

MEMO# 15137

September 9, 2002

ICI DRAFT COMMENT LETTER ON NASD'S PROPOSED INTERPRETIVE MATERIAL REGARDING THE USE OF INVESTMENT ANALYSIS TOOLS

URGENT/ACTION REQUESTED [15137] September 9, 2002 TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 17-02 INVESTMENT ADVISERS COMMITTEE No. 17-02 PENSION COMMITTEE No. 37-02 SEC RULES COMMITTEE No. 73-02 RE: ICI DRAFT COMMENT LETTER ON NASD'S PROPOSED INTERPRETIVE MATERIAL REGARDING THE USE OF INVESTMENT ANALYSIS TOOLS As we previously informed you, in August, the NASD proposed for comment Interpretive Material that would provide a limited exception to Rule 2210(d)(2)(N), which prohibits NASD members from making predictions or projections of investment results to the public.* Under the exception provided in the IM, an NASD member could make available to its customers an "investment analysis tool," provided the member complies with specified disclosure requirements and provides NASD staff access to the tool and any related sales material at least 30 days prior to its use. Attached for your review is a copy of the Institute's draft comment, which supports the proposed IM but recommends that the NASD: • Revise the proposed definition of "investment analysis tool" to more precisely define the tools that are intended to be covered by this exception and affirm that this new exception is not intended to affect the treatment under Rule 2210(d)(2)(N) of the types of tools that the NASD has permitted members to use; • Revise the disclosure that would be required by the IM to limit it to information that would be material to an investor utilizing an investment analysis tool; and • Conform the proposed filing requirements in the IM to those in Rule 2210 and in other interpretive material adopted under the rule. Comments on the proposed IM must be filed with the NASD by Friday, September 13, 2002. Accordingly, comments on the Institute's draft letter should be provided to the undersigned no later than the close of business on Wednesday, September 11th. Comments may be provided by phone (202-326-5825) or e-mail (tamara@ici.org). Tamara K. Reed Associate Counsel Attachment (in .pdf format) * See Memorandum No. 15056 (August 20, 2002).