

MEMO# 19569

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

©2006 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. [19569] January 4, 2006 TO: BROKER/DEALER ADVISORY COMMITTEE No. 1-06 BANK AND TRUST ADVISORY COMMITTEE No. 1-06 RE: INSTITUTE LETTER RELATING TO REGULATION OF CERTAIN TPAS UNDER TRANSFER AGENT RULES The Institute has sent a letter to the Securities and Exchange Commission recommending that third-party administrators (“TPAs”) to retirement plans and other employee benefit plans (“Plans”) that perform the functions of transfer agents delineated under the Securities Exchange Act of 1934 be required to register as transfer agents, and that appropriately tailored regulatory requirements apply to registered TPAs. The most significant aspects of the letter are summarized below and a copy of the letter is attached. The letter states that, in carrying out their responsibilities in connection with mutual fund holdings, TPAs engage in transfer agent functions that fall within the scope of the definition of “transfer agent” under the Exchange Act. 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 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 – two of the transfer agent functions delineated in the Exchange Act. Under the terms of Section 17A of the Exchange Act, persons that perform such functions are required to be registered with the SEC. The letter states that registration with the Commission of TPAs engaged in these activities will provide important protections to Plan participants. In particular, the registration of TPAs will enable the Commission to impose appropriate regulatory responsibilities on TPAs in connection with certain Plan trading activity, such as the responsibility to address abusive short-term trading. While TPAs that meet the definition of a “transfer agent” should be required to register with the Commission, the letter does not recommend subjecting TPAs to all the requirements applicable to registered transfer agents. Instead, the letter recommends that the Commission develop specifically tailored exemptions from certain regulatory requirements based on the functions TPAs perform and the resulting investor protection needs. Ari Burstein Associate Counsel Attachment (in .pdf format)

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