

MEMO# 19328

November 4, 2005

DRAFT LETTER RELATING TO REGULATION OF CERTAIN TPAS UNDER TRANSFER AGENT RULES

©2005 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. CONFIDENTIAL – NOT FOR DISTRIBUTION [19328] November 4, 2005 TO: SEC RULES COMMITTEE No. 59-05 PENSION COMMITTEE No. 38-05 RE: DRAFT LETTER RELATING TO REGULATION OF CERTAIN TPAS UNDER TRANSFER AGENT RULES In connection with the SEC's development of rule proposals in the area of transfer agent registration and regulation, the Institute has prepared a draft letter to the SEC recommending that it consider whether certain third-party administrators ("TPAs") to retirement plans and other employee benefit plans ("Plans") should be required to register and be regulated as transfer agents. The most significant aspects of the draft letter are summarized below. If you have any comments on the draft letter, please contact Ari Burstein by e-mail at aburstein@ici.org or by phone at 202-371-5408 no later than November 14. The draft letter states that, in carrying out their responsibilities in connection with mutual fund holdings, TPAs engage in certain transfer agent functions that fall within the scope of the definition of transfer agent in Section 3(a)(25) of the Securities Exchange Act of 1934. For example, TPAs often process Plan participants' purchases, redemptions and exchanges and update their accounts accordingly. In addition, in some cases, TPAs interface directly with a fund to update a Plan's position on the fund's books. As such, the draft letter states that these TPAs are engaged in registering the transfer of securities and transferring record ownership of securities on the books of the issuer – several of the core transfer agent functions delineated in Section 3(a)(25). [Members: Are there any other functions that TPAs perform that fall within the scope of the definition of transfer agent?] The draft letter recommends that the SEC consider whether TPAs that perform such functions should be required to be registered under transfer agent rules. The draft letter states that there are clear public policy benefits to requiring TPAs that meet the definition of a "transfer agent" under the federal securities laws to register with the SEC. First, the registration of such TPAs would provide important protections to Plan participants. Second, the registration of TPAs would allow the SEC to impose appropriate regulatory responsibilities on TPAs in connection with certain Plan trading activity, such as, for example, to address abusive short-term trading. 2 The draft letter states that while TPAs that meet the definition of a "transfer agent" should register as a transfer agent with the SEC, subjecting TPAs to all the requirements applicable to registered transfer agents may not be necessary for the protection of Plan participants. Accordingly, the draft letter states that it may be appropriate for the SEC to adopt specifically tailored exemptions from some of those requirements for TPAs based on the functions they perform and the resulting

investor protection needs. Ari Burstein Associate Counsel Attachment (in .pdf format)

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