MEMO# 14616

April 5, 2002

INSTITUTE LETTER ON REVIEW OF DIVISION OF INVESTMENT MANAGEMENT

[14616] April 5, 2002 TO: SEC RULES COMMITTEE No. 28-02 RE: INSTITUTE LETTER ON REVIEW OF DIVISION OF INVESTMENT MANAGEMENT The Institute has sent a letter to SEC Division of Investment Management Director Paul Roye (a copy of which is attached) offering its views on how the Division can improve its functions and operations. As a preliminary matter, the letter states that the Institute recognizes that the current insufficient level of resources at the SEC is the largest challenge facing the Commission in its effort to protect investors. The letter notes that the Institute has strongly supported proposals to increase the Commission's resources and reform the SEC's pay structure and believes that ensuring adequate resources for the SEC is essential for it to continue effective regulatory oversight and investor protection initiatives. In addition to increased resources, the letter states that there are several steps the Division could take that could improve its functions and operations. The most significant of these steps are summarized below. The letter first recommends that the Division take several steps to address delays in the area of exemptive applications. For example, the letter urges the Division to adopt rules to codify exemptive orders that have been granted to numerous applicants. The letter also recommends that the Division consider establishing a "Routine Applications Branch" for expedited review of routine applications. In addition, the letter recommends that consideration given to creating additional senior-level positions to address novel exemptive issues to allow them to be resolved more quickly. Finally, the letter recommends making publicly available the status of applications on file so that the public could examine the length of time taken to review applications and the staff could avoid unnecessary calls from applicants. In order to expedite the no-action letter process, the letter recommends that the Division subject the no-action process to certain concrete deadlines and publicize those deadlines. The letter states that the establishment of protocols of this type would impose a discipline that would prevent backlogs and provide more timely guidance to the industry. The letter also suggests several changes to the disclosure review process. In particular, the letter recommends better coordination within the Office of Disclosure Review and senior-level periodic review of comment letters to assure consistency and quality control. The letter also recommends that fund complexes be alerted to the name of the staff member(s) assigned to their complexes' filings to facilitate correspondence with staff. 2 The letter also recommends that the Division make changes to improve the efficiency of the rulemaking process, including soliciting comments early in the rulemaking process through informal fact-finding from persons in the industry with relevant experience in the subject of the rulemaking. In addition, the letter recommends that the Division consider reassigning to non- lawyers on staff the responsibility for the portions of rulemaking releases apart from the rule itself. In addition to recommendations regarding specific offices within the Division, the letter recommends that steps be taken to improve coordination among the various

offices in the Division. In particular, the letter recommends that there should be greater oversight by the Director's office to ensure the coordination of the different offices. Under the existing structure, this coordination duty could be assigned to the Deputy Director, who would focus on the issues of process and communication. The letter also encourages the Division to devote significant resources to the training of staff. In particular, the letter suggests that one way to better educate new staff about the operation of mutual funds would be to establish more "Attorney-Fellow" positions in the Division and to fill them with individuals with industry experience. In addition, the letter states that another staffing issue affecting the Division's operations is the frequent recusal of senior staff members from all matters, including routine ones, involving funds in which they are invested. In this regard, the letter recommends that staff members only recuse themselves in the event that the matter had a "direct and predictable effect" upon the individual's financial interest. Finally, the letter recommends that the Division improve its interaction with the other divisions at the Commission and urges the Division to enhance its efforts to educate the other divisions when necessary in order to avoid unintended consequences in the application of Commission rules to investment companies. The letter also recommends that the Division establish procedures through which it can develop better communication and coordination between its regulatory functions and the inspection and examination functions of the Office of Compliance Inspections and Examinations (OCIE). In particular, to improve such communication, the letter suggests that the Division and OCIE jointly establish a formal mechanism for conveying Division policy positions to OCIE staff nationwide. In the alternative, the letter states that consideration should be given to distributing a monthly communication to the examiners in the field that would highlight recent rulemaking and no-action letters, and provide in-depth analyses of particular issues that might arise during the course of an examination. Ari Burstein Associate Counsel Attachment Attachment (in .pdf format)
