

MEMO# 18446

January 24, 2005

INSTITUTE DRAFT LETTER ON PROPOSED SEC RULE AND INTERPRETIVE STATEMENT EXCLUDING CERTAIN BROKERS FROM THE ADVISERS ACT

[18446] January 24, 2005 TO: INVESTMENT ADVISERS COMMITTEE No. 4-05 SEC RULES COMMITTEE No. 8-05 RE: INSTITUTE DRAFT LETTER ON PROPOSED SEC RULE AND INTERPRETIVE STATEMENT EXCLUDING CERTAIN BROKERS FROM THE ADVISERS ACT Earlier this month, the Securities and Exchange Commission proposed permanent adoption of a revised version of a temporary rule defining when broker-dealers are excluded from regulation under the Investment Advisers Act of 1940.* The Release also proposed publication of an interpretive statement to provide further guidance relating to this exclusion. A copy of the Institute's draft comment letter on these proposals is attached and briefly summarized below. Comments on the Release are due to the Commission no later than February 7th. Please provide any comments you have on the draft letter to the undersigned no later than Monday, January 31st. Comments may be provided by phone (202-326-5825) or e-mail (tamara@ici.org). SUPPORT FOR THE PROPOSED RULE The Institute's letter supports the Commission's proposed rule relating to the Adviser's Act exclusion for broker-dealers as well-reasoned. We believe it will provide greater clarity regarding when clients of a broker-dealer are entitled to the protections of the Advisers Act. The Institute concurs with the Commission's approach to treat all accounts over which a broker-dealer exercises investment discretion as advisory accounts, regardless of the broker-dealer's form of compensation. Similarly, the Institute strongly supports both the placement and content of the disclosure that would be required of broker-dealers relying on the exclusion. The letter notes that such disclosure should help investors make informed decisions regarding whether to retain a broker-dealer or an investment adviser to assist them in fulfilling their investment goals. * See SEC Release Nos. 34-50980 and IA 2340, Certain Broker-Dealers Deemed Not To Be Investment Advisers (Jan. 6, 2005). A copy of the Release is available on the Commission's website at: <http://www.sec.gov/rules/proposed/34-50980.pdf>. 2 SUPPORT FOR THE PROPOSED INTERPRETIVE STATEMENT The letter also supports the Commission's proposal to publish an interpretive statement relating to what types of advisory services of a broker-dealer are "solely incidental" to its brokerage services for purposes of the exclusion. The Institute concurs with the Commission's approach to provide this guidance by identifying those practices – such as financial planning and certain wrap fee program services – that would not be deemed solely incidental to the broker-dealer's brokerage services. Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

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