

COMMENT LETTER

September 23, 2002

Comment Letter Addressing Potential Analyst Conflicts of Interest, September 2002

September 23, 2002

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Regulation Analyst Certification (File No. S7-30-02)

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to comment on proposed Regulation Analyst Certification ("Regulation AC") to address conflicts of interest faced by research analysts and their firms.² Our comments are limited to the effect of this proposal on investment advisory personnel.

Proposed Regulation AC sets forth an approach similar to that taken by the NASD and NYSE in their recently adopted rule changes relating to analyst conflicts of interest.³ In particular, the Proposing Release notes that the term "research analyst" would not include an investment adviser, such as a mutual fund portfolio manager, who is not principally responsible for preparing research reports, even if the investment adviser is a registered person of a member.⁴

The Institute supports the approach taken in proposed Regulation AC. As we stated in our previous comment letters on the NASD and NYSE proposals in this area,⁵ whatever potential conflicts of interest may exist in the context of statements made by investment advisory personnel, such as portfolio managers of mutual funds and other discretionary accounts, they are greatly attenuated as compared to those presented by "sellside" analyst recommendations. Moreover, advisory firms already have stringent procedures in place to address potential conflicts, such as those relating to the personal investment activities of portfolio managers. For these reasons, we believe it is appropriate for the Commission to exclude investment advisory personnel from the scope of Regulation AC.⁶ Accordingly, we also would oppose, in response to the request for comment in the Proposing Release, broadening the definitions of "research report" and "research analyst" in a way that would

sweep investment advisory personnel into the scope of the proposal.

The Proposing Release requests comment on whether there are certain classes of persons associated with a broker-dealer that should not be subject to proposed Regulation AC and whether the rule should explicitly exclude investment advisers. Because “any person associated with a broker-dealer” would include “any person directly or indirectly controlling, controlled by, or under common control with such broker-dealer,”⁷ the proposal could be read to apply to certain investment advisers. The Institute therefore supports an explicit exclusion of investment advisers to make clear that they are not covered by the rule.

* * *

We appreciate the opportunity to comment on the proposal. If you have any questions regarding our comments, please contact the undersigned at 202-326-5824 or Ari Burstein at 202-371-5408.

Sincerely,

Amy B.R. Lancellotta
Senior Counsel

Attachments

cc: Annette L. Nazareth, Director
Robert L.D. Colby, Deputy Director
James A. Brigagliano, Assistant Director
Division of Market Regulation

Paul F. Roye, Director
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Securities and Exchange Commission

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,973 open-end investment companies (“mutual funds”), 514 closed-end investment companies, and six sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.363 trillion, accounting for approximately 95 percent of total industry assets, and over 87.8 million individual shareholders.

² Securities Exchange Act Release No. 46301 (August 2, 2002), 67 FR 51510 (August 8, 2002) (“Proposing Release”).

³ Securities Exchange Act Release No. 45908 (May 10, 2002).

⁴ Proposing Release, note 16.

⁵ [Letter](#) from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Barbara Z. Sweeney, NASD Regulation, dated August 15, 2001 (NASD proposal to amend NASD Rule 2210) and [letter](#) from Amy B.R. Lancellotta, Senior Counsel, Investment

Company Institute, to Jonathan G. Katz, Secretary, SEC, dated April 18, 2002 (proposed NASD and NYSE conflict of interest rule changes). Copies of these comment letters are attached.

[6](#) Although we do not believe that there is any need, for the reasons stated above, to apply Regulation AC to investment advisory personnel, should the Commission wish to consider this matter further, we believe it should do so only in the context of a tailored rule proposal under the Investment Advisers Act of 1940 and/or the Investment Company Act of 1940, rather than as part of an initiative designed for broker-dealer personnel.

[7](#) Section 3(a)(18) of the Securities Exchange Act of 1934.

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