

**MEMO# 14584**

March 27, 2002

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

[14584] March 27, 2002 TO: SEC RULES COMMITTEE No. 25-02 COMPLIANCE ADVISORY COMMITTEE No. 28-02 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 12-02 RE: DRAFT INSTITUTE LETTER ON NASD AND NYSE PROPOSED RULE CHANGES RELATING TO RESEARCH ANALYST CONFLICTS OF INTEREST As we previously informed you,<sup>1</sup> the Securities and Exchange Commission has published for comment proposed rule changes filed by the NASD and the New York Stock Exchange to address research analyst conflicts of interest. The Institute has prepared a draft comment letter to the SEC on the proposals, a copy of which is attached. The draft letter reiterates the comments made by the Institute in response to the NASD's proposal to amend NASD Rule 2210 to address analyst conflicts of interest,<sup>2</sup> particularly that the Institute strongly opposes the application of new disclosure requirements to portfolio managers. The draft letter notes that there are many differences in the potential conflicts of interest presented by "sellside" analyst recommendations and statements made by portfolio managers. Therefore, at least in the great majority of cases, any potential conflicts of interest for portfolio managers would be greatly attenuated. In addition, the letter notes that advisory firms already have stringent procedures in place to address potential conflicts relating to the personal investment activities of portfolio managers. The draft letter states that we are therefore pleased that the proposing release specifically states that because most mutual fund portfolio managers are not principally responsible for the preparation of "research reports" as defined by the NASD's proposed rule change, a mutual fund portfolio manager generally would not be deemed to be a "research analyst," even if the portfolio manager is an associated person of a member firm and discusses the mutual fund's portfolio holdings in a television interview. Communications by these portfolio managers therefore would be excluded from the scope of the proposed rule. The letter states that we believe that the NASD has properly excluded these communications from the 1 Memorandum to SEC Rules Committee No. 21-02, Compliance Advisory Committee No. 22-02 and Closed-End Investment Company Committee No. 10-02, dated March 18, 2002. 2 The NASD proposal would have imposed new disclosure requirements upon NASD members and their associated persons in an effort to address the potential conflicts of interest presented by analyst recommendations and would have applied to "portfolio managers of investment companies and other discretionary accounts ... where these managers are also associated persons of an NASD member." 2 scope of the proposed rule as they do not present the types of concerns that the proposed rule change is designed to address. Comments on the proposal are due to the

SEC no later than April 4, 2002. 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 April 2. Ari Burstein Associate Counsel Attachment (in .pdf format)

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