML RULES TO FOREIGN INSTITUTIONAL INVESTORS Earlier this year, staff of the Securities and Exchange Board of India (SEBI) encouraged us to submit a letter describing some of the key issues that foreign institutional investors (FIIs) face investing in India. The primary issue raised in our draft response letter, a copy of which is attached, relates to the application of new anti-money laundering rules to FIIs. Members of the AML Compliance Working Group are requested to review the portion of the letter relating to AML and provide comments or suggested edits by the close of business on July 14, 2006. The issue raised in the draft letter relates to new AML rules in India that require banking companies, financial institutions and other "intermediaries" to perform prescribed AML functions, including filing suspicious transaction reports and verifying the identity of clients. The new rules also require firms to designate an officer as "Principal Officer" responsible for ensuring AML compliance. The term "intermediary" is defined broadly and includes, among others, FIIs. In the draft letter, we urge SEBI to reconsider direct application of the new AML rules to FIIs. We recommend that SEBI instead treat FIIs as investors, rather than intermediaries, for purposes of the Indian AML rules. This approach would work much like the Section 312 rules on correspondent accounts for foreign financial institutions in the US, pursuant to which local banks, brokers and other domestic financial institutions must take a risk-based approach to their foreign institutional customers, applying an appropriate level of AML scrutiny depending on the type of foreign customer involved. 2 Robert C. Grohowski Senior Counsel - International Affairs Attachment (in .pdf format) Please provide any comments or suggested edits to Bob Grohowski (202-371-5430 or rcg@ici.org) or Glen Guymon (202-326-5837 or gguymon@ici.org). Written comments also may be faxed to 202-326-5841.