

**MEMO# 13319**

April 3, 2001

# **INSTITUTE RULEMAKING PETITION TO SEC CONCERNING PORTFOLIO INVESTMENT PROGRAMS**

[13319] April 3, 2001 TO: BOARD OF GOVERNORS No. 16-01 INVESTMENT ADVISERS COMMITTEE No. 9-01 SEC RULES COMMITTEE No. 32-01 RE: INSTITUTE RULEMAKING PETITION CONCERNING PORTFOLIO INVESTMENT PROGRAMS The Institute has submitted to the Securities and Exchange Commission the attached petition urging the adoption of a definitional rule that would clarify that certain portfolio investment programs are “investment companies” within the meaning of the Investment Company Act of 1940. 1 The petition asserts that these programs are functionally equivalent to mutual funds and, if not appropriately regulated, their investors will be deprived of crucial protections. Accordingly, the rule would require that they be registered and regulated under the Investment Company Act and that their shares be registered under the Securities Act of 1933. The proposed rule would clarify that an “investment company” includes any group of persons who purchase a pre-selected portfolio of securities from a program with certain characteristics demonstrating investment management by others. These characteristics are as follows: (1) the offering of a pre-selected portfolio of securities reflecting a model portfolio selected pursuant to the program according to stated investment objectives, policies, or criteria; (2) periodic review of the model portfolio to determine whether it needs to be changed to satisfy a stated investment objective or strategy (whether by adding and/or subtracting securities or changing the relative weighting of securities); and (3) provision or arrangement of a service through which investors may execute the securities transactions necessary to purchase the pre-selected portfolios and incorporate into their portfolios the periodic changes in the model portfolio. To be defined as an investment company under the rule, a program would have to meet all three criteria. Amy B.R. Lancellotta Senior Counsel Attachment 1 The Institute previously submitted to the SEC a letter and memorandum regarding the status of these programs under the federal securities laws. See Memorandum to Board of Governors No. 54-00, Investment Advisers Committee No. 21-00, and SEC Rules Committee No. 114-00, dated September 18, 2000. 2Attachment (in .pdf format)