

MEMO# 11134

July 23, 1999

DRAFT INSTITUTE LETTER ON AGGREGATION FOR CONTROL PURPOSES UNDER THE CHANGE IN BANK CONTROL ACT AND THE BANK HOLDING COMPANY ACT

1[11134] July 23, 1999 TO: COMPLIANCE ADVISORY COMMITTEE No. 30-99 RE: DRAFT INSTITUTE LETTER ON AGGREGATION FOR CONTROL PURPOSES UNDER THE CHANGE IN BANK CONTROL ACT AND THE BANK HOLDING COMPANY ACT

At the request of several members of the Compliance Advisory Committee, the Institute has prepared a draft letter (attached) requesting that the Federal Reserve Board ("Board") clarify that, in certain circumstances, entities comprising multi-service investment management organizations would not be required to aggregate beneficial ownership of securities for purposes of determining whether prior notice and Board approval is required under the Change in Bank Control Act (the "CIBC Act") or the Bank Holding Company Act (the "BHC Act"), and Regulation Y thereunder. The letter states that the entities comprising these multi-service investment management organizations often include one or more investment companies and that the Institute believes that investment companies and other advisory clients of these investment management entities may be adversely affected if securities of a bank or bank holding company held by these entities must be aggregated for purposes of the CIBC Act and the BHC Act. The letter also states that the Institute believes that assumptions regarding control for aggregation purposes based solely on corporate form or affiliation are not warranted when the entities comprising multi-service investment management organizations operate as independent and separate business units. Requiring prior notice and approval of the Board each time these entities, in the aggregate, acquire ten percent or more of any class of voting securities of a state member bank or bank holding company (as required by Board regulations) imposes unnecessary regulatory burdens and operating constraints on these entities. Requiring prior notice and approval also adversely affects the types and amounts of investments these entities can make and discourages the acquisition of bank securities. The letter suggests that the functional approach applied by other federal regulations in determining whether an entity controls another entity for aggregation purposes can be applied to the Board's requirements in a manner that is consistent with the goals of the CIBC Act and the BHC Act, i.e., preventing these entities from directing, influencing, or controlling the management or policies of a bank if they were to acquire in the aggregate more than 10 percent of the outstanding stock of the bank. The letter therefore requests that the Board clarify that if certain

conditions are met, entities comprising multi-service investment management organizations will be treated as separate entities not required to aggregate their holdings under the CIBC Act and the BHC Act. These conditions could include, for example, undertakings by these entities that they will, in the normal course of business (1) not exercise or attempt to exercise a controlling influence over the management or policies of the bank or its bank subsidiaries; (2) maintain and enforce written policies and procedures reasonably designed to prevent the flow of information to and from the entities comprising the organization that relate to the voting and investment powers over the securities; (3) not have or attempt to have any employees serve as an officer, agent, or employee of the bank or its bank subsidiaries; (4) not take any action causing the bank or its bank subsidiaries to become a subsidiary of the investment management organization; (5) not solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of the bank or its bank subsidiaries; and (6) not seek or accept representation on the board of directors of the bank or its subsidiaries. If you have any comments on the Institute's draft letter, please contact the undersigned by phone at (202) 371-5408, by fax (202) 326-5839, or by e-mail at aburstein@ici.org by Monday, August 16. Ari Burstein Assistant Counsel

Attachment

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