

MEMO# 16199

June 12, 2003

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

[16199] June 12, 2003 TO: SEC RULES COMMITTEE No. 57-03 CLOSED-END INVESTMENT COMPANY COMMITTEE No. 40-03 INVESTMENT ADVISERS COMMITTEE No. 14-03 RE: DRAFT INSTITUTE LETTER ON NASD AND NYSE 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.¹ 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 June 19, 2003. If you have any comments on the draft Institute letter, please contact the undersigned by phone at 202-371-5408 or by e-mail at aburstein@ici.org no later than June 17. 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 of particular concern to members is the amendment to the definition of "research report," which expands what constitutes a "research report" to potentially sweep into the scope of the rules various communications made by investment advisers and investment advisory personnel. The draft letter therefore urges the NASD and NYSE to exclude investment advisers and other investment advisory personnel from the scope of the rule. If the NASD and NYSE are unwilling to adopt such an approach, the draft letter recommends that the NASD and NYSE consider adopting an approach similar to that implemented in SEC Regulation Analyst Certification ("Regulation AC"). In particular, Regulation AC narrowed the scope of persons to which Regulation AC applies and included a list of communications that would not be considered "research reports" for purposes of the rule. Ari Burstein Associate Counsel Attachment (in .pdf format) 1 Memorandum to SEC Rules Committee No. 51-03, Closed-End Investment Company Committee No. 36-03 and Investment Adviser Committee No. 11-03 (16143), dated June 2, 2003.