

MEMO# 15248

October 8, 2002

DRAFT INSTITUTE COMMENT LETTER ON PROPOSED AIMR RESEARCH OBJECTIVITY STANDARDS

[15248] October 8, 2002 TO: SEC RULES COMMITTEE No. 81-02 INVESTMENT ADVISERS COMMITTEE No. 21-02 COMPLIANCE ADVISORY COMMITTEE No. 85-02 RE: DRAFT INSTITUTE COMMENT LETTER ON PROPOSED AIMR RESEARCH OBJECTIVITY STANDARDS As we previously informed you,¹ the Association for Investment Management and Research ("AIMR") has published for comment proposed Research Objectivity Standards ("Standards"). The Institute has prepared a draft comment letter (attached) on the Standards, the most significant aspects of which are summarized below. Comments on the Standards must be received by AIMR no later than October 17, 2002. We have scheduled a conference call for Thursday, October 10, at 11:00 am Eastern to discuss the Institute's comment letter. The dial in number for the call will be 888-220-3091 and the pass code for the call will be AIMR/Ari Burstein. If you would like to participate on the call, please contact Monica Carter Johnson by phone at 202-326-5823 or by e-mail at mcarter@ici.org. The draft letter states that while the Institute generally supports the objectives of the Standards, i.e., to achieve independence and objectivity of research, we strongly oppose the application of the Standards to investment management firms. The draft letter notes that investment management firms are subject to comprehensive federal securities laws and that such firms already have stringent internal procedures in place to address conflicts of interest. Moreover, the draft letter states that whatever potential conflicts of interest may exist relating to investment management firms and research are greatly attenuated as compared to those presented by sellside firms and that we are not aware of any reported cases of abuse in this area involving investment management firms. Finally, the draft letter states that the proposed Standards would create significant compliance burdens for firms, the costs of which would outweigh the benefits. The draft letter also contains specific comments on the proposed Standards. As a preliminary matter, the draft letter states that many of the definitions contained in the proposed 1 Memorandum to SEC Rules Committee No. 62-02, Investment Advisers Committee No. 14-02 and Compliance Advisory Committee No. 53-02, dated July 26, 2002. 2 Standards, such as the definitions of "research analyst" and "research report," are ambiguous and/or overly broad. The letter therefore recommends that AIMR revise these terms to be consistent with the definitions in the recently adopted NASD rule relating to analyst conflicts of interest (which excluded most investment management personnel). The letter also recommends that AIMR clarify that the term "recommendation" will be interpreted in a manner consistent with how NASD Regulation has defined this term in the past. The draft letter also expresses several concerns regarding the scope of the Standard that would require firms that permit covered employees to present and discuss research and recommendations in "public appearances"

to require these employees to fully disclose personal and firm conflicts of interest to the audience. The draft letter states that if AIMR determines that this Standard should apply to investment management firms, the better approach would be to formulate this Standard referring to a “research analyst” presenting a “research report” during a public appearance, using the definitions of these terms as adopted by the NASD. The draft letter also states that, given existing federal securities law requirements, as well as the stringent internal policies and procedures that investment management firms have in place relating to the personal investment and trading activities of investment management personnel, the Standard containing several requirements relating to a covered employees’ personal investments and trading activities is unnecessary. Specifically, the letter notes that funds must adhere to Rule 17j-1 under the Investment Company Act. The letter also notes that substantially all funds groups have adopted the recommendations in the Institute’s Report of the Advisory Group on Personal Investing addressing the personal investment and trading activities of investment personnel. The draft letter therefore states that if AIMR determines that this Standard is necessary, AIMR should revise the Standard and follow an approach similar to that used in Rule 17j-1 to determine the scope of the Standard. Finally, the draft letter states that the Standard’s recommended disclosures are unnecessary inasmuch as registered investment advisers are already subject to similar, and in some cases more extensive, disclosure requirements under the Investment Advisers Act. The letter also notes that the recommended disclosures are vague and may raise confidentiality concerns for investment management firms. For example, it is unclear whether the Standards’ disclosure requirements would be satisfied by a general description of a firm’s conflicts of interest or if specific disclosure of each conflict of interest is required. The draft letter therefore states that the better approach would be for the Standards to make a strong affirmation of a firm’s obligations to adhere to all applicable disclosure requirements of the SEC and other regulatory bodies. At a minimum, the draft letter recommends that AIMR not require the disclosure of the specific conflicts of interest to which the firm or its covered employees are subject, but instead only require a general statement about the conflicts. Ari Burstein Associate Counsel Attachment (in .pdf format)