

MEMO# 13369

April 6, 2001

INSTITUTE COMMENT LETTER ON SEC PROPOSAL RELATING TO PROPOSED RULE CHANGES OF SELF-REGULATORY ORGANIZATIONS

[13369] April 6, 2001 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 10-01 EQUITY MARKETS ADVISORY COMMITTEE No. 12-01 FIXED-INCOME ADVISORY COMMITTEE No. 4-01 SEC RULES MEMBERS No. 29-01 RE: INSTITUTE COMMENT LETTER ON SEC PROPOSAL RELATING TO PROPOSED RULE CHANGES OF SELF-REGULATORY ORGANIZATIONS The Institute has filed a comment letter (attached) with the Securities and Exchange Commission on the SEC's proposed rule¹ to amend the requirements applicable to self-regulatory organization ("SRO") filings of proposed rule changes with the SEC.² The comment letter states that the Institute supports amendments to the rulemaking process that would improve the ability of interested persons to submit comments on SRO actions. However, the letter states that we have reservations regarding several aspects of the proposed rule, including the new category of rules eligible for immediate effectiveness. In addition, the comment letter states that we are disappointed that the Commission did not propose changes to the length of time allocated to interested persons to comment on SRO proposed rule changes. The Institute therefore recommends that this issue be addressed prior to adoption of the proposed rule.

A. Immediate Effectiveness of Trading Rules The comment letter states that the Institute opposes making most "trading rules," a new defined term under the proposal, eligible for immediate effectiveness. The letter points out that there have been numerous instances where the types of proposed rule changes that would be eligible for immediate effectiveness under the proposal have had a major impact on market participants, many of which necessitated further industry discussion prior to approval and implementation of the rule change. The comment letter states that the Institute is therefore concerned that many of the filings that would become immediately effective under the proposed rule could result in adverse consequences for investors without any opportunity for input from the public or review by the SEC. However, the Institute recommends that if the SEC does permit most trading rules to become effective immediately upon filing, at a minimum, such rules not become operative until 30 days after the date of filing. The comment letter states

¹ Securities Exchange Act Release No. 43860 (January 19, 2001), 66 FR 8912 (February 6, 2001). ² See Memorandum to Equity Markets Advisory Committee No. 5-01, Closed-End Investment Company Members No. 4-01, Fixed Income Advisory Committee No. 1-01, and SEC Rules Members No. 13-01, dated February 5, 2001. ²that a delayed operational date would allow interested persons the opportunity to examine the filing and determine whether it could have effects on the securities markets which need to be addressed. The letter also responds to the SEC's request for comment on

whether there are other types of proposed rule changes that the SEC should consider making eligible for immediate effectiveness, such as proposed rule changes relating to listing standards and new products. The comment letter states that, like many trading rules, proposed rule changes relating to these types of issues potentially have major impacts on investors and address fundamental concerns of investors. Therefore, the Institute opposes making other types of rule changes eligible for immediate effectiveness.

B. Public Comment Period The comment letter states that the Institute is extremely disappointed that the SEC did not propose changes to the 21-day time period currently provided for public comment on SRO proposed rule changes. The comment letter notes that the Institute has commented on several occasions in the past that a 21-day comment period is inadequate to develop detailed, substantive and well-considered comments before the close of the comment period on important SRO proposed rule changes and that providing the public with only 21 days to comment on significant proposals does not constitute a meaningful “opportunity” to comment. The comment letter therefore states that the first step in improving the SRO rulemaking process must be to extend the time permitted for public comment and urges the SEC to lengthen the public comment period, at the very least for those filings that would make fundamental structural changes and for other non-trading rules that would be subject to the regular notice and comment period under Section 19(b)(2) of the Exchange Act. Ari Burstein Associate Counsel Attachment

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