

MEMO# 14937

July 19, 2002

ICI COMMENT LETTERS ON REPORT OF NYSE COMMITTEE ON CORPORATE ACCOUNTABILITY AND LISTING STANDARDS

[14937] July 19, 2002 TO: SEC RULES COMMITTEE No. 60-02 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 29-02 CORPORATE GOVERNANCE & DISCLOSURE WORKING GROUP No. 17-02 RE: ICI COMMENT LETTERS ON REPORT OF NYSE COMMITTEE ON CORPORATE ACCOUNTABILITY AND LISTING STANDARDS As we previously informed you, the New York Stock Exchange recently issued a report of its Corporate Accountability and Listing Standards Committee that recommends changes in corporate governance and disclosure practices of NYSE-listed companies.* The Committee solicited public comment on its recommendations before seeking their approval by the NYSE Board at an August 1, 2002 meeting. In response, the Institute prepared the attached comment letters. The first letter focuses on the application of the Report's recommendations to investment companies listed on the Exchange; the second letter comments on the recommendations from funds' perspective as investors. Letter Commenting on the Application of the Recommendations to Listed Investment Companies The letter recommends that the NYSE clarify that investment companies would not be subject to the Report's recommendations in instances where comparable requirements already exist under the federal securities laws. Specifically, the letter recommends that the NYSE clarify that the following would not apply to investment companies: (1) the NYSE's definition of independent directors; (2) the recommendations with respect to nominating committees; (3) the recommendations with respect to compensation committees; and (4) the recommendations with respect to codes of business conduct and ethics. With respect to audit committees, the letter recommends, among other things, that: (1) the NYSE treat a "fund complex" as one company for purposes of counting the number of audit committees served on by an investment company director; (2) investment company audit committee chair persons be required to have experience with respect to investment company matters, rather than accounting expertise; (3) the NYSE clarify that investment company audit committees need not be responsible for retaining and terminating the investment company's * See Memorandum to SEC Rules Committee No. 48-02, Closed-End Investment Company Committee No. 24-02, and Corporate Governance & Disclosure Working Group No. 8-02, dated June 19, 2002. 2 auditors, where such responsibilities reside with the fund's independent directors; (4) investment companies be excluded from the requirement that audit committee members discuss earnings press releases and financial information provided to analysts; and (5) investment company audit committees be required to meet at least twice a year, with the committee meeting separately, at least annually, with management, internal auditors, and

independent auditors. Finally, the letter recommends that investment companies be provided the flexibility to disclose corporate governance guidelines in their proxy statements, annual reports, or websites. Letter Commenting on the Recommendations From Funds' Perspective as Investors The letter expresses strong support for the recommendation that shareholders approve all equity compensation plans. The letter states that several of the other recommendations made in the Report are worthy of serious consideration and that the Institute will provide more specific comments on them when they are formally proposed. These recommendations include: requiring audit committees to have the authority to retain and terminate the company's independent auditors, including the sole authority to approve all significant non-audit engagements with the independent auditors; requiring listed companies to adopt and disclose their corporate governance guidelines; and requiring listed foreign private issuers to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards. The letter also expresses support for many of the Report's recommendations to other institutions, including that: the SEC should require companies, in all public or shareholder communications, to report complete GAAP-based financial information before any reference to "pro forma" or "adjusted" financial information and any pro forma information should be reconciled to the GAAP information; the SEC should exercise more active oversight of the Financial Accounting Standards Board to improve the quality of GAAP and the speed of FASB actions; the SEC should act to improve Management's Discussion and Analysis disclosure with respect to accounting estimates; the SEC should require companies to more promptly disclose insider transactions; and Congress should allocate additional resources to the SEC. Dorothy M. Donohue Associate Counsel Attachment no. 1 (in .pdf format)