

MEMO# 13890

August 24, 2001

SEC DENIES ICI RULEMAKING PETITION CONCERNING PORTFOLIO INVESTMENT PROGRAMS

[13890] August 24, 2001 TO: BOARD OF GOVERNORS No. 41-01 INVESTMENT ADVISERS COMMITTEE No. 22-01 SEC RULES COMMITTEE No. 68-01 RE: SEC DENIES ICI RULEMAKING PETITION CONCERNING PORTFOLIO INVESTMENT PROGRAMS As we previously informed you, in March 2001 the Institute submitted a rulemaking petition to the Securities and Exchange Commission requesting the adoption of a definitional rule that would clarify that certain portfolio investment programs (“PIPs”) are “investment companies” within the meaning of the Investment Company Act of 1940.¹ The SEC recently issued the attached letter denying the Institute’s petition on the grounds that the PIPs described in the petition “do not at this time appear to raise interpretive issues that warrant the Commission undertaking a rulemaking.”² Notwithstanding its decision, the Commission states that it is interested in the concerns raised in the Institute’s petition and “intends to monitor the development of these programs for compliance with all of the federal securities laws.” As the programs develop, the Commission will consider what action, if any, may be necessary. The Commission’s letter contrasts the PIPs described in the petition with investment company securities. It notes that PIPs provide investors with the opportunity to make their own investment decisions and to create and manage portfolios of securities based on the investor’s individual needs and objectives. In contrast, investment company investors do not have the ability to direct the specific investment decisions regarding the investment company’s portfolio. Also, unlike investment company investors who have no beneficial ownership interest in the individual securities comprising the pool of securities, each investor in a PIP is the “direct beneficial owner of each of the securities included in the portfolio ...[with] all of the rights of ownership with respect to such securities.” Regarding the investor protection concerns that the petition argued should be addressed by the Investment Company Act and the Securities Act of 1933, the Commission notes that “sponsors of the PIPs are generally subject to 1 See Memorandum to Board of Governors No. 16-01, Investment Advisers Committee No. 9-01, and SEC Rules Committee No. 32-01, dated April 3, 2001. 2 See Letter from Jonathan G. Katz, Secretary, Securities and Exchange Commission, to Craig S. Tyle, General Counsel, Investment Company Institute, dated August 23, 2001. 2 regulation and oversight under other federal securities laws,” as well as under the rules and regulations of self-regulatory organizations. Amy B.R. Lancellotta Senior Counsel Attachment Attachment (in .pdf format)

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.