

MEMO# 13277

March 20, 2001

DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSED RULE RELATING TO PROPOSED RULE CHANGES OF SELF- REGULATORY ORGANIZATIONS

[13277] March 20, 2001 TO: EQUITY MARKETS ADVISORY COMMITTEE No. 10-01 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 5-01 FIXED-INCOME ADVISORY COMMITTEE No. 3-01 SEC RULES COMMITTEE No. 29-01 RE: DRAFT INSTITUTE COMMENT LETTER ON SEC PROPOSED RULE RELATING TO PROPOSED RULE CHANGES OF SELF-REGULATORY ORGANIZATIONS As we previously informed you,¹ the Securities and Exchange Commission ("SEC") has published for comment a proposed rule² to amend the requirements applicable to self-regulatory organization ("SRO") filings of proposed rule changes with the SEC. The Institute has prepared a draft comment letter on the proposal. The draft letter states that the Institute supports amendments to the rulemaking process that would improve the ability of interested persons to submit comments on SRO actions but that we have reservations regarding several aspects of the proposed rule, including the new category of rules eligible for immediate effectiveness. In addition, the draft letter states that we are disappointed that the Commission did not propose changes to the length of time allocated to interested persons to comment on SRO proposed rule changes. The Institute therefore recommends that this issue be addressed prior to adoption of the proposed rule. A. Immediate Effectiveness of Trading Rules The proposal would allow proposed rule changes governing most "trading rules," a new defined term under the proposal, to become effective upon filing with the Commission. Only those trading rules that make "fundamental structural changes" to the market, and that significantly affect the protection of investors or the public interest or impose a significant burden on competition, would not be eligible to become effective upon filing and would be subject to the regular notice and comment period. The draft letter states that the Institute opposes immediate effectiveness for trading rules as there have been numerous instances where the types of proposed rule changes that would be 1 See Memorandum to Equity Markets Advisory Committee No. 5-01, Closed-End Investment Company Committee No. 4-01, Fixed Income Advisory Committee No. 1-01, and SEC Rules Committee No. 13-01, dated February 5, 2001. 2 Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 6, 2001). 2 eligible for immediate effectiveness under the proposal have had a major impact on market participants, many of which necessitated further industry discussion prior to approval and implementation of the rule change. The draft letter states that the Institute is therefore concerned that many of the filings that would become immediately effective under the proposed rule could result in adverse consequences for investors without any opportunity for input from the public or review by the Commission. In addition, although the

Commission would retain the authority to abrogate a rule change that has become effective if it determines that abrogation is necessary or appropriate in the public interest or for the protection of investors, or, under the current proposal, the rule change makes fundamental structural changes and should not have been filed for immediate effectiveness, the draft letter states that it is questionable whether many proposed rule changes will meet these high standards. If the Commission does permit most trading rules to become effective immediately upon filing, the draft letter recommends that, at a minimum, such rules not become operative until 30 days after the date of filing. The draft letter states that a delayed operational date would allow interested persons the opportunity to examine the filing and determine whether it could have effects on the securities markets which need to be addressed and could prevent a disruption to an SRO's operations if it is found that implementation of the proposed rule change will have adverse effects on the market. The Proposing Release also requests comment on whether there are other types of proposed rule changes that the Commission should consider making eligible for immediate effectiveness, such as proposed rule changes relating to listing standards and new products. The draft letter states that, like many trading rules, proposed rule changes relating to these types of issues potentially have major impacts on investors and address fundamental concerns of investors. Therefore, the Institute opposes making other types of rule changes become effective immediately.

B. Public Comment Period The draft letter states that the Institute is extremely disappointed that the Commission did not propose changes to the 21-day time period currently provided for public comment on SRO proposed rule changes. The draft letter notes that the Institute has commented on several occasions in the past that a 21-day comment period is inadequate to develop detailed, substantive and well-considered comments before the close of the comment period on important SRO proposed rule changes and that providing the public with 21 days to comment on significant proposals does not constitute a meaningful "opportunity" to comment. The draft letter therefore states that the first step in improving the SRO rulemaking process must be to extend the time permitted for public comment and urges the Commission to lengthen the public comment period, at the very least for those filings that would make fundamental structural changes and for other non-trading rules that would be subject to the regular notice and comment period under Section 19(b)(2) of the Exchange Act.

3Comments on this proposal are due to the SEC no later than April 6, 2001. If you have any comments on the draft Institute letter, please provide them to the undersigned by phone at (202) 371-5408, by fax at (202) 326-5841, or by e-mail at aburstein@ici.org no later than March 30. Ari Burstein Associate Counsel Attachments Attachment (in .pdf format)