

MEMO# 13709

July 10, 2001

DRAFT COMMENT LETTER ON SEC'S INTERIM RULES RELATING TO THE REGULATION OF BANKS AS BROKER- DEALERS UNDER THE '34 ACT

[13709] July 10, 2001 TO: ADVISORY GROUP ON BANKING ISSUES BANK INVESTMENT MANAGEMENT MEMBERS No. 4-01 BANK AND TRUST ADVISORY COMMITTEE No. 7-01 PENSION COMMITTEE No. 45-01 RE: DRAFT COMMENT LETTER ON SEC'S INTERIM RULES RELATING TO THE REGULATION OF BANKS AS BROKER-DEALERS UNDER THE '34 ACT As we previously advised you,* effective May 11, 2001 the Securities and Exchange Commission adopted on an interim final basis rules to implement provisions in the Gramm- Leach-Bliley (GLB) Act that provide functional exceptions for banks from the definitions of "broker" and "dealer" under the Securities Exchange Act of 1934. As noted in our previous Memorandum, the Institute intends to comment on the rules only to the extent they impact investment companies. Attached is a draft comment letter that focuses on the provisions in the interim rules (i) interpreting the "sweep" exception of the GLB Act and (ii) adopting an exemption for the use of NSCC and Fund/SERV to execute transactions in investment company securities. The draft letter is summarized below. Comments are due to the Commission no later than Tuesday, July 17, 2001. Members with comments on the Institute's draft letter should submit them to the undersigned by phone (202-326-5825) or e-mail (tamara@ici.org) no later than Friday, July 13, 2001. THE SWEEP EXCEPTION As amended by the GLB Act, the Exchange Act provides an exception from the definition of "broker" or "dealer" for a bank that invests or reinvests deposit funds into any registered no-load money market fund. Because the GLB Act did not define the terms "no-load" or "money market fund," the interim rules include definitions for these terms. (See Interim Rules 3b-17(e) and (f).) The Institute's letter expresses support for the fact that the Interim Rules define these terms consistent with their usage under the Exchange Act and the Investment Company Act of 1940. * See Memorandum to Advisory Group on Banking Issues, Bank Investment Management Members No. 2-01 and Bank and Trust Advisory Committee No. 4-01 (May 30, 2001) and to Pension Committee No. 34-01 (May 31, 2001). 2THE USE OF NSCC AND FUND/SERV Rule 3a4-6 of the Interim Rules provides an exemption to allow banks to continue to execute transactions in shares of open-end investment companies through NSCC's Mutual Fund Services, including Fund/SERV. As noted in the Institute's draft letter, this exemption will enable banks to clear and settle mutual funds transactions without having to effect such trades through a registered broker or dealer. Accordingly, the Institute's letter supports this exemption. Tamara K. Reed Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and

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