

MEMO# 18527

February 10, 2005

DRAFT INSTITUTE LETTER ON SEC PROPOSAL RELATING TO REGULATION M

[18527] February 10, 2005 TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 6-05 EQUITY MARKETS ADVISORY COMMITTEE No. 11-05 SEC RULES COMMITTEE No. 13-05 RE: DRAFT INSTITUTE LETTER ON SEC PROPOSAL RELATING TO REGULATION M As we previously informed you,¹ the Securities and Exchange Commission has published for comment proposed amendments to Regulation M relating to anti-manipulation rules concerning the offering of securities.² The Institute has prepared a draft comment letter on the proposal. The most significant aspects of the draft letter are summarized below and a copy of the draft letter is attached. Comments on the proposed amendments to Regulation M are due to the SEC no later than February 15, 2005. If you have any comments on the draft letter, please contact the undersigned by phone at 202-371-5408 or by e-mail at aburstein@ici.org. The draft letter strongly supports the goals of the proposal – promoting integrity, fairness and transparency in the securities offering process. The letter states, however, that the proposed amendment to Regulation M to prohibit “penalty bids” would adversely impact the initial public offerings of closed-end funds. The draft letter therefore recommends that the Commission continue to permit closed-end funds to use penalty bids and adopt an approach similar to that proposed by the New York Stock Exchange and NASD with respect to such penalties. In particular, the SRO proposals would permit the use of penalty bids so long as the penalty is imposed on the entire syndicate in connection with sales to all participants in the IPO. The draft letter states that, in this manner, the Commission can adequately address concerns regarding penalty bids (e.g., the inequitable imposition of these penalties) and achieve the goals of the amendments to Regulation M. Ari Burstein Associate Counsel Attachment (in .pdf format) 1 Memorandum to Equity Markets Advisory Committee No. 53-04 and SEC Rules Members No. 177-04, dated December 20, 2004 [18342]. 2 SEC Release Nos. 33-8511; 34-50831; and IC-26691 (December 9, 2004), 69 FR 75774 (December 17, 2004).