

**MEMO# 17895**

August 13, 2004

# **ICI COMMENT LETTER ON PROPOSED SEC REGULATION S-AM CONCERNING SHARING INFORMATION WITH AFFILIATES FOR MARKETING**

[17895] August 13, 2004 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 33-04 COMPLIANCE ADVISORY COMMITTEE No. 79-04 INVESTMENT ADVISERS COMMITTEE No. 12-04 PRIVACY ISSUES WORKING GROUP No. 5-04 SEC RULES COMMITTEE No. 70-04 SMALL FUNDS COMMITTEE No. 45-04 TRANSFER AGENT ADVISORY COMMITTEE No. 68-04 UNIT INVESTMENT TRUST COMMITTEE No. 22-04 RE: ICI COMMENT LETTER ON PROPOSED SEC REGULATION S-AM CONCERNING SHARING INFORMATION WITH AFFILIATES FOR MARKETING

As we previously informed you, in accordance with recent changes to federal law (i.e., the addition to the Fair Credit Reporting Act of a new Section 624), the Securities and Exchange Commission has published for comment a new regulation, Regulation S-AM, that would impose specific regulatory requirements on financial institutions that share certain consumer information with an affiliate if the information is used by such affiliate to make or send marketing solicitations.<sup>1</sup> In response to the Commission's request for comment, the Institute has filed the attached letter, which is briefly summarized below. This draft is substantially similar to the version previously circulated for comment.<sup>2</sup> In summary, the Institute's letter supports the Commission's proposal to place the responsibility for providing the requisite notice and opt-out right to consumers on the financial institution that shares consumer information with an affiliate, rather than on the affiliate. The letter additionally recommends that:

1 See Institute Memorandum to SEC Rules Committee No. 60-04, Small Funds Committee No. 39-04, Compliance Advisory Committee No. 70-04, Closed-End Investment Company Committee No. 26-04, Investment Advisers Committee No. 8-04, Unit Investment Trust Committee No. 16-04, Transfer Agent Advisory Committee No. 61-04, and Privacy Issues Working Group No. 2-04 [17762], dated July 13, 2004, summarizing Commission Release Nos. 34-49985, IC-26494, and IA-2259 Limitations on Affiliate Marketing (Regulation S-AM), July 8, 2004, (the "Release"). A copy of the Release is available on the SEC's website at: <http://www.sec.gov/rules/proposed/34-49985.htm>. 2 See Institute Memorandum to SEC Rules Committee No. 64-04, Small Funds Committee No. 42-04, Compliance Advisory Committee No. 76-04, Closed-End Investment Company Committee No. 30-04, Investment Advisers Committee No. 10-04, Unit Investment Trust Committee No. 20-04, Transfer Agent Advisory Committee No. 65-04, and Privacy Issues Working Group No. 3-04 [17823], dated July 28, 2004.

2 • The Commission's adopting release clarify the Commission's intent to construe the meaning of the term "affiliate" under Reg. S-AM consistently with this term under Reg. S-P; • The Commission clarify that proposed Reg. S-AM governs the use of eligibility information for marketing solicitation

purposes and that its application is not dependent upon the medium used to make such solicitation; • The constructive sharing of eligibility information that is lawful under the FCRA not be deemed to trigger the requirements of proposed Reg. S-AM; • Proposed Reg. S-AM be revised to permit the use of oral notices and opt-outs; and • The Commission provide a transition period for mandatory compliance with Reg. S-AM that will allow firms to coordinate the delivery of any notices required by Reg. S-AM with the 2005 annual privacy notices required under Reg. S-P. Each of these recommendations is discussed in detail in the Institute's letter. Tamara K. Salmon Senior 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.