

**MEMO# 17179**

March 5, 2004

## **DRAFT ICI COMMENT LETTER ON SEC PROPOSAL REGARDING INVESTMENT ADVISER CODES OF ETHICS; MARCH 9TH CONFERENCE CALL**

URGENT/ACTION REQUESTED [17179] March 5, 2004 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 10-04 COMPLIANCE ADVISORY COMMITTEE No. 33-04 INVESTMENT ADVISERS COMMITTEE No. 4-04 SEC RULES COMMITTEE No. 21-04 SMALL FUNDS COMMITTEE No. 16-04 RE: DRAFT ICI COMMENT LETTER ON SEC PROPOSAL REGARDING INVESTMENT ADVISER CODES OF ETHICS; MARCH 9TH CONFERENCE CALL The Institute has prepared the attached draft comment letter on the Securities and Exchange Commission's proposed new rule, Rule 204A-1 under the Investment Advisers Act of 1940, which would require each registered investment adviser to adopt a code of ethics.<sup>1</sup> Comments on the proposal must be filed with the SEC by Monday, March 15th. The Institute will hold a conference call on Tuesday, March 9th at 2:30 p.m. EST to discuss the draft comment letter. The dial-in number for the call is 888-889-1961 and the pass code is 48827. If you plan to participate on the call, please send an e-mail to Monica Carter-Johnson at [mcarter@ici.org](mailto:mcarter@ici.org). If you are unable to participate in the call, please provide your comments before the call, if possible, to Dorothy Donohue by phone (202-218-3563), fax (202-326-5827), or e-mail ([ddonohue@ici.org](mailto:ddonohue@ici.org)). The draft letter is briefly summarized below. In addition, following the summary we describe two issues on which we specifically request your input. • The draft letter supports requiring each investment adviser code of ethics to set forth a standard of business conduct that the adviser requires of all its supervised persons. • The draft letter recommends revising the proposal to require that each code of ethics include provisions reasonably designed to prevent misuse of material nonpublic information about the adviser's securities recommendations and client securities holdings and transactions (rather than provisions reasonably designed to prevent access to material nonpublic information about the adviser's securities).<sup>1</sup> See Memorandum to Closed-End Investment Company Committee No. 5-04, Compliance Advisory Committee No. 11-04, Investment Advisers Committee No. 2-04, SEC Rules Committee No. 11-04, and Small Funds Committee No. 8-04 [17015], dated January 28, 2004. <sup>2</sup> recommendations and client securities holdings and transactions by persons who do not need such information to perform their duties). • The draft letter recommends revising the proposal to make the reporting obligations of directors, officers, partners, and employees of investment advisers more consistent with reporting obligations under Rule 17j-1. • The draft letter supports the Commission's decision to require reporting obligations with respect to holdings and transactions in certain affiliated mutual funds. • The draft letter supports requiring each

supervised person to acknowledge receipt of the code of ethics and suggests permitting such acknowledgements to be in electronic form (in addition to written form, as proposed).

- The draft letter generally supports the proposed recordkeeping requirements with respect to personal securities transactions but opposes requiring advisers to keep records of access persons' personal securities reports (and duplicate brokerage confirmations or account statements in lieu of those reports) electronically in an accessible computer database because the costs of such a requirement would greatly outweigh its benefits.
- The draft letter recommends that the Commission provide for a compliance date ranging from 9 to 12 months after adoption, depending on the nature of the new requirements. There are two appendices attached to the draft comment letter. Appendix A contains the text of proposed Rule 204A-1(e) and Rule 17j-1(a)(1), as we recommend that they be changed. Appendix B shows these provisions, marked to highlight our recommended changes. We welcome your comments on all aspects of the draft letter and are particularly interested in your views on the two issues described below.

1. The draft letter recommends that the Commission revise the proposed definition of "access person" to make Rule 204A-1 more consistent with Rule 17j-1. In part, our recommendation would eliminate the term "supervised person" and add (and define) the term "advisory person." Our proposed definition of "advisory person" would include, among others, any employee of the investment adviser or any employee of any company in a control relationship to the investment adviser. As proposed by the Commission, "supervised person" would include any employee of the investment adviser but not any employee of any company in a control relationship to the investment adviser. Should we include as an advisory person any employee of any company in a control relationship to the investment adviser? If not, what is the rationale for not including these employees?

2. We understand that some members have practical concerns with the scope of the advisory employee reporting obligations with respect to affiliated funds. In an attempt to address this concern, the draft letter recommends that the Commission narrow the scope of the term, "reportable fund" so that only those access persons of an adviser who have access to nonpublic information about a fund whose investment adviser or principal underwriter controls that adviser, is controlled by that adviser, or is under common control with that adviser would have to report their holdings in that fund. Does this recommended change to "reportable fund" appropriately limit the scope of the reporting obligations under Rule 204A-1? Dorothy M. Donohue Associate Counsel Attachment (in .pdf format)

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