

MEMO# 16252

June 27, 2003

PCAOB ACCOUNTING SUPPORT FEE PROPOSAL; DRAFT ICI COMMENT LETTER

[16252] June 27, 2003 TO: ACCOUNTING/TREASURERS COMMITTEE No. 25-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 41-03 SEC RULES COMMITTEE No. 61-03 SMALL FUNDS COMMITTEE No. 24-03 UNIT INVESTMENT TRUST MEMBERS No. 19-03 VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 2-03 RE: PCAOB ACCOUNTING SUPPORT FEE PROPOSAL; DRAFT ICI COMMENT LETTER As we recently informed you, the Public Company Accounting Oversight Board has adopted rules regarding the calculation and assessment of accounting support fees to fund its operations, as required by the Sarbanes-Oxley Act.¹ The PCAOB filed these rules with the Commission on April 16 for its approval. The SEC recently issued a release seeking comment on the PCAOB rules.² Comments on the PCAOB rules are due to the SEC by July 18, 2003. The proposed rules call for the accounting support fee to be allocated to, and payable by, two classes of issuers: (1) publicly-traded companies with average, monthly U.S. equity market capitalizations during the preceding year, based on all classes of common stock, of greater than \$25 million, and (2) investment companies with average, monthly net assets of greater than \$250 million.³ Issuers permitted not to file audited financial statements (e.g., unit investment trusts that have not filed or updated a registration statement that became effective during the preceding year) will not be assessed an accounting support fee. Consistent with the Institute's recommendations, the proposed rules assess investment companies accounting support fees at ten percent of the rate paid by publicly-traded operating companies. The proposed rules note that reliable monthly net assets data may not be available for certain types of investment companies, such as insurance company separate accounts and unit investment trusts. 1 See Memorandum No. 15964, dated April 29, 2003. 2 Securities Exchange Act Release No. 34-48075 (June 23, 2003), 68 FR 38406 (June 27, 2003) ("Release"). The Release is available on the Commission's website: <http://www.sec.gov/rules/pcaob/34-48075.htm> 3 In the case of an investment company with multiple series, the net asset value of each series would be measured against the \$250 million threshold separately. 2 The Institute has prepared the attached draft comment letter supporting the proposed rules, including the PCAOB's decision to assess investment companies ten percent of the fee rate charged to publicly-traded operating companies. The Institute's letter notes, however, that issuers of variable annuity contracts and variable life insurance contracts (together "Variable Contracts") will pay twice the accounting support fee charged to other types of investment companies, inasmuch as both the insurance company separate account and the underlying open-end fund in which it invests are "issuers" under the Board's rule. To address this, the Institute's letter recommends that insurance company separate accounts registered with the SEC be excluded from the class of investment company issuers subject to the fee rule. The letter indicates that it is important to exempt these issuers from the proposed rule so that if a reliable source of

monthly net assets data becomes available in the future, Variable Contracts will not be subject to "double fees." If you have any comments on the Institute's draft comment letter, please contact the undersigned at 202/326-5851 or smith@ici.org by July 11, 2003. Gregory M. Smith Director - Operations/Compliance & Fund Accounting Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16252, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16252. Attachment (in .pdf format)

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