

MEMO# 14890

July 9, 2002

DISTRICT COURT GRANTS MOTION TO DISMISS IN ROHRBAUGH ACTION

[14890] July 9, 2002 TO: BOARD OF GOVERNORS No. 23-02 PRIMARY CONTACTS - MEMBER COMPLEX No. 52-02 RE: DISTRICT COURT GRANTS MOTION TO DISMISS IN ROHRBAUGH ACTION The D.C. District Court has dismissed the Rohrbaugh case against the Institute, which was filed by shareholders in three member investment companies in May 2000.* Plaintiffs in the Rohrbaugh case alleged that the ICI uses membership dues in a manner that benefits its investment adviser members and injures its investment company members, and that this violates Sections 17(d) or 36(b) of the Investment Company Act. The court granted the Institute's motion to dismiss on numerous grounds. First, it found that both the Section 17(d) and the Section 36(b) claims should be dismissed because the plaintiffs failed to allege that the ICI is "controlled by," and thus an "affiliated person" of, the investment advisers to the particular investment companies owned by the plaintiffs. The court also determined that the Section 17(d) claim failed for two additional reasons. First, the court held that the plaintiffs lacked standing to bring a direct claim. The court found that, because the plaintiffs' alleged injuries were injuries to the mutual funds in which they own shares, the claim is derivative in nature. Second, the court found that the plaintiffs failed to allege a "joint transaction" between the ICI and any other entity. Finally, the court noted that, in addition to the reason stated above, the Section 36(b) claim failed because the plaintiffs failed to allege a breach of fiduciary duty with respect to excessive compensation or payment. The court rejected the plaintiffs' claim that the "payments" referred to in this section would apply to association membership dues. Craig S. Tyle General Counsel * Rohrbaugh v. Investment Company Institute, Civil Action No. 1:00CV01237-GK (D.D.C., May 31, 2000).