

MEMO# 15238

October 4, 2002

ICI DRAFT COMMENT LETTERS ON CERTIFICATION OF MANAGEMENT INVESTMENT COMPANY SHAREHOLDER REPORTS AND CERTIFICATION OF PROXY STATEMENTS

URGENT/ACTION REQUESTED [15238] October 4, 2002 TO: ACCOUNTING/TREASURERS COMMITTEE No. 46-02 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 39-02 COMPLIANCE ADVISORY COMMITTEE No. 83-02 SEC RULES COMMITTEE No. 80-02 UNIT INVESTMENT TRUST COMMITTEE No. 23-02 RE: ICI DRAFT COMMENT LETTERS ON CERTIFICATION OF MANAGEMENT INVESTMENT COMPANY SHAREHOLDER REPORTS AND CERTIFICATION OF PROXY STATEMENTS As we previously reported to you, the Securities and Exchange Commission has proposed new rules and rule amendments under the Investment Company Act of 1940 that, among other things, would require registered management investment companies to file certified shareholder reports on new Form N-CSR ("Certified Shareholder Report").¹ In addition, the SEC has solicited comment on whether to extend a certification requirement to definitive proxy and information statements.² In response, the Institute has prepared two draft comment letters, both of which are attached and summarized below. Comments on the certification of proxy statements are due by Wednesday, October 9, 2002. Please provide any comments to Frances Stadler at (202) 326-5822 (phone), (202) 326-5827 (fax) or frances@ici.org (email) by the close of business on Tuesday, October 8th. Comments on the Commission's shareholder report certification proposal are due by Wednesday, October 16, 2002. The Institute has scheduled a conference call for Thursday, October 10, 2002 to discuss the draft comment letter. The details of the call will be provided to you shortly. If you are unable to participate on the call, please provide any comments to Barry Simmons at (202) 326-5923 (phone), (202) 326-5827 (fax) or bsimmons@ici.org (email) by Thursday, October 10th. 1 See Memorandum to Accounting/Treasurers Members No. 33-02, Closed-end Investment Company Members No. 41-02, Compliance Advisory Committee No. 70-02, SEC Rules Members No. 74-02, and Unit Investment Trust Members No. 24-02, dated September 3, 2002. 2 See SEC Release Nos. 33-8124, 34-46427, IC-25722 (August 28, 2002); 67 Fed. Reg. 57276 (September 9, 2002) (adopting the Form N-SAR certification requirement for investment companies and soliciting comment on whether to extend a certification requirement to definitive proxy and information statements). 2 Draft Letter on SEC Request for Comment on Proxy Statement Certification The Institute's draft letter opposes the extension of a certification requirement to proxy and information statements, noting that this would overstep the intent of the Sarbanes-Oxley Act and that no concerns have been

expressed about the content of these documents. The letter states that adding a new certification requirement for proxy and information statements would increase burdens on issuers, including investment companies, and that any added burden would be excessive in the absence of any evidence demonstrating the need for such a requirement. Draft Letter on SEC Shareholder Report Certification Proposal The Institute's draft letter makes the following comments:

- We support the part of the Commission's proposal that would require the certification of financial statements and other financial information in shareholder reports inasmuch as this is the type of information contemplated by Section 302 of the Sarbanes-Oxley Act.
- We recommend eliminating the Form N-SAR certification requirement. The letter notes that the form contains limited financial information, is not relied upon by investors in evaluating an investment company's results or financial condition and, therefore, does not satisfy the intent of Section 302. It also indicates that a dual certification requirement (shareholder reports and Form N-SAR) would impose an unjustified and unreasonable burden on investment companies. In addition, the letter recommends that unit investment trusts should not be subject to any certification requirement given their unique structure and operations.
- We recommend that the certification requirement not apply to the "Management's Discussion of Fund Performance" or other non-financial information contained in a fund's shareholder report. The letter points out that certification of such information would be beyond the intent of the Sarbanes-Oxley Act.
- We oppose extending the disclosure controls and procedures requirement to all filings made under the Securities Act, the Exchange Act and the Investment Company Act. The letter states that the proposal goes beyond the scope of the Sarbanes-Oxley Act and singles out investment companies for disparate treatment. It further notes that the proposal imposes significant burdens with no apparent benefit, particularly given that investment companies already have stringent controls in place.
- We recommend that, if the Commission's proposal is adopted, the Commission provide for a 90-day period before compliance is required in order to give funds sufficient time to implement the new requirements.

Barry E. Simmons Associate Counsel Attachment (in .pdf format)