

MEMO# 15942

April 24, 2003

ICI COMMENT LETTER TO SEC ON NASD PROPOSAL RELATING TO INVESTMENT ANALYSIS TOOLS

[15942] April 24, 2003 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 3-03 INVESTMENT ADVISERS COMMITTEE No. 8-03 PENSION COMMITTEE No. 11-03 SEC RULES COMMITTEE No. 39-03 RE: ICI COMMENT LETTER TO SEC ON NASD PROPOSAL RELATING TO INVESTMENT ANALYSIS TOOLS As indicated previously, the Securities and Exchange Commission recently published for comment a revised version of proposed Interpretive Material to NASD Rule 2210 that would allow NASD members to make available to their customers “investment analysis tools” under certain circumstances.¹ The Institute has filed a comment letter with the SEC on the proposal. The comment letter is substantially similar to the draft letter we sent to you earlier this week. A copy of the comment letter is attached and summarized below. The Institute’s letter is generally supportive of the proposed IM. Our letter notes that we are pleased that many of the recommendations we made to the NASD on its original proposal² are reflected in the current proposal. We recommend, however, that the NASD make the following additional revisions to the proposed IM: • Eliminate the requirement in the IM that the mathematical process used by an investment analysis tool be one that can be “audited.” • Eliminate the requirement to disclose that other investments not considered by the tool may have characteristics similar or superior to those being analyzed by the tool. • In lieu of requiring that the tool and each piece of related sales material and each written report generated by the tool include the same disclosure, provide NASD members the flexibility to determine how such disclosure is provided to investors, so long as the totality of the disclosure satisfies the requirements of the IM. 1 See Memorandum No. 15925, dated April 22, 2003. 2 See Memorandum No. 15056, dated August 20, 2002 (original NASD proposal); Memorandum No. 15226, dated October 2, 2002 (ICI comment letter). 2 • Conform the proposed filing requirements in the IM to the NASD’s existing filing requirements under Rule 2210. In addition to providing these substantive comments on the proposal, the Institute’s letter expresses concern with the insufficient amount of time the Commission has provided interested persons to comment on the proposal – i.e., the bare minimum 21-day period. It strongly encourages the Commission to lengthen the comment period for future significant self-regulatory organization rule proposals. Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

should not be considered a substitute for, legal advice.