

MEMO# 14926

July 16, 2002

ICI DRAFT COMMENT LETTER ON SEC'S PROPOSED AMENDMENTS TO ADVERTISING RULES; CONFERENCE CALL JULY 23RD

[14926] July 16, 2002 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 12-02
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 27-02 SEC RULES COMMITTEE No.
58-02 SMALL FUNDS COMMITTEE No. 10-02 UNIT INVESTMENT TRUST COMMITTEE No.
19-02 RE: ICI DRAFT COMMENT LETTER ON SEC'S PROPOSED AMENDMENTS TO
ADVERTISING RULES; CONFERENCE CALL JULY 23RD As we previously informed you, in May,
the Securities and Exchange Commission proposed for comment substantial amendments
to its rules relating to investment company advertising.* Attached for your review is a copy
of the Institute's draft comment letter on the proposed amendments. The draft letter is
briefly summarized below. Comments on the proposed amendments must be filed with the
SEC by Wednesday, July 31, 2002. The Institute will hold a conference call on Tuesday, July
23rd at 4:00 to discuss the draft letter. If you are interested in participating in the call,
please e-mail your contact information to Deborah Washington (deborah@ici.org) by Friday,
July 19th. If you are unable to participate in the call, please provide your comments on the
proposed amendments to Tami Reed by Monday, July 22nd by phone (202-326-5825), fax
(202-326-5839) or e-mail (tamara@ici.org). SUMMARY OF THE INSTITUTE'S COMMENTS The
Institute's draft letter expresses general support for most of the Commission's proposals. It
notes that the proposed amendments to Rule 482 are largely consistent with
recommendations made by the Institute to the Commission in July 2001. The letter also
makes the following comments: • We strongly support the current regulatory framework
governing investment company advertising. * See ICI Memorandum No. 14737 (May 21,
2002). 2 • We strongly support the elimination of the "substance of which" requirement
from Rule 482. • We reiterate our previous recommendation that Rule 482 should provide
funds flexibility regarding the method (e.g., website or toll-free phone number) by which
investors can obtain performance information current to the most recent month end, rather
than requiring funds to make the information available through a toll-free phone number. •
We continue to recommend that Rule 482 not require funds to refer investors to another
source for more current performance information if the performance information in an
advertisement is current to the most recent month end prior to its use. • We support the
Commission's decision not to require that the performance information in an ad be current
to the most recent month end prior to use of the ad. • We strongly oppose the three-
calendar day period proposed in Rule 482(g)(2) (which would require that monthly
performance information that must be made available by phone be available within three
calendar days after the end of the most recent month ended prior to use of an

advertisement), because it fails to recognize that the time needed to calculate and test fund performance information and make it available to investors will differ among funds. The letter instead recommends that the rule's timeliness requirement be deemed satisfied if month-end performance information is made available as soon as reasonably practicable, based on a fund's particular facts and circumstances. • With respect to the narrative disclosure that would be prescribed by Rule 482, we: (1) recommend that the Commission clarify that funds may tailor the disclosure so long as it communicates the concepts required to be disclosed; (2) support requiring the disclosure to be presented in close proximity to the performance data in an advertisement and not in footnotes, but oppose the proposed type size and style requirements because they are unnecessary; and (3) request clarifications related to the application of the narrative disclosure presentation requirements to radio or television advertisements and fund websites. • We oppose the Commission's revisions to Rule 134, the "tombstone ad" rule, that would eliminate the ability of investment companies to advertise under the rule. • We strongly urge the Commission to confirm that performance information that is computed in accordance with Rule 482's requirements and current as required by the rule will not be deemed fraudulent or misleading. • We recommend that the standard that would be set forth in Rule 156 to govern when portrayals of past income, gain, or growth of assets in an advertisement may be misleading be revised from the proposed "necessary or appropriate" standard either to a "necessary" or to a "necessary and appropriate" standard. Tamara K. Reed Associate Counsel Attachment (in .pdf format)