

MEMO# 11555

January 18, 2000

INSTITUTE COMMENTS ON THE SEC'S PROPOSAL TO EXCLUDE CERTAIN BROKER-DEALERS FROM THE ADVISERS ACT

* See Memorandum to Investment Advisers Committee No. 18-99 and SEC Rules Committee No. 107-99, dated December 20, 1999. [11555] January 18, 2000 TO: INVESTMENT ADVISERS COMMITTEE No. 3-00 SEC RULES COMMITTEE No. 10-00 RE: INSTITUTE COMMENTS ON THE SEC'S PROPOSAL TO EXCLUDE CERTAIN BROKER-DEALERS FROM THE ADVISERS ACT

In November 1999, the SEC published for comment a new rule under the Advisers Act, Rule 202(a)(11)-1, that would exclude a broker-dealer from regulation under the Act as long as: (1) any investment advice provided by the broker-dealer to its clients is provided on a non-discretionary basis; (2) such advice is solely incidental to the brokerage services of the broker-dealer; and (3) the broker-dealer discloses to its customers that their accounts are brokerage accounts. The Institute filed the attached comment letter in support of the SEC's proposal. The substance of the Institute's comment letter is identical to the draft version that was previously circulated.* The letter notes that the line that would be drawn under the Commission's proposal to distinguish those broker-dealers that would have to register under the Act from those that would not is somewhat arbitrary. Notwithstanding this, because the proposal would benefit customers by better aligning the interests of a broker-dealer with those of its customer, the Institute believes the approach taken in the Commission's proposal is a sound one. In view of the changes taking place in the industry, however, the Institute's letter recommends that the Commission study some of the broader issues raised by the proposal relating to the exclusion in the Act for certain broker-dealers. Tamara K. Reed Associate Counsel Attachment