

MEMO# 17672

June 10, 2004

DRAFT INSTITUTE LETTER ON SEC CONCEPT RELEASE ON SECURITIES TRANSACTIONS SETTLEMENT

[17672] June 10, 2004 TO: SMALL FUNDS COMMITTEE No. 37-04 RE: DRAFT INSTITUTE LETTER ON SEC CONCEPT RELEASE ON SECURITIES TRANSACTIONS SETTLEMENT As we previously informed you,¹ the Securities and Exchange Commission has published for comment a concept release on securities transactions settlement.² The Concept Release requests comment on methods to improve the safety and operational efficiency of the U.S. clearance and settlement system and to help the U.S. securities industry achieve straight-through processing ("STP"). Specifically, the Concept Release requests comment on: (1) changes to the confirmation and affirmation process; (2) shortening the securities settlement cycle; and (3) reducing the use of physical securities. The Institute has prepared a draft comment letter on the Concept Release. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the Concept Release are due to the SEC no later than June 16, 2004. If you have any comments on the Institute's draft letter, please contact Ari Burstein by phone at 202-371-5408 or by e-mail at aburstein@ici.org or Diane Butler by phone at 202-326-5850 or by e-mail at butler@ici.org no later than June 15.

I. Trade Confirmation and Affirmation The draft letter strongly supports the goal of improving the trade confirmation and affirmation process in order to achieve STP in the securities markets. Nevertheless, the draft letter states that market forces, and not regulatory mandates, should drive the move to STP.³ If the securities industry does not voluntarily move to STP, however, the draft letter states that a regulatory mandate may be necessary and recommends that such a mandate be implemented in 1 Memorandum to Accounting/Treasurers Committee No. 9-04, STP Advisory Committee No. 1-04, SEC Rules Committee No. 34-04, Technology Advisory Committee No. 10-04 and Equity Markets Advisory Committee No. 16-04, dated April 15, 2004 [17394]. 2 SEC Release Nos. 33-8398; 34-49405; IC-26384 (March 11, 2004), 69 FR 12922 (March 18, 2004) ("Concept Release"). 3 The Concept Release requests comment on two possible approaches to improve the trade confirmation and affirmation process in order to achieve STP: (1) adoption of an SEC rule that would require broker-dealers to confirm and affirm trades on trade date ("T+0") and (2) requiring the SROs to amend their rules to prohibit broker-dealers from providing certain privileges to a customer unless all trades with that customer are confirmed/affirmed on T+0. 2 a series of interim steps in order to provide market participants with an opportunity to address a number of issues concerning an accelerated confirmation and affirmation process. The draft letter also recommends that ample time, e.g., not less than 24 months, be provided for the implementation of any changes to the confirmation and affirmation process. The Concept Release also requests

comment on whether all participants in institutional trades should be required to use a matching service in order to improve the confirmation and affirmation process and to achieve STP. The draft letter states that while the use of a matching service could provide a means to improve the confirmation and affirmation process and to achieve STP, the SEC should not mandate the use of such a service by all participants in institutional trades. Instead, the draft letter recommends that market participants should be allowed to choose alternative methods for the confirmation and affirmation of trades, as long as that process is completed in the requisite time frame. Members: Do you agree that the move to STP should be done on a voluntary basis and not by regulatory mandate? If yes, why? If a regulatory mandate is necessary, should this be done by amending existing SRO rules or by implementing an SEC rule? Please provide reasons for your choice. What are the specific burdens of mandating the use of a matching service? II. Securities Settlement Cycle The Concept Release requests comment on the benefits and costs associated with implementing a settlement cycle for most broker-dealer transactions that is shorter than T+3. The draft letter states that while the Institute supports the goals of shortening the settlement cycle, we are not in favor of shortening the cycle to less than T+3 at this time. Instead, the SEC's and the industry's focus should be on achieving industry-wide STP. In addition, the draft letter states that a shorter settlement cycle would not produce significant benefits over and above those that will be realized by moving to a faster confirmation and affirmation process and that the costs associated with establishing a shorter settlement cycle could outweigh the related benefits. III. Immobilization and Dematerialization of Securities Certificates The Concept Release requests comment on a number of specific issues relating to the immobilization or dematerialization of securities certificates, including whether securities certificates should be completely immobilized or dematerialized. The draft letter strongly supports the immobilization or dematerialization of securities certificates and states that there are many benefits to be gained by market participants and investors by such an initiative. Ari Burstein Associate Counsel Attachment

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