

MEMO# 5001

July 22, 1993

INSTITUTE COMMENT LETTER ON CFTC BUNCHED ORDER PROPOSAL

July 22, 1993 TO: INVESTMENT ADVISERS COMMITTEE NO. 21-93 SEC RULES COMMITTEE NO. 67-93 DERIVATIVE INSTRUMENTS SUBCOMMITTEE RE: INSTITUTE COMMENT LETTER ON CFTC BUNCHED ORDER PROPOSAL

As we previously informed you, the Commodity Futures Trading Commission recently proposed rule amendments that would permit an "eligible account manager" (such as a registered investment adviser) to bunch futures orders for certain institutional clients, including registered investment companies. The proposed rule amendments also would allow end-of-day allocation of the fills for those orders. (See Memorandum to Investment Advisers Committee No. 11-93, SEC Rules Committee No. 46-93 and Derivative Instruments Subcommittee, dated May 11, 1993.) The Institute has filed the attached comment letter with the CFTC regarding the proposal. The Institute's letter expresses support for the rationale behind the proposal, which is "to permit account managers to provide equivalent treatment of customers' accounts traded pursuant to strategies involving activity in both futures markets and securities markets." However, the letter notes that the costs of complying with the proposal in its current form may outweigh its potential benefits, and suggests some changes to address this concern. For example, the attached letter points out that the proposal would be restricted to "intermarket orders" but that it is not clear what this term would encompass, particularly in the context of registered investment companies. The letter suggests that all futures orders entered on behalf of registered investment companies be considered "intermarket orders" for purposes of the proposal. It also describes various practical problems presented for investment advisers to investment companies by a proposed prohibition on participation in the allocation procedure by accounts in which any of an extensive list of persons has an "interest." In addition, the letter recommends certain modifications to the items which, under the proposal as currently drafted, an investment adviser would have to certify in writing to the futures commission merchant ("FCM") allocating the order. The Institute's letter opposes a provision of the proposal that would require an investment adviser to provide information to the FCM about "related securities accounts," because of the confidential, proprietary nature of this information. The letter asserts that the requirement that investment advisers make various records available to the CFTC or the Justice Department upon request should address any enforcement concerns. It recommends, however, that the proposal be amended specifically to provide for confidential treatment of such records. Frances M. Stadler Assistant Counsel Attachment

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.