

MEMO# 15183

September 17, 2002

DRAFT INSTITUTE LETTER TO THE SEC WITH RESPECT TO CODES OF ETHICS AND FINANCIAL EXPERTS

URGENT/ACTION REQUESTED [15183] September 17, 2002 TO: SEC RULES COMMITTEE No. 77-02 ACCOUNTING/TREASURERS COMMITTEE No. 44-02 RE: DRAFT INSTITUTE LETTER TO THE SEC WITH RESPECT TO CODES OF ETHICS AND FINANCIAL EXPERTS The recently-enacted Sarbanes-Oxley Act of 2002 contains several provisions that must be implemented through SEC rulemaking. Some provisions require the SEC to propose rules within 90 days of the legislation's enactment (i.e., by October 28th). Included among these are: (1) Section 406, which directs the Commission to issue rules to require each issuer to disclose whether or not it has adopted a code of ethics for senior financial officers and if not, why not, and (2) Section 407, which requires each issuer to disclose whether or not its audit committee includes at least one member who is a "financial expert," as that term is defined by the SEC. The Institute plans to send a letter to the SEC regarding the application of these provisions to investment companies in advance of the publication of proposed rules. A draft of the letter is attached for your review. The draft letter urges the SEC, in developing rules to implement Sections 406 and 407, to take into account existing requirements applicable to investment companies and the unique nature of investment company financial statements. In particular, with respect to Section 406, the letter describes existing code of ethics requirements for investment companies under the Investment Company Act of 1940 and recommends that the SEC deem compliance with Rule 17j-1 under the Investment Company Act to satisfy any new Commission requirement applicable to investment companies under Section 406. With respect to Section 407, the letter notes that several of the factors that the SEC is directed to consider in developing a definition of "financial expert" are not relevant to investment companies (e.g., whether the person has experience in "accounting for estimates, accruals, and reserves"), and recommends that the SEC define "financial expert" for investment companies in a way that recognizes the inherent differences between investment companies and operating companies. Given the short time frame for SEC rulemaking, we would like to send our recommendations to the SEC this week. Therefore, please provide any comments on the 2 draft letter to Frances Stadler (202/326-5822 or frances@ici.org) or Greg Smith (202/326-5851 or smith@ici.org) by the close of business on Wednesday, September 18th. Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format)

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