

MEMO# 15515

January 7, 2003

INSTITUTE COMMENT LETTER REGARDING SEC PROPOSAL REQUIRING AUDITOR RECORD RETENTION

[15515] January 7, 2003 TO: ACCOUNTING/TREASURERS COMMITTEE No. 1-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 3-03 INVESTMENT ADVISERS COMMITTEE No. 1-03 SEC RULES COMMITTEE No. 2-03 SMALL FUNDS COMMITTEE No. 1-03 UNIT INVESTMENT TRUST COMMITTEE No. 2-03 RE: INSTITUTE COMMENT LETTER REGARDING SEC PROPOSAL REQUIRING AUDITOR RECORD RETENTION The Institute recently filed a comment letter with the Securities and Exchange Commission on a proposed rule implementing the requirements in Section 802 of the Sarbanes- Oxley Act. The proposed rule would require accountants that audit or review an issuer's financial statements to retain their workpapers and other documents that form the basis for the audit or review for a period of five years. The Commission's Proposing Release requested comment on several issues regarding the application of the rule to investment companies and investment advisers. The Institute's comment letter is substantially similar to the draft letter we previously circulated to you.¹ The Institute's letter supports the Commission utilizing its authority under Section 32(c) of the Investment Company Act to require auditors to maintain records related to audits of investment companies and to make them available for inspection by SEC staff. The letter notes that Commission access to auditors' workpapers may enhance the efficiency and effectiveness of the SEC's inspection program. The Institute's letter argues that the Commission should not extend the rule's proposed record keeping requirements to issuers of securities. The letter notes that investment companies are already subject to extensive record keeping and record retention requirements. Moreover, to the extent the Commission utilizes its authority under Section 32(c), any such record retention requirement would be duplicative and unnecessary. Since many investment advisers are not issuers of securities, the Commission requested comment on whether the proposed rule should be extended to apply to audits of investment advisers. The Institute's letter notes that an investment adviser's balance sheet is not 1 See Accounting/Treasurers Committee No. 56-02, Closed-End Investment Company Committee No. 57-02, Investment Advisers Committee No. 32-02, SEC Rules Committee No. 108-02, Small Funds Committee No. 22-02, Unit Investment Trust Committee No. 33-02, dated December 20, 2002. 2 particularly meaningful to fund investors and that the Commission omitted the requirement that advisers to mutual funds provide an audited balance sheet in connection with shareholder approval of an investment advisory contract. In view of the de-emphasis of audited balance sheets, the Institute's letter recommends against extending the proposed rule to audits of investment advisers. Gregory M. Smith Director - Operations/ Compliance & Fund Accounting Attachment Attachment (in .pdf format)

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