

MEMO# 17031

January 30, 2004

AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT IMPACTING INVESTMENT COMPANIES

[17031] January 30, 2004 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 5-04 COMPLIANCE ADVISORY COMMITTEE No. 12-04 SEC RULES MEMBERS No. 12-04 SMALL FUNDS MEMBERS No. 7-04 UNIT INVESTMENT TRUST MEMBERS No. 2-04 RE: AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT IMPACTING INVESTMENT COMPANIES Effective December 13, 2003, President Bush signed into law the "Intelligence Authorization Act for Fiscal Year 2004" (Pub. Law 108-117). Section 374 of this Act amended the definition of "financial institution" as used in Section 3414 of the "Right to Financial Privacy Act" to include, among other entities, "an investment banker or investment company."* As a result of this amendment, investment companies are now subject to the provisions in Section 3414 that require a financial institution to produce a customer's or entity's financial records in response to a request from a specified U.S. Government official and prohibit the financial institution and any of its officers, employees, or agents from disclosing to any person that a Government authority has sought or obtained access to a customer's financial records. The Government authorities authorized to request records pursuant to Section 3414 are as follows: • A Government authority authorized to conduct foreign counter- or foreign positive- intelligence activities for purposes of conducting such activities; • The Secret Service for purposes of conducting its protective functions; • A Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses. In requesting such records, the Government authority must submit to the financial institution a written certificate, as required by Section 3403(b) of the Act, that is signed by an appropriate * Section 3414 of the Right to Financial Privacy Act may be found at 12 U.S.C. 3414. The definition of "financial institution" as used in this provision may be found at 31 U.S.C. 5312(a)(2)(I), which merely lists the entities included as financial institutions without further defining them. Other entities added to the definition of "financial institution" by this amendment are any brokers or dealers registered with the Securities and Exchange Commission and any broker or dealer in securities or commodities. See 31 U.S.C. 5312 (a)(2)(G) and (H). 2 supervisory official of the authority and that certifies to the financial institution that the Government authority has complied with the Act. In addition, Section 3414 requires financial institutions to comply with a request for a customer's or entity's financial records made pursuant to the Act by the Federal Bureau of Investigation when the Director or the Director's authorized designee "certifies in writing to the financial institution that such records are sought for foreign counter intelligence purposes to protect against international terrorism or clandestine intelligence activities, provided that such an

investigation of a U.S. person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.” Attached are copies of Section 3414, as amended, and the operative definition of “financial institution” as used in this Section (i.e., 31 U.S.C. 5312). Tamara K. Salmon Senior Associate Counsel Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments, please visit our members website (<http://members.ici.org>) and search for memo 17031, or call the ICI Library at (202) 326-8304 and request the attachments for memo 17031.

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