

MEMO# 11589

January 28, 2000

ICI COMMENT LETTER ON SEC FUND GOVERNANCE PROPOSALS

* See Memorandum to Small Funds Members No. 10-99, dated Oct. 22, 1999, Memorandum to Small Funds Committee No. 15-99, dated Oct. 22, 1999, Memorandum to Closed-End Investment Company Members No. 37-99, Investment Company Directors No. 11-99 and SEC Rules Members No. 62-99, dated Oct. 19, 1999, and Memorandum to Board of Governors No. 63-99, Closed-End Investment Company Committee No. 35-99, Director Services Committee No. 25-99 and SEC Rules Committee No. 79-99, dated Oct. 19, 1999. 1 [11589] January 31, 2000 TO: BOARD OF GOVERNORS No. 6-00 CLOSED-END INVESTMENT COMPANY MEMBERS No. 3-00 DIRECTOR SERVICES COMMITTEE No. 3-00 SEC RULES MEMBERS No. 8-00 SMALL FUNDS MEMBERS No. 2-00 RE: ICI COMMENT LETTER ON SEC FUND GOVERNANCE PROPOSALS

In October 1999, the Securities and Exchange Commission issued for public comment proposed rule and form amendments designed to enhance the independence and effectiveness of fund directors and to provide investors with greater information about fund directors.* Accompanying this cover memo is the Institute's comment letter on the SEC's proposals, which was recently filed with the SEC. The comment letter is briefly summarized below. The comment letter expresses general support for the SEC's proposals and their goal of strengthening the independence and effectiveness of independent fund directors, but expresses concerns with certain elements of the proposals including, in particular, the proposal relating to independent legal counsel and some of the proposed disclosure requirements. After a brief introduction and discussion of the respective characteristics of best practices and rules, the letter expresses the following positions. Proposed Amendments to Exemptive Rules The letter states that the Institute accepts the SEC's general approach of tying reliance on selected exemptive rules to compliance with conditions designed to enhance the independence of a fund's independent directors. In particular, the letter: 1 supports the proposed condition that would require a simple majority (as opposed to a two-thirds super-majority) of independent directors on the board; and 2 supports the proposed condition that would require independent directors to select and nominate other independent directors. The letter also supports the concept of independent directors having counsel that can render impartial and objective advice, but strongly urges the SEC not to address the issue of counsel to the independent directors through rulemaking. The letter suggests that if the SEC remains convinced that a rule is necessary, it should take a process-based approach that would require independent directors, in the exercise of their business judgment, to make an annual finding that their counsel is able to render impartial and objective advice. Other Proposed Rules and Rule Amendments With respect to several other proposed rules and rule amendments, the letter: 1 supports conditioning the ability to purchase joint insurance policies on the absence

of any exclusion for bona fide claims against co-insureds; ! supports allowing funds with independent audit committees to forego the need for shareholder ratification of the selection of independent public accountants; and ! expresses appreciation for the SEC's intent to clarify a potential issue raised by independent directors' ownership of index fund shares, but opposes the promulgation of a rule implying that such ownership would result in the directors' beneficial ownership of the fund's underlying portfolio securities. Proposed Disclosure Requirements With respect to the proposed rule and form changes relating to disclosure, the letter: ! generally supports the SEC's proposal to require disclosure of certain basic information about directors in fund annual reports, SAs and proxy statements; ! strongly supports the SEC's decision not to propose requiring director information in the prospectus; ! generally supports the proposed disclosure of directors' ownership of funds in the fund complex, but recommends requiring such disclosure within prescribed dollar ranges of ownership rather than in specific dollar amounts; ! opposes requiring additional disclosure in fund proxy statements about certain positions, interests, transactions and relationships of directors and their family members with the fund and various related persons and entities; ! recommends that, in lieu of providing this type of disclosure in the SAI, funds be required to maintain records, which would be available to the SEC, concerning the positions, interests, transactions and relationships of independent directors and their family members with the fund and various related persons and entities; and ! recommends that the SEC narrow the scope of information about positions, interests, transactions and relationships that would have to be included in the records (for example, by revising the proposed definition of "immediate family member" for this purpose to cover only family members residing with the director or any dependents of the director). * * * * The Institute's comment letter reflects suggestions made by numerous Institute members. We greatly appreciate your assistance. We will keep you advised of further developments in this area. Craig S. Tyle General Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 11589. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>).