

MEMO# 18490

February 17, 2005

ICI COMMENT LETTER ON CFA INSTITUTE ASSET MANAGER CODE OF PROFESSIONAL CONDUCT

[18490] February 17, 2005 TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 15-05 COMPLIANCE ADVISORY COMMITTEE No. 14-05 EQUITY MARKETS ADVISORY COMMITTEE No. 13-05 CLOSED-END INVESTMENT COMPANY MEMBERS No. 14-05 INVESTMENT ADVISER MEMBERS No. 4-05 INVESTMENT ADVISER ASSOCIATE MEMBERS No. 4-05 SEC RULES MEMBERS No. 29-05 SMALL FUNDS MEMBERS No. 16-05 INTERNATIONAL MEMBERS No. 6-05 RE: ICI COMMENT LETTER ON CFA INSTITUTE ASSET MANAGER CODE OF PROFESSIONAL CONDUCT Late last year, the CFA Centre for Financial Market Integrity ("CFA Centre")¹ issued for public comment an exposure draft of an Asset Manager Code of Professional Conduct ("Code"). According to the exposure draft, the Code "is meant to apply, on a global basis, to firms . . . who manage client assets as separate accounts or pooled funds (including mutual funds)." The Code sets forth minimum standards for providing asset management services to clients. The Institute has filed the attached comment letter on the Code. The letter is briefly summarized below. In addition to filing the comment letter, the Institute has provided more detailed comments on the exposure draft to CFA Centre staff members by telephone. The draft letter notes the Institute's support for efforts to encourage adherence to high ethical standards in the investment management industry. It expresses the Institute's belief, however, that the Code's mandatory and specific nature will undermine efforts to create and maintain effective codes of conduct. It also expresses concerns about the process for developing the exposure draft and the importance of proper coordination of global efforts in this area. The letter urges the CFA Centre to refrain from pursuing this initiative further. The letter states that to be effective, a code of conduct must take into account the circumstances and characteristics of a particular firm. It points out that while the preamble to 1 The CFA Centre was formed by the CFA Institute (formerly, the Association for Investment Management and Research, or AIMR). 2 the Code says it is intended to be general in nature and to allow firms flexibility, most provisions of the Code and related guidance are very specific and are expressed as mandates. The draft letter states that the sheer diversity of investment management firms around the world makes it extremely unlikely that all of the Code's provisions will be appropriate for all firms. It lists several variables that are relevant and important to the development of a robust and effective code of conduct for a particular firm and emphasizes that firms need sufficient latitude to take these variables into account. The letter indicates that the Code's mandatory language and "one size fits all" solutions to a wide range of complex issues create obstacles to the development of effective codes. They also lead to the conclusion that codes that incorporate standards of conduct that both comply with applicable law and benefit investors are deficient. The draft letter provides several

examples to illustrate these points. It states that the examples demonstrate that there are compelling reasons for the CFA Centre not to pursue this initiative. It expresses concern that firms will be placed in the unfair position of having to explain any divergence between their own codes and the Code (or alternatively, to adopt ineffective codes), and urges the CFA Centre not to issue it in final form. The letter recommends that if the CFA Centre determines to proceed with this initiative, it clarify that the Code comprises voluntary recommendations that firms may consider and use terms such as “may” or “could” to describe possible approaches for firms to achieve the recommended conduct. It states that this is especially important given the stated intent for the Code to apply broadly to all types of asset management firms throughout the world. The letter indicates that other issues also need to be addressed if the CFA Centre proceeds with the Code, and notes that the Institute has provided more specific comments directly to the CFA Centre staff. Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 18490, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18490.

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.