

MEMO# 16895

December 18, 2003

DRAFT ICI COMMENT LETTER ON SEC MANAGER OF MANAGERS FUND RULE PROPOSAL

[16895] December 18, 2003 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 66-03 SEC RULES COMMITTEE No. 104-03 RE: DRAFT ICI COMMENT LETTER ON SEC MANAGER OF MANAGERS FUND RULE PROPOSAL As previously indicated, the SEC recently proposed new rule 15a-5 under the Investment Company Act of 1940, which would permit an investment adviser to serve as a subadviser to an investment company without approval by the fund's shareholders, provided various conditions are met.¹ The SEC's proposal would largely codify a number of exemptive orders the SEC has issued that facilitate funds' ability to enter into "manager of managers" arrangements. The Institute has prepared a draft comment letter on the proposal. The draft letter is attached and summarized below. We request your comments on all aspects of the draft letter and, in particular, several questions that are highlighted for your consideration within the text of the letter. Comments on the proposal must be filed by January 8, 2004. If you have comments on the draft letter, please provide them to Barry Simmons by phone (202/326-5923), fax (202/326-5827) or email (bsimmons@ici.org) by Tuesday, December 30th. The Institute's draft comment letter expresses general support for the SEC's proposal, noting that it recognizes the growing trend of investment companies that utilize subadvisers to manage their portfolio securities, and would enable these funds to retain subadvisers (and materially amend subadvisory contracts) without shareholder approval. It states that the Institute's comments are largely technical and are intended to help further the goal of maintaining important investor protections, ensure that manager of managers funds fully benefit from the proposal, and minimize any unnecessary burdens. In summary, the draft letter makes the following comments. • The draft letter recommends that the Commission revise the condition in the proposed rule that would require the principal adviser to "supervise and oversee the activities of" the subadviser by deleting the phrase "the activities of" to clarify that the provision does 1 See Memorandum to Closed-End Investment Company Committee No. 56-03 and SEC Rules Committee No. 86-03 [16705], dated October 27, 2003. 2 not require the principal adviser to "micromanage" the activities of each of its subadvisers. • The draft letter recommends that the Commission indicate what level of ownership (e.g., one percent) would constitute a material interest for purposes of the condition in the rule that would prohibit a fund's officers or directors, the fund's principal adviser, or any of the principal adviser's officers or directors from owning, directly or indirectly, any material interest in the subadviser. • The draft letter recommends that the provision that would permit a principal adviser to replace one of its wholly-owned subadvisers with another wholly-owned subadviser without a shareholder vote be extended

to also apply to circumstances where a fund's subadviser, and a subadviser that the principal adviser intends to hire to replace that subadviser, both are wholly owned by the principal adviser's parent company. • The draft letter recommends that the requirement that, within 90 days of entering into a subadvisory contract or making a material change to a wholly-owned subadviser's contract, the fund must furnish its shareholders with an information statement pursuant to the proxy rules be replaced with a requirement to furnish a notice that describes the subadvisory agreement and contains other relevant information that enables fund shareholders to understand the subadvisory arrangement. • The Institute requests that the Commission modify the proposed condition that would require a manager of managers fund having a name that identifies the subadviser also identify the principal adviser before the subadviser's name to require the prominent disclosure of both the principal adviser's name and the subadviser's name in communications with investors instead of requiring that the subadviser's name be part of, or be preceded by, the principal adviser's name. • The draft letter opposes the Commission's proposal to rescind its existing manager of managers orders upon adoption of the final rule and recommends allowing funds to choose whether to abide by the final rule or the terms of their order. • The draft letter recommends that the final rule provide a reasonable transition period (e.g., nine months) to enable funds to complete any required contract modifications resulting from the final rule. Barry E. Simmons Associate Counsel Attachment (in .pdf format)

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