

**MEMO# 16713**

October 30, 2003

## **INSTITUTE RECOMMENDATIONS RE: LATE TRADING AND MARKET TIMING**

[16713] October 30, 2003 TO: BOARD OF GOVERNORS No. 57-03 CEOS PRIMARY CONTACTS - MEMBER COMPLEX No. 92-03 INVESTMENT COMPANY DIRECTORS No. 14-03 RE: INSTITUTE RECOMMENDATIONS RE: LATE TRADING AND MARKET TIMING Since early September, mutual fund advisers and boards of directors have been aggressively working to identify the scope of abuses related to trading in mutual fund shares and to assist the SEC and other regulators in identifying actions that could be taken to eliminate these abuses. During this period, the Institute's Board of Governors and Executive Committee have had numerous discussions about these issues and directed the Institute to form two task forces to consider all possible solutions to these problems, including such significant steps as recommending that the SEC strengthen the 4:00 p.m. trade reporting cutoff and requesting SEC approval of additional tools to strengthen funds' ability to eliminate market timing abuses. In the past few weeks these task forces met to consider various options. The options identified by the task forces were discussed with the SEC staff and the Institute's Executive Committee. Earlier today the Executive Committee met to consider the options and determine how mutual funds should respond. Attached is a press release that summarizes the Committee's decisions. Specifically, the Committee endorsed the following:

- With respect to late trading, the Institute should call for a firm 4:00 p.m. deadline for all mutual fund trades to be reported to the fund or the fund's transfer agent.
- With respect to market timing, the Institute should call for a mandatory, minimum industry-wide two percent redemption fee for non-money market fund shares held for a minimum of five days or less. A narrow exemption should be provided for those funds specifically designed for short-term trading.
- With respect to personal trading, the Institute should immediately urge all mutual fund advisers to clarify or amend their codes of ethics so that all transactions by affiliated personnel in mutual fund shares sponsored by the adviser are covered by the code. The Committee recognized that these steps would change some of the fundamental ways in which mutual fund shareholders invest and mutual funds interact with brokers and other intermediaries. The recommendations will require fund companies and intermediaries to make major changes to computer systems and procedures that will take time and financial resources to implement. However, the Committee concluded that the benefits these changes will bring to long-term mutual fund shareholders in terms of enhanced confidence in mutual funds far outweigh the costs of implementation. If you have any questions regarding these recommendations please contact either of us. Paul G. Haaga, Jr. Matthew P. Fink Chairman, Board of Governors President Attachment FOR IMMEDIATE RELEASE

Contacts: John Collins 202-326-5864 Chris Wloszczyna 202-326-5889 James Doyle 202-326-8317

**MUTUAL FUND LEADERS CALL FOR FUNDAMENTAL REFORMS TO ADDRESS TRADING ABUSES** Washington, DC, October 30, 2003 - The Investment Company Institute today recommended that fundamental reforms be undertaken to combat trading abuses

that have been revealed at some fund companies. The Institute is presenting these recommendations to the SEC, and will call for these reforms in testimony before Congress early next week. First, the Institute called for and will vigorously support a firm 4:00 pm deadline for all mutual fund trades to be reported to mutual fund companies. Institute Chairman Paul Haaga said the ICI Executive Committee “was aware that this decision, if embraced by the SEC, would substantially alter longstanding business practices. We also recognize that it will affect millions of fund shareholders, thousands of intermediaries, and hundreds of fund companies.” Haaga said the ICI would nevertheless urge the SEC to move as rapidly as possible given the practical challenges associated with implementation. “The ICI Executive Committee was presented with a range of policy options. We considered but rejected exceptions to the deadline for entities subject to full SEC regulation. We considered but rejected several procedural options that would have closed the late trading window substantially, but not all the way. Finally, we considered but rejected reliance on accelerated technological developments.” Haaga said that while technology will undoubtedly help facilitate future compliance efforts, and that the Institute will revisit this issue with the SEC at an appropriate time, “the technology simply could not be ready fast enough to meet our needs.” Haaga noted that the Institute has endorsed the preliminary late trading action plan laid out by SEC Chairman Donaldson a few weeks ago. He added, “Today we’ve taken a substantial additional step. The firm 4:00 pm deadline represents all that can be done to slam the late trading window shut. We intend and are committed to doing everything possible to keep this window shut and permanently locked.” Second, the Institute called for and will vigorously support a mandatory, industry-wide minimum two percent redemption fee on the sale of virtually all mutual funds (other than money market funds) for a minimum of five days following purchases. According to Institute President Matt Fink, “One hundred percent of redemption fee proceeds would go to the fund and would thus benefit the fund’s long-term shareholders. None of the fees would go to fund managers or intermediaries.” The Institute determined that a uniform, industry-wide minimum requirement was necessary, Fink said, because it was “the only option that ensures that the fees’ desired deterrent effect would be felt in the thousands of omnibus accounts that mutual funds do not and can not control.” Fink added, “The key element of this decision is the establishment of an across-the-board, industry-wide minimum.” Funds designed for short-term trading and that prominently disclose that fact should be permitted to secure a specific exemption from this requirement from the SEC. Third, with respect to short-term purchases and sales by senior fund personnel the Institute recommends that its members clarify or amend their codes of ethics to include oversight of all trading activity in mutual funds offered or sponsored by the company. Additional options in this area will also be considered, including whether a supplement is needed to the ICI’s Report of the Advisory Group on Personal Investing. James S. Riepe, a member of the ICI Executive Committee and a member of the 1994 Advisory Group, said that “if true, reports that some portfolio managers and senior industry executives rapidly traded shares in their own company’s funds to produce arbitrage profits is an inexcusable and intolerable violation of mutual funds’ core ethic of putting shareholder interests above all else.” ICI Chairman Haaga said mutual funds would continue to work with the SEC and other government officials to seek additional possible responses to the issues uncovered by ongoing investigations. “Our commitment to righting the wrongs that arise from these investigations comes with no caveats, limitations or qualifications. We said ‘everything is on the table to protect fund shareholders,’ and we mean it. We said we would embrace whatever it takes to rebuild investor confidence and we mean that too. Our decisions today are important steps in an ongoing process.” -ICI- ICI-03-126 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,655 open-end investment companies ("mutual funds"), 588 closed-end investment companies,

106 exchange-traded funds and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.857 trillion, accounting for approximately 95% of total industry assets, and 90.2 million individual shareholders.

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