

MEMO# 11482

December 20, 1999

INSTITUTE DRAFT COMMENT LETTER ON THE SEC'S PROPOSAL TO EXCLUDE CERTAIN BROKER-DEALERS FROM THE ADVISERS ACT

* See Memorandum to Investment Adviser Members No. 25-99, SEC Rules Members No. 67-99 and Investment Adviser Associate Members No. 28-99, dated November 8, 1999. [11482] December 20, 1999 TO: INVESTMENT ADVISERS COMMITTEE No. 18-99 SEC RULES COMMITTEE No. 107-99 RE: INSTITUTE DRAFT COMMENT LETTER ON THE SEC'S PROPOSAL TO EXCLUDE CERTAIN BROKER-DEALERS FROM THE ADVISERS ACT

As we previously informed you, the SEC recently published for comment a new rule under the Advisers Act, Rule 202(a)(11)-1, that would exclude a broker-dealer from regulation under the Act as long as: (1) any investment advice provided by the broker-dealer to its clients is provided on a non-discretionary basis; (2) such advice is solely incidental to the brokerage services of the broker-dealer; and (3) the broker-dealer discloses to its customers that their accounts are brokerage accounts.* The SEC has requested comments on the proposal by January 14th. The Institute has drafted the attached letter that expresses support for the SEC's proposal. The letter notes that the line that would be drawn under the Commission's proposal to distinguish those broker-dealers that would have to register with the Commission from those that would not is somewhat arbitrary. However, because the proposal would benefit customers by better aligning the interests of a broker-dealer with those of its customer, and is therefore consistent with one of the compensation recommendations in the Tully Report, the Institute believes the approach taken in the Commission's proposal is a sound one. Persons with comments on the draft letter should contact the undersigned by phone (202-326- 5825) or e-mail (tamara@ici.org) no later than Friday, January 7, 1999. Tamara K. Reed Associate Counsel Attachment