

**MEMO# 11901**

May 23, 2000

## **ICI Submission for SEC Roundtable on Investment Adviser Issues**

[11901] May 23, 2000 TO: BOARD OF GOVERNORS No. 28-00 INVESTMENT ADVISERS COMMITTEE No. 17-00 SEC RULES COMMITTEE No. 80-00 RE: ICI SUBMISSION FOR SEC ROUNDTABLE ON INVESTMENT ADVISER ISSUES

\_\_\_\_\_ The Institute today participated on a panel at the SEC's Roundtable on Investment Adviser Regulatory Issues focusing on technology and investment adviser regulation. Attached is a copy of the Institute's submission for the Roundtable. The Institute's paper, Investment Advisory Services in the Internet Age – Ensuring Investor Protection, focuses on how technology, particularly the Internet, is changing the manner in which investment advice is provided to investors and the implications of such changes for federal oversight of investment advisers. The paper suggests that the SEC consider whether it would be appropriate to review how technology is changing the way Americans receive investment advice, focusing on on-line investment advisory services. It raises a number of questions that might be appropriate for the SEC to consider in its review. These include, for example, whether the SEC should provide guidance as to its views on how on-line services may or may not come within the current definition of "investment adviser" in the Investment Advisers Act of 1940 and whether the SEC should have greater flexibility to require advisers who are exempt from registration but subject to the Act's antifraud provisions to disclose certain information to investors (e.g., conflicts of interests, background, qualifications). The paper also focuses on whether technological developments suggest a need to reassess the safe harbor from the Investment Company Act of 1940 set forth in Rule 3a-4 for certain discretionary investment advisory programs. It notes that technological advances may enable financial professionals to offer new ways to create portfolios for individual investors and to operate a "virtual" mutual fund on-line, often with lower minimum account size requirements than were typically imposed in the past, and to mass market these programs to retail investors. These changes may call into question the extent to which investors in some programs, such as those offered over the Internet, are, in fact, receiving the individualized treatment deemed critical by the SEC in adopting Rule 3a-4, and whether the proliferation of these programs calls into question the SEC's ability to monitor compliance with the rule. The paper recommends that the SEC examine the parameters of Rule 3a-4 to determine whether they are serving the objective of ensuring individualized treatment and industry compliance with the conditions of the rule. Such a review would help the SEC determine, among other things, whether some or all aspects of mutual fund regulation (e.g., independent oversight of these programs similar to that provided by mutual fund directors, delivery of disclosure to investors similar to that provided to mutual fund investors) would be appropriate for those programs that are widely marketed to retail investors. Amy B.R. Lancellotta Senior

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