

MEMO# 20350

September 5, 2006

Draft ICI Comment Letter on SEC Soft Dollar Interpretive Guidance Relating to Commission-Sharing Arrangements

©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. [20350] September 5, 2006 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 26-06 EQUITY MARKETS ADVISORY COMMITTEE No. 18-06 INVESTMENT ADVISERS COMMITTEE No. 6-06 SEC RULES COMMITTEE No. 38-06 SMALL FUNDS COMMITTEE No. 22-06 RE: DRAFT ICI COMMENT LETTER ON SEC SOFT DOLLAR INTERPRETIVE GUIDANCE RELATING TO COMMISSION-SHARING ARRANGEMENTS As previously indicated, the Securities and Exchange Commission recently published final interpretive guidance on the scope of brokerage and research services and client commission arrangements under Section 28(e) of the Securities Exchange Act of 1934.¹ The SEC's interpretive release requested further comments with respect to commission-sharing arrangements under Section 28(e). The Institute has prepared a draft comment letter, which is attached and briefly summarized below. Comments must be filed with the SEC by September 7, 2006. If you have any comments on the attached draft letter, please contact Frances Stadler at 202/326-5822 or frances@ici.org by the close of business on Wednesday, September 6th. The draft letter praises the SEC's final soft dollar interpretive guidance. The letter states that the guidance properly reflects comments submitted by the Institute and others and strikes an appropriate balance between the regulation of soft dollar practices and the facilitation of soft dollar arrangements in the interests of investors. With respect to commission-sharing arrangements, the draft letter strongly supports the flexibility that the final guidance provides. It commends the SEC for recognizing the variety of commission-sharing arrangements and recommends that any further guidance reflect the need for 1 See Memorandum to Closed-End Investment Company Members No. 33-06, Equity Markets Advisory Committee No. 14-06, Investment Adviser Members No. 21-06, SEC Rules Members No. 65-06 and Small Funds Members No. 53-06 [20215], dated July 28, 2006. 2 flexibility. It also commends the SEC for clarifying that the final guidance does not place any affirmative obligations on money managers with respect to the responsibility of introducing brokers and commission sharing arrangements. The draft letter urges the SEC to continue to work with the broker-dealer community to ensure that any responsibilities imposed on brokers under the guidance with respect to these types of arrangements are appropriate and workable. The draft letter also reiterates the Institute's recommendation that the SEC level the playing field by prohibiting the use of client commissions outside the safe harbor by all investment advisers, regardless of the type of client account involved. The letter states that this change would ensure that all advisers treat investors equitably in connection with the adviser's use of brokerage, and that broker- dealers do not have an

incentive to favor advisers who are permitted to use client commissions outside the safe harbor. Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format)

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