

MEMO# 14464

February 14, 2002

INSTITUTE COMMENT LETTER ON AIMR TRADE MANAGEMENT GUIDELINES

[14464] February 14, 2002 TO: COMPLIANCE ADVISORY COMMITTEE No. 14-02 EQUITY MARKETS ADVISORY COMMITTEE No. 9-02 INVESTMENT ADVISERS COMMITTEE No. 3-02 SEC RULES COMMITTEE No. 18-02 RE: INSTITUTE COMMENT LETTER ON AIMR TRADE MANAGEMENT GUIDELINES As we previously informed you,¹ in November 2001, the Association for Investment Management and Research (“AIMR”) published for comment draft “Trade Management Guidelines” (“Guidelines”). In response to AIMR’s request for comment, the Institute filed the attached letter. Except for the addition of comments relating to the recordkeeping provisions in the Guidelines, the Institute’s letter is substantially similar to the draft that was circulated last month.² As a general matter, the letter notes that the Guidelines can be a useful tool to assist firms in developing and implementing processes relating to best execution. Notwithstanding this, the letter, which is summarized below, notes that we have concerns with the Guidelines’ application and several recommendations regarding the provisions relating to proposed trade management processes, disclosure, and recordkeeping.

I. APPLICATION OF THE GUIDELINES The letter notes that, due to the complexity of the concept of best execution, it is extremely important that each firm be able to tailor its processes to its specific circumstances. The letter therefore urges that the Guidelines be revised to: provide appropriate flexibility; eliminate seemingly mandatory requirements; and clarify that best execution is not a quantifiable concept and that statistical measurements can be only one part of the overall assessment that firms may make in examining best execution. ¹ See Memorandum to SEC Rules Committee No. 91-01, Investment Advisers Committee No. 26-01, Compliance Advisory Committee No. 57-01 and Equity Markets Advisory Committee No. 46-01, dated November 19, 2001. ² See Memorandum to SEC Rules Committee No. 10-02, Investment Advisers Committee No. 1-02, Compliance Advisory Committee No. 7-02 and Equity Markets Advisory Committee No. 5-02, dated January 30, 2002.

II. TRADE MANAGEMENT PROCESSES With respect to the provisions in the Guidelines relating to Trade Management Processes, the Institute’s letter notes the Institute’s support for the concept of the establishment of a trade management oversight committee as an option for firms but expresses concern that the responsibilities set forth by the Guidelines for such a committee may be too extensive. As such, it may be unreasonable to expect such a committee to be able to effectively carry out all these responsibilities. The letter notes that a more appropriate role for the committee would be to oversee and assist a firm in developing and evaluating its trading practices, rather than having the sole responsibility for these functions. The letter expresses strong opposition to the Guidelines’ recommendation that firms adopt the AIMR Soft Dollar Standards and recommends the elimination of this provision. The letter also opposes the Guidelines’ recommendation that a firm compile and review information illustrating the broker’s financial condition, including a broker’s audited

financial statements. The letter notes that this recommendation is unnecessary and could be unduly burdensome for firms. III. DISCLOSURES With respect to provisions in the Guidelines relating to disclosure, the letter states that most of the Guidelines' recommended disclosures are already required in Form ADV. In addition, however, the SEC has proposed to increase the disclosures that would be required of federally-registered investment advisers. As such, it is unnecessary for the Guidelines to include disclosure requirements. The letter also notes that several of the recommended disclosures appear to be potential conflicts for the broker and not the adviser. It is therefore unclear why the adviser should be required to make these disclosures. Should AIMR determine that disclosure recommendations are necessary, the letter recommends that AIMR eliminate those provisions in the Guidelines that relate to disclosure beyond that required under federal law. The letter also recommends that the frequency of disclosure be conformed to the requirements under the Investment Advisers Act of 1940. IV. RECORDKEEPING The letter expresses concerns with the provisions in the Guidelines relating to recordkeeping. In particular, the letter notes that, in keeping with our recommendation that the Guidelines provide appropriate flexibility, we believe the Guidelines' recordkeeping requirements are far too rigid and detailed in nature. Because the Advisers Act already imposes extensive recordkeeping requirements on advisers, and because the additional recordkeeping requirements proposed in the Guidelines could prove burdensome and add unnecessary expense for firms, the Institute's letter recommends that the Guidelines conform their recordkeeping requirements to those under federal law. If, however, AIMR determines that the Guidelines should contain recordkeeping requirements, we recommend that it clarify that records are not expected to be maintained on a trade-by-trade basis, but rather on a periodic basis. Tamara K. Reed Associate Counsel Attachment (in .pdf format)