

MEMO# 16801

November 21, 2003

DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSAL RELATING TO FUND OF FUNDS INVESTMENTS

[16801] November 21, 2003 TO: SEC RULES COMMITTEE No. 95-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 62-03 UNIT INVESTMENT TRUST COMMITTEE No. 22-03 RE: DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSAL RELATING TO FUND OF FUNDS INVESTMENTS As we previously informed you,¹ the Securities and Exchange Commission has published for comment proposed new rules under the Investment Company Act of 1940 to broaden the ability of an investment company to invest in shares of another investment company under “fund of funds” arrangements, as well as amendments to several forms used by funds that would increase disclosure of expenses of fund of funds arrangements.² The Institute has prepared a draft comment letter on the proposal. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the proposal must be received by the SEC no later than December 3, 2003. If you have any comments on the Institute’s draft letter, please contact the undersigned by phone at 202-371-5408 or by e-mail at aburstein@ici.org no later than November 28. The draft letter strongly supports the Commission’s proposals and states several reasons why the proposals would benefit funds, their shareholders, and Commission staff. The letter also provides comments, primarily technical in nature, on several aspects of the proposals. For example, the draft letter recommends that, in order to provide greater flexibility to funds to meet their investment objectives, proposed Rule 12d1-2 should be revised to permit acquiring funds to obtain shares of an acquired fund using an in-kind transfer of securities and that such transactions should be exempt from the “for cash” requirement of Rule 17a-7 of the Act. The draft letter states that it would be more efficient for a fund to be able to transfer securities that it holds directly to the affiliated fund in return for fund shares. ¹ Memorandum to SEC Rules Committee No. 81-03, Closed-End Investment Company Committee No. 51-03 and Unit Investment Trust Committee No. 20-03, dated October 14, 2003 [16663]. ² Investment Company Act Release No. 26198 (October 1, 2003), 68 FR 58226 (October 8, 2003). ² The draft letter also recommends that the Commission provide further relief for funds to enter into other types of cash management arrangements, such as joint repurchase agreements. The draft letter therefore reiterates an ICI recommendation that the Commission amend Rule 17d-1 under the Act to permit joint transactions by a fund and its affiliates where the fund participates on terms not different from those applicable to any affiliated participant. The draft letter states that these transactions do not present the risks that Section 17(d) was designed to prevent. Finally, the draft letter states that while the Institute supports the proposal’s disclosure requirements, there should be a de minimis exemption to those requirements that would exempt funds from disclosing the additional line item in the fee table if the

aggregate fees and costs of acquired funds do not exceed a minimum level. The draft letter states that disclosure of costs below this level would be immaterial to investors when comparing the costs of investing in alternative funds of funds and in comparing the cost of an investment in a fund of funds with the cost of a more traditional fund. It also would distract investors' attention from more important information in the fee table. [Members: Please provide suggestions on what this de minimis level should be, e.g., if the aggregate expenses are less than one basis point? In addition, are there additional policy arguments for establishing such a de minimis exemption?] The draft letter also provides several technical recommendations on the proposed disclosure requirements. Ari Burstein Associate Counsel Attachment (in .pdf format)

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