

MEMO# 16020

May 6, 2003

DRAFT ICI COMMENT LETTER ON SEC PROPOSAL REGARDING CERTIFICATIONS UNDER SECTIONS 302 AND 906 OF THE SARBANES-OXLEY ACT

[16020] May 6, 2003 TO: ACCOUNTING/TREASURERS COMMITTEE No. 18-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 32-03 COMPLIANCE ADVISORY COMMITTEE No. 34-03 SEC RULES COMMITTEE No. 43-03 SMALL FUNDS COMMITTEE No. 16-03 RE: DRAFT ICI COMMENT LETTER ON SEC PROPOSAL REGARDING CERTIFICATIONS UNDER SECTIONS 302 AND 906 OF THE SARBANES-OXLEY ACT As we previously reported to you, the Securities and Exchange Commission has proposed technical amendments to its rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to require issuers to provide the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as exhibits to the periodic reports to which they relate.¹ The Commission has also provided interim guidance on how issuers should submit their Section 906 certifications until final rules are adopted. The Institute's draft comment letter is attached and summarized below. Comments on the Commission's proposal are due by Thursday, May 15th. Please provide any comments you may have on the draft letter to Barry Simmons by Monday, May 12th. You may contact me by phone at (202) 326-5923, by fax at (202) 326-5827, or by email at bsimmons@ici.org. The Institute's draft letter supports the Commission's Section 302 certification proposal, noting that it would not affect funds since Form N-CSR already requires them to file their Section 302 certification as an exhibit to their shareholder reports. The letter also supports the Section 906 certification proposal, noting that it represents a logical approach to the certification submission process and would be consistent with the way funds are presently required to submit their Section 302 certifications. The draft letter focuses on one technical aspect of the Commission's interim guidance regarding the submission of Section 906 certifications. Until final rules are adopted, the Commission encourages issuers to submit the Section 906 certification as an exhibit to the periodic report to which it relates. Consistent with its electronic filing rules under Regulation S-T, the Commission's interim guidance directs issuers that file their periodic reports via EDGAR to retain the manual signature page for each 1 See Institute Memorandum No. 15814, dated March 26, 2003. 2 certification, or another document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of the certification. The guidance further directs issuers to insert a legend after the text of each certification that reads: "A signed original of this written statement required by section 906 has been provided to [the issuer] and will be retained by [the issuer] and furnished to the SEC or its staff upon request." The Institute's

draft letter expresses concern that the legend only contemplates the retention of a manual signature page, but not any other authenticating document, an option permitted by Regulation S-T. The letter, therefore, recommends that the Commission modify the legend to make it consistent with Regulation S-T, thus enabling issuers that prepare EDGAR submissions to retain alternate authentication documents. The letter adds that because such modifications relate to the Commission's interim guidance, which is already in effect, this matter should be addressed as soon as possible in the Commission's Frequently Asked Questions that are posted on its website. Barry E. Simmons Associate Counsel Attachment (in .pdf format)

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