

MEMO# 20245

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NASD and NYSE Interpretive Guidance on Fixed Income Research

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20245] August 4, 2006 TO: SEC RULES MEMBERS No. 67-06 FIXED-INCOME ADVISORY COMMITTEE No. 3-06 EQUITY MARKETS ADVISORY COMMITTEE No. 16-06 RE: NASD AND NYSE INTERPRETIVE GUIDANCE ON FIXED INCOME RESEARCH NASD and the New York Stock Exchange have issued joint interpretive guidance¹ relating to research analysts and research reports in connection with fixed-income securities. The guidance is the result of examinations conducted by NASD and the NYSE to determine how member organizations have addressed conflicts of interest with respect to fixed income research. The Release states that the examinations found many instances relating to several different areas in which firms had failed to adhere to the voluntary, principle-based guidelines issued by the Bond Market Association (“Guiding Principles”).² The Guiding Principles were designed to assist firms in managing potential conflicts of interest that may arise in the context of fixed income research activities.³ Specifically, the examination results revealed that the most prevalent failure among member organizations with respect to the Guiding Principles involved the inadequacy of disclosures contained in fixed income research reports, which are designed to inform investors of potential conflicts of interest that may affect fixed income research. In addition, instances were noted in which member organizations did not have effective written supervisory procedures in place for fixed income research analysts pursuant to the SRO supervision rules and the Guiding Principles, or had supervisory procedures in place but failed to enforce them. Finally, the examinations found instances in which member organizations failed to comply with the requirements set forth in SEC Regulation AC. In 1 The Interpretive Guidance can be found on the NASD’s website at http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_017059.pdf (“Release”). 2 The Guiding Principles can be found on the Bond Market Association’s website at http://www.bondmarkets.com/assets/files/guiding_principles_for_research.pdf. 3 The Release notes that, in considering whether to engage in more definitive rulemaking, NASD and the NYSE will continue to monitor the extent to which firms have adopted and adhered to the Guiding Principles, or other supervisory systems regarding fixed-income research conflicts of interest that are designed to achieve compliance with applicable SRO rules and securities laws and regulations. 2 particular, member organizations issued research reports that did not include the requisite analyst certifications or that included references to analyst certifications that were insufficient. Failures also were noted with respect to certifications required in connection with research analyst public appearances. Ari Burstein Associate Counsel

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