

MEMO# 14410

January 30, 2002

DRAFT INSTITUTE COMMENT LETTER ON PROPOSED AIMR TRADE MANAGEMENT GUIDELINES

[14410] January 30, 2002 TO: SEC RULES COMMITTEE No. 10-02 INVESTMENT ADVISERS COMMITTEE No. 1-02 COMPLIANCE ADVISORY COMMITTEE No. 7-02 EQUITY MARKETS ADVISORY COMMITTEE No. 5-02 RE: DRAFT INSTITUTE COMMENT LETTER ON PROPOSED AIMR TRADE MANAGEMENT GUIDELINES As we previously informed you,¹ the Association for Investment Management and Research ("AIMR") has published for comment draft "Trade Management Guidelines" ("Guidelines"). The Institute has prepared a draft comment letter (attached) on the Guidelines. The draft letter states that while the Institute generally supports the Guidelines, we have several concerns regarding their application, as well as several recommendations regarding the Guidelines' proposed processes and disclosures.

I. Application of the Guidelines The draft letter states that given the complexities and ambiguities surrounding the concept of best execution, the Institute believes it is critical that the Guidelines be drafted in the most flexible manner possible. The letter therefore urges AIMR to revise the Guidelines to ensure that they provide appropriate flexibility. For these reasons, the draft letter also states that it is critical that the Guidelines' recommendations not be construed as mandatory for firms to adopt. The letter notes, however, that, as drafted, the Guidelines may be viewed as something other than completely voluntary for firms in developing and implementing processes relating to best execution. The letter therefore urges AIMR to clarify throughout the Guidelines that they are simply recommended practices that firms may or may not use in determining the processes that are best suited for their firm. Finally, the draft letter states that there is too much emphasis throughout the Guidelines on the use of statistical measurements to determine best execution. The letter therefore recommends that the Guidelines clarify that best execution is not a quantifiable concept and that statistical measurements are just one part of the overall assessment that firms may make in examining best execution. ¹ See Memorandum to SEC Rules Committee No. 91-01, Investment Advisers Committee No. 26-01, Compliance Advisory Committee No. 57-01 and Equity Markets Advisory Committee No. 46-01, dated November 19, 2001. ² II. Trade Management Processes The draft letter supports the concept of the establishment of a trade management oversight committee as an option for firms but states that the Institute is concerned that the responsibilities set forth by the Guidelines for such a committee may be too extensive. The letter therefore recommends that a more appropriate role for the trade management oversight committee would be to oversee and assist a firm in developing and evaluating its trading practices, rather than having the sole responsibility for these functions. The draft letter also strongly objects to the Guidelines' recommendation that a firm develop trade management

procedures that adopt the AIMR Soft Dollar Standards. The letter states that the Guidelines should be unbiased recommendations to assist firms in the development of best execution processes and that they should not contain a recommendation that all firms adopt specific standards with respect to soft dollar practices developed by AIMR itself. The letter therefore recommends that AIMR eliminate this recommendation from the Guidelines. Finally, the draft letter opposes the recommendation that a firm compile and review information illustrating the broker's financial condition, including a broker's audited financial statements. Specifically, the letter states that this recommendation is unnecessary and could be unduly burdensome for firms. In addition, the letter notes that it is unclear what type of and how extensive a review of a broker's financial statements would be appropriate. For these reasons, the letter recommends that AIMR eliminate this recommendation from the Guidelines.

III. Disclosures The draft letter states that while the Institute generally supports increased disclosure that would improve the quality of information provided to clients and prospective clients, we do not believe that it is necessary for the Guidelines to include disclosure recommendations as registered investment advisers are already subject to similar, and more extensive, disclosure requirements under the Advisers Act. In particular, the letter states that much of the Guidelines' recommended disclosures are already required in SEC Form ADV and notes that the SEC recently proposed amendments to Form ADV to increase the disclosures required of registered investment advisers. The letter therefore opposes the disclosure recommendations as they would lead to duplicative and unnecessary disclosures for investment advisers.

IV. Recordkeeping The draft letter does not contain any comments on the Guidelines' recommendations relating to recordkeeping. Do members believe that the Guidelines' recordkeeping recommendations would be unduly burdensome for firms? If yes, please provide specific examples of recommendations that would prove burdensome. In addition, are there any other comments members would like to make in connection with the Guidelines' recordkeeping recommendations?

3 Comments on the Guidelines are due to AIMR no later than February 12, 2002. If you have any comments on the draft Institute letter, please provide them to the undersigned by phone at (202) 371-5408, by fax at (202) 326-5839, or by e-mail at aburstein@ici.org or to Amy Lancellotta by phone at (202) 326-5824, by fax at (202) 326-5827, or by e-mail at amy@ici.org no later than February 5. Ari Burstein Associate Counsel Attachment (in .pdf format)

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