

MEMO# 15061

August 22, 2002

PROPOSED SEC REGULATION RELATING TO ANALYST CERTIFICATION

[15061] August 22, 2002 TO: SEC RULES COMMITTEE No. 67-02 COMPLIANCE ADVISORY COMMITTEE No. 63-02 INVESTMENT ADVISERS COMMITTEE No. 16-02 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 33-02 RE: PROPOSED SEC REGULATION RELATING TO ANALYST CERTIFICATION The Securities and Exchange Commission has published for comment proposed Regulation Analyst Certification ("Regulation AC") to address concerns regarding research analyst independence and objectivity.¹ Proposed Regulation AC is part of a continuing process by the SEC to address conflicts of interest affecting research issued by securities firms and is intended to complement other rules governing conflicts of interest, including rules recently adopted by the NYSE and the NASD.² The most significant aspects of the proposal are summarized below. Comments on proposed Regulation AC are due to the SEC no later than September 23, 2002. If you have any suggestions that you would like the Institute to include in its comment letter, please contact the undersigned by phone at 202-371-5408, by fax at 202-326- 5839, or by e-mail at aburstein@ici.org no later than September 5. Proposed Regulation AC would require, among other things, that any "research report" disseminated by broker-dealers include certifications by "research analysts" that the views expressed in the research report accurately reflect the analysts' personal views, and whether the analysts received compensation or other payments in connection with their specific recommendations or views. Research analysts also would be required to provide certifications and disclosures in connection with public appearances. The proposed regulation defines "research report" as "a written communication that includes an analysis of securities of an issuer or issuers, provides information reasonably sufficient upon which to base an investment decision and includes a recommendation." ¹ Securities Act Release No. 8119 (August 2, 2002) ("Release"). The proposed regulation can be found on the SEC's web site at <http://www.sec.gov/rules/proposed/33-8119.htm> ² See Memorandum to SEC Rules Members No. 35-02, Compliance Advisory Committee No. 40-02, Closed-End Investment Company Members No. 20-02 and Investment Adviser Members No. 22-02, dated May 13, 2002. ² "Research analyst" is defined as "any natural person who is principally responsible for the analysis of any security or issuer included in a research report." The Release does not explicitly discuss the applicability of proposed Regulation AC to portfolio managers. However, in its general request for comment, the SEC requests comment whether the proposed definitions of "research report" and "research analyst" should be broader or narrower than proposed and states in a footnote to this request for comment that "... we note the term research analyst would not include an investment adviser, such as a mutual fund portfolio manager, who is not principally responsible for preparing research reports, even if the investment adviser is a registered person of a member." The footnote further cites the recent Joint Memorandum issued by the NYSE and the NASD which interpreted their respective rules in this manner.³ The Release also notes

that the application of proposed Regulation AC broadly covers brokers or dealers and any person associated with a broker or dealer because the SEC believes that these entities are subject to the greatest conflicts. The SEC requests comment, however, on whether there are certain classes of persons associated with a broker-dealer that should not be subject to the rule, and whether the rule should explicitly exclude investment advisers. Ari Burstein Associate Counsel 3 See Memorandum to SEC Rules Members No. 47-02, Compliance Advisory Committee No. 47-02, Closed-End Investment Company Members No. 23-02 and Investment Adviser Members No. 26-02, dated July 3, 2002.

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