The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 3486

February 4, 1992

RECENT NO-ACTION LETTER ON THE STATUS OF A WRAP FEE PROGRAM UNDER THE INVESTMENT COMPANY ACT

February 4, 1992 TO: INVESTMENT ADVISER MEMBERS NO. 5-92 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 3-92 RE: RECENT NO-ACTION LETTER ON THE STATUS OF A WRAP FEE PROGRAM UNDER THE INVESTMENT COMPANY ACT

_____ The staff of the Division of Investment Management recently issued a no-action letter permitting an investment adviser (the "Adviser") to market and administer a wrap fee program without registering the program under the Investment Company Act of 1940 or registering the clients' accounts under the Securities Act of 1933. The staff's response provides a comprehensive analysis of and reflects the staff's current position on the status of wrap fee programs under the Investment Company Act as well as certain issues relating to these programs. The program will be marketed to clients of certified financial planners, chartered financial consultants and other persons rendering investment advice (collectively referred to as "consultants"). Each client will select one or more managers from a list supplied by the Adviser. Clients will be charged a single "wrap fee" for the service, which will be deducted quarterly from client accounts by the bank custodian. Each client will receive the disclosures required by Part II of Form ADV and the cash solicitation rule (Rule 206(4)-3(b) with respect to the Adviser as well as the client's consultant and manager that is selected. The Adviser will provide the consultant with materials to distribute to prospective clients explaining the program, the fees, and the relationship among all the different parties and the responsibilities of each. With respect to fees, the staff states that because of the multiplicity of fees represented by the "wrap fee" charged to clients, an adviser who charges a fee for its services larger than normally charged by other advisers has a duty to disclose to its clients that the same or similar services may be available at a lower fee. Further, the staff states that all fiduciaries that are a party to these arrangements must consider the aggregate fees and services in fulfilling this duty. The staff's no-action position was conditioned upon the following factors: (1) the bank custodian will hold client securities in nominee name only for ministerial purposes; (2) the bank will maintain a separate account for each client showing the account position of, and trades made for, that client's individual account; (3) a client's beneficial interest in a security does not represent an undivided interest in all the securities held by the custodian with respect to these accounts; (4) each client will retain any rights under the federal securities laws to proceed directly against the issuer of any underlying security in its account; (5) the bank will provide each client with a monthly account statement describing each transaction in its account; (6) each client will retain all "indicia of ownership"; (7) each client will have the authority and opportunity to instruct its manager

to refrain from purchasing securities that otherwise might be purchased for its account; (8) each client will receive the individualized services described in the Adviser's letter to the staff; (9) except for temporary investments of cash balances in money market funds, the program will not involve recommendations concerning, or the purchase and sale of, shares of investment companies; and (10) with respect to investments in money market funds, each client will sign an acknowledgement requiring all cash balances to be temporarily invested in money market securities, there will be no pooling of client accounts, and the clients will receive all relevant disclosures relating to their investment in the money market fund and the additional fees the clients will incur. A copy of the Adviser's letter and the staff's response is attached. Amy B.R. Lancellotta Associate General Counsel Attachment

---