

**MEMO# 15717**

March 4, 2003

## **DRAFT INSTITUTE LETTER ON NYSE AND NASD PROPOSED RULE CHANGES RELATING TO RESEARCH ANALYST CONFLICTS OF INTEREST**

[15717] March 4, 2003 TO: SEC RULES COMMITTEE No. 22-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 14-03 INVESTMENT ADVISERS COMMITTEE No. 5-03 RE: DRAFT INSTITUTE LETTER ON NYSE AND NASD PROPOSED RULE CHANGES RELATING TO RESEARCH ANALYST CONFLICTS OF INTEREST As we previously informed you, the Securities and Exchange Commission published for comment proposed rule changes filed by the NASD and the New York Stock Exchange to amend their rules relating to research analyst conflicts of interest.<sup>1</sup> The Institute has prepared a draft comment letter to the SEC on the proposal, a copy of which is attached. Comments on the proposed rule changes are due to the SEC no later than March 10, 2003. If you have any comments on the draft Institute 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](mailto:aburstein@ici.org) no later than March 7. The draft letter reiterates the Institute's strong opposition to the application of new disclosure requirements in the area of research analyst conflicts of interest to investment advisory personnel. The draft letter states that the Institute was therefore pleased that the NASD and NYSE interpretative guidance on their analyst conflict of interest rules stated that the terms "research analyst" and "associated person" would not include most investment advisory personnel. The draft letter notes, however, that the proposed rule changes would expand the definition of "research report" in a way that could sweep communications by investment advisers and investment advisory personnel into the scope of the rules. The draft letter therefore recommends that the NASD and NYSE take an approach similar to the approach the SEC recently took in Regulation AC, which included a list of communications that would not be considered "research reports" for purposes of the rule, and clarify that communications such as "periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients discussing past performance or the basis for previously made discretionary investment decisions" would not be considered "research reports" for purposes of their rules. The draft letter states that the exclusion of these types of communications from the scope of the NASD and NYSE rules is 1 Memorandum to SEC Rules Members No. 3-03, Closed-End Investment Company Members No. 2-03 and Investment Adviser Members No. 2-03, dated January 9, 2003. 2 appropriate inasmuch as they do not appear to present the types of concerns that the rules are designed to address, i.e., conflicts of interest raised by sellside securities analysts and their connection to a firm's investment banking business and the receipt of investment banking revenue. Ari Burstein Associate Counsel Attachment (in .pdf format)

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