

MEMO# 17532

May 14, 2004

NASD AND NYSE INTERPRETIVE GUIDANCE ON ANALYST CONFLICT OF INTEREST RULES

[17532] May 14, 2004 TO: SEC RULES MEMBERS No. 71-04 COMPLIANCE ADVISORY COMMITTEE No. 50-04 INVESTMENT ADVISER MEMBERS No. 8-04 CLOSED-END INVESTMENT COMPANY MEMBERS No. 31-04 RE: NASD AND NYSE INTERPRETIVE GUIDANCE ON ANALYST CONFLICT OF INTEREST RULES The NASD and NYSE have issued a joint memorandum providing further guidance on rules governing research analysts' conflicts of interest.¹ Specifically, the joint memorandum, in response to changes to the SRO rules governing "research analysts" and "research reports," provides clarification of previously issued interpretive guidance and responds to questions received since the last SRO joint memorandum was issued in July 2002.² In general, the joint memorandum addresses issues relating to, among other things, the definition and scope of "research report," the application of the SRO rules to third-party research, restrictions on publishing research, personal trading restrictions and disclosure. Of most significance to investment companies, the joint memorandum states that the SROs are adopting the SEC's interpretation regarding periodic reports and other communications prepared for investment company shareholders or discretionary investment account clients. In particular, communications that discuss individual securities in the context of a fund's or account's past performance or the basis for past discretionary investment decisions are generally excluded from the definition of "research report." In addition, the joint memorandum states that an investment company portfolio manager that prepares these types of communications would not be considered a "research analyst" for purposes of the SRO rules even if he or she were registered with a member. The memorandum adds, however, that if such a portfolio manager prepares communications that meet the definition of "research report" and do not fall within any of the exceptions to that definition, those communications will be subject to the SRO rules and the portfolio manager will be regarded as a "research analyst." Ari Burstein Associate Counsel 1 The joint memorandum can be found on the NASD's website at <http://www.nasdr.com/pdf-text/0418ntm.pdf>. 2 See Memorandum to SEC Rules Members No. 47-02, Compliance Advisory Committee No. 47-02, Investment Advisor Members No. 26-02 and Closed-End Investment Company Members No. 23-02, dated July 3, 2002 [14870].

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