

MEMO# 15168

September 13, 2002

DRAFT INSTITUTE COMMENT LETTER ON PROPOSED SEC REGULATION RELATING TO ANALYST CERTIFICATION

[15168] September 13, 2002 TO: SEC RULES COMMITTEE No. 76-02 COMPLIANCE ADVISORY COMMITTEE No. 76-02 INVESTMENT ADVISERS COMMITTEE No. 19-02 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 36-02 RE: DRAFT INSTITUTE COMMENT LETTER ON PROPOSED SEC REGULATION RELATING TO ANALYST CERTIFICATION As we previously informed you,¹ the SEC published for comment proposed Regulation Analyst Certification ("Regulation AC") to address concerns regarding research analyst independence and objectivity. The Institute has prepared a draft comment letter to the SEC on the proposal, a copy of which is attached. Comments on proposed Regulation AC are due to the SEC no later than September 23, 2002. If you have any comments on the draft Institute letter, please contact the undersigned by phone at 202-371-5408, by fax at 202-326-5839, or by e-mail at aburstein@ici.org no later than September 18. The draft letter reiterates the points made in previous Institute letters on proposals by the NASD and the NYSE addressing research analyst conflicts of interest, in particular, that the Institute strongly opposes the application of requirements in this area to investment advisory personnel, in particular portfolio managers of mutual funds and other discretionary accounts. The draft letter therefore notes that we were pleased that proposed Regulation AC sets forth an approach similar to that taken by the NASD and NYSE in their recently adopted rule changes relating to analyst conflicts of interest, specifically that the term "research analyst" would not include an investment adviser, such as a mutual fund portfolio manager, who is not principally responsible for preparing research reports, even if the investment adviser is a registered person of a member. In response to a request for comment in the proposing release, the draft letter also supports the explicit exclusion of investment advisers from the requirements of proposed Regulation AC. The draft letter states, however, that if the SEC wishes to consider including 1 Memorandum to SEC Rules Committee No. 67-02, Compliance Advisory Committee No. 63-02, Investment Advisers Committee No. 16-02 and Closed-End Investment Company Committee No. 33-02, dated August 22, 2002. 2 portfolio managers and investment advisers under the scope of the rule, it should do so in the context of a tailored rule proposal under the Investment Advisers Act of 1940 and/or the Investment Company Act of 1940, rather than as part of an initiative designed for broker-dealer personnel. Ari Burstein Associate Counsel Attachment (in .pdf format)

should not be considered a substitute for, legal advice.