

**MEMO# 18507**

February 7, 2005

# **INSTITUTE LETTER ON PROPOSED SEC RULE AND INTERPRETIVE STATEMENT EXCLUDING CERTAIN BROKERS FROM THE ADVISERS ACT**

[18507] February 7, 2005 TO: INVESTMENT ADVISERS COMMITTEE No. 6-05 SEC RULES COMMITTEE No. 11-05 RE: INSTITUTE LETTER ON PROPOSED SEC RULE AND INTERPRETIVE STATEMENT EXCLUDING CERTAIN BROKERS FROM THE ADVISERS ACT Last month, the Securities and Exchange Commission proposed permanent adoption of a revised version of a temporary rule defining when broker-dealers are excluded from regulation under the Investment Advisers Act of 1940.<sup>1</sup> The Release also proposed publication of an interpretive statement to provide further guidance relating to this exclusion. A copy of the Institute's comment letter on these proposals is attached and briefly summarized below. The Institute's letter is substantively identical to the draft version, which was previously circulated to members.<sup>2</sup>

**SUPPORT FOR THE PROPOSED RULE** The Institute's letter supports the Commission's proposed rule relating to the Advisers Act's exclusion for broker-dealers as well-reasoned. We believe it will provide greater clarity regarding when clients of a broker-dealer are entitled to the protections of the Advisers Act. The Institute concurs with the Commission's approach to treat all accounts over which a broker-dealer exercises investment discretion as advisory accounts, regardless of the broker-dealer's form of compensation. Similarly, the Institute strongly supports both the placement and content of the disclosure that would be required of broker-dealers relying on the exclusion. The letter notes that such disclosure should help investors make informed decisions regarding whether to retain a broker-dealer or an investment adviser to assist them in fulfilling their investment goals.

**SUPPORT FOR THE PROPOSED INTERPRETIVE STATEMENT**

<sup>1</sup> See SEC Release Nos. 34-50980 and IA-2340, Certain Broker-Dealers Deemed Not To Be Investment Advisers (Jan. 6, 2005). A copy of the Release is available on the Commission's website at: <http://www.sec.gov/rules/proposed/34-50980.pdf>.

<sup>2</sup> See Institute Memorandum to Investment Advisers Committee No. 4-05 and SEC Rules Committee No. 8-05 [18446], dated January 24, 2004. The letter also supports the Commission's proposal to publish an interpretive statement relating to what types of advisory services of a broker-dealer are "solely incidental" to its brokerage services for purposes of the exclusion. The Institute concurs with the Commission's approach to provide this guidance by identifying those practices – such as financial planning and certain wrap fee program services – that would not be deemed solely incidental to the broker-dealer's brokerage services. Tamara K. Salmon Senior Associate Counsel Attachment (in .pdf format)

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