

MEMO# 15226

October 2, 2002

ICI COMMENT LETTER ON NASD'S PROPOSED INTERPRETIVE MATERIAL REGARDING THE USE OF INVESTMENT ANALYSIS TOOLS

[15226] October 2, 2002 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 19-02 INVESTMENT ADVISERS COMMITTEE No. 20-02 PENSION COMMITTEE No. 40-02 SEC RULES COMMITTEE No. 79-02 RE: ICI COMMENT LETTER ON NASD'S PROPOSED INTERPRETIVE MATERIAL REGARDING THE USE OF INVESTMENT ANALYSIS TOOLS As we previously informed you, in August, the NASD proposed for comment Interpretive Material (IM) that would provide a limited exception to Rule 2210(d)(2)(N), which prohibits NASD members from making predictions or projections of investment results to the public.¹ Under the exception provided in the IM, an NASD member could make available to its customers an "investment analysis tool," provided the member complies with specified disclosure requirements and provides NASD staff access to the tool and any related sales material at least 30 days prior to its use. A copy of the Institute's comment letter on the proposal is summarized below. The Institute's letter supports the NASD's proposal but recommends that the NASD:

- Clarify that the IM will have no impact on the types of tools that have been permitted by the NASD under Rule 2210(d)(2)(N);
- Revise the disclosure that would be required by the IM to limit it to information that would be material to an investor utilizing an investment analysis tool;
- Delete the references to "related sales material" in subsection (c) of the proposed IM, because the detailed disclosure requirements of the IM should not apply to sales material given that an investor who chooses to utilize an investment analysis tool will receive those disclosures along with the tool; and
- Revise the IM's pre-filing requirements from thirty days to ten days in order to ensure consistency with the other filing requirements imposed under Rule 2210.

¹ See Memorandum No. 15056 (August 20, 2002), summarizing NASD Notice to Members 02-51. The comment period on the proposal was extended from September 13, 2002 to October 1st. ² The Institute's letter is substantially similar to the draft letter previously circulated with the following two exceptions.² First, the discussion in the draft letter of the proposed definition was revised to delete the recommendation that the NASD more precisely define this term. Second, the draft letter did not include any discussion of the application of the IM's proposed disclosure requirements to "related sales material." The letter filed by the Institute recommends that such material be excluded from the disclosure requirements set forth in subsection (c) of the IM. A copy of the Institute's letter is attached. Tamara K. Reed Associate Counsel Attachment (in .pdf format) ² See Memorandum No. 15137 (September 9, 2002).

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