

**MEMO# 11700**

March 6, 2000

## **INSTITUTE FILES LETTER COMMENTING ON ONE ASPECT OF SEC'S PAY-TO-PLAY RULE PROPOSAL**

\* See Memorandum to Investment Adviser Members No. 12-99, and SEC Rules Members 48-99, dated August 6, 1999. [11700] March 6, 2000 TO: INVESTMENT ADVISERS COMMITTEE No. 7-00 SEC RULES COMMITTEE No. 32-00 RE: INSTITUTE FILES LETTER COMMENTING ON ONE ASPECT OF SEC'S PAY-TO-PLAY RULE PROPOSAL

As you may recall, in August 1999, the Securities and Exchange Commission ("SEC") proposed rules to address certain "pay-to-play" practices involving investment advisers.\* The rules are intended to prevent the selection of advisers to public funds from being influenced by the advisers' political contributions to a government official responsible for the management of such funds. In response to a comment letter filed by two subcommittees of the American Bar Association ("ABA"), the Institute recently submitted a comment letter to the SEC on one aspect of the proposal -- its exclusion for investment advisers to registered investment companies. In particular, in January 2000, two subcommittees of the ABA filed a joint comment letter with the SEC asserting that the SEC's proposal would leave certain "gaps in coverage" and be "underinclusive" because it would exclude investment advisers to registered investment companies. In response to these comments, the Institute filed the attached comment letter with the SEC. The letter notes that while the Institute has not taken a position on the proposed rules in general, it expressly endorses the rules' proposed treatment of advisers to registered investment companies. The Institute's letter explains that the extension of the proposed rules to advisers to such companies is neither necessary nor appropriate due to the extensive regulation of investment companies under the federal securities laws. In addition, the letter notes that the proposal is appropriately tailored to advance the SEC's stated regulatory goals and should, as a result, withstand any allegation that the rules are defective under the First Amendment to the U.S. Constitution. Tamara K. Reed Associate Counsel Attachment