

**MEMO# 13516**

May 17, 2001

## **SEC AND CFTC PROPOSE RULES IMPLEMENTING COMMODITY FUTURES MODERNIZATION ACT OF 2000**

[13516] May 17, 2001 TO: INVESTMENT ADVISERS COMMITTEE No. 13-01 SEC RULES COMMITTEE No. 38-01 RE: SEC AND CFTC PROPOSE RULES IMPLEMENTING COMMODITY FUTURES MODERNIZATION ACT OF 2000 The Securities and Exchange Commission and the Commodity Futures Trading Commission have proposed rules under the Securities Exchange Act of 1934 and the Commodity Exchange Act implementing new statutory provisions enacted by the Commodity Futures Modernization Act of 2000 (the "CFMA"). A copy of the joint proposing release is attached.<sup>1</sup> The CFMA, which became law on December 21, 2000, lifted a previous ban on single stock and narrow-based stock index futures, and established a framework for the joint regulation of these products by the SEC and the CFTC. Specifically, the CFMA amended the definition of "security" in the Exchange Act, the Securities Act of 1933, the Investment Company Act, and the Investment Advisers Act to include a "security future." For purposes of each of these Acts, as well as the CEA, "security future" is defined, in relevant part, as "a contract of sale for future delivery of a single security or of a narrow-based security index." The definition of "narrow-based security index" includes the terms "dollar value of average daily trading volume" and "market capitalization," which are not further defined by statute. Instead, the CFMA directs the SEC and the CFTC to jointly specify by rule or regulation the methods to be used to determine "dollar value of average daily trading volume" and "market capitalization" for purposes of this definition. Proposed Exchange Act Rule 3a55-1 and proposed Rule 41.11 under the CEA are intended to specify such methods. These proposed rules also would define certain terms that would add clarity to the statutory definition. In addition, proposed Exchange Act Rule 3a55-2 and proposed Rule 41.12 under the CEA would create an exception to the definition of narrow-based security index, to permit, subject to certain conditions, a designated contract market, registered derivatives transaction execution facility, or foreign board of trade to continue trading a contract of sale for future delivery on a security index that becomes a narrow-based security index during the first 30 days after the future begins trading. Similarly, proposed Rule 41.14 under the CEA would permit a national securities exchange to continue trading a contract of sale for future delivery on an index that ceases to be a narrow-based security index, subject to 1 SEC Release No. 34-44288 (May 10, 2001), 66 Fed. Reg. 27560 (May 17, 2001).<sup>2</sup> certain conditions. Finally, proposed Exchange Act Rule 3a55-3 and proposed Rule 41.14 under the CEA would provide that when a futures contract on a security index is traded on or subject to the rules of a foreign board of trade, that index shall not be considered a narrow-based security index if it would not be a narrow-based security index pursuant to the statutory definition of a narrow-based security index or the exclusions from that definition. Comments on the proposed

rules are due to the SEC and CFTC no later than June 18. If you have any comments you would like the Institute to consider including in a possible comment letter, please provide them to me by phone at (202) 326-5822, by fax at (202) 326-5827, or by e-mail at frances@ici.org, or to Tami Reed by phone at (202) 326-5825, by fax at (202) 326- 5827, or by e-mail at tamara@ici.org, no later than Friday, June 1. Frances M. Stadler Deputy Senior Counsel Attachment Attachment (in .pdf format)

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