

MEMO# 16778

November 18, 2003

INSTITUTE DRAFT COMMENT LETTER ON AMEX'S PROPOSED CORPORATE GOVERNANCE REQUIREMENTS; YOUR VIEWS REQUESTED BY NOVEMBER 20TH

[16778] November 18, 2003 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 60-03 SEC RULES COMMITTEE No. 93-03 RE: INSTITUTE DRAFT COMMENT LETTER ON AMEX'S PROPOSED CORPORATE GOVERNANCE REQUIREMENTS; YOUR VIEWS REQUESTED BY NOVEMBER 20TH As we previously informed you, the Securities and Exchange Commission recently published for comment an American Stock Exchange proposal that would enhance board independence and increase the role of independent directors on board committees for companies listed on Amex.¹ The Institute has prepared a draft comment letter, a copy of which is attached and summarized below. Comments are due to the SEC by this Friday, November 21st. If you have any comments on the draft letter, please contact me by phone at (202) 218-3563, by fax at (202) 326-5827, or by e-mail at ddonohue@ici.org no later than Thursday, November 20th. The draft letter commends Amex for taking this initiative to improve corporate governance by enhancing the role of independent directors and strengthening the oversight responsibilities of audit committees. The draft letter notes that the Institute's perspectives on the proposal are as both investors in and issuers of securities. It points out that as investors in equity securities, the Institute's members rely on high-quality financial reporting to make investment decisions. Accordingly, the letter states the Institute's general support for the proposal, and states our belief that the proposal will serve to enhance the interests of investors by improving the governance structure of listed companies and the integrity of financial reporting. The remainder of the draft letter is from the perspective of investment companies as issuers. The draft letter states that we are pleased that the proposal recognizes that because closed-end investment companies "are subject to pervasive federal regulation" that it is not necessary or appropriate to apply to them the proposed corporate governance requirements with the exception of proposed new audit committee requirements to the extent required by Rule 10A-3 under the Securities Exchange Act of 1934. The draft letter states that we strongly concur that with respect to closed-end investment companies, existing regulatory requirements satisfy many of Amex's policy goals, thereby making it unnecessary to apply the proposed ¹ See Institute Memorandum to Closed-End Investment Company Committee No. 58-03, SEC Rules Committee No. 89-03 [16770], dated November 12, 2003. ² requirements with respect to: independent directors; director nominations; executive compensation; and codes of conduct and ethics. The draft letter also states that the Institute concurs with Amex that it is not necessary to apply the proposed corporate governance requirements to exchange-traded investment companies, given the nature and

structure of these companies except to the extent required by Rule 10A-3. In addition, the draft letter states that we are pleased that the provisions of the Amex proposal are very similar to analogous provisions in the NYSE and Nasdaq rules recently published for comment by the SEC. The draft letter points out that such a coordinated approach ensures that the self-regulatory organizations do not compete on the basis of differences in their rules, encouraging a “race to the bottom” to attract new listings, to the ultimate detriment of investors. The draft letter also objects to the abbreviated 21-day comment period and recommends that the SEC lengthen the comment period for future significant self-regulatory rules proposals. Finally, the draft letter recommends that consistent with the NYSE and Nasdaq proposals, Amex make clear in any adopting release that while it does not require any audit committee members to satisfy the definition of audit committee financial expert set forth in Item 401(e) of Regulation S-K, a board may presume that such person qualifies as a financially sophisticated audit committee member. Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)

Copyright © by the 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.