

MEMO# 12597

September 18, 2000

INSTITUTE SUBMISSION TO SEC CONCERNING WEB-BASED INVESTMENT PROGRAMS

September 18, 2000 TO: BOARD OF GOVERNORS No. 54-00 INVESTMENT ADVISERS COMMITTEE No. 21-00 SEC RULES COMMITTEE No. 114-00 RE: INSTITUTE SUBMISSION TO SEC CONCERNING WEB-BASED INVESTMENT PROGRAMS The Institute has submitted the attached letter and memorandum to the Securities and Exchange Commission regarding the status under the federal securities laws of an investment program being offered by Folio[fn] Investments, Inc. and other similar web-based programs. The submission asserts that such programs involve the offer and sale of a separate security under the Securities Act of 1933 and an investment company under the Investment Company Act of 1940, and requests that the SEC staff examine these issues carefully. Folio[fn] offers through its website investment products called "Folios," which are baskets of stocks that the investor purchases in a single transaction. Investors can choose from various "Ready-to-go" Folios created by Folio[fn], which the investor can customize. The shares in each Folio will consist primarily of odd lots and fractional shares, recorded on Folio[fn]'s books as belonging to the individual investor. Folio[fn] will effect investors' transactions by grouping them in each of two daily time windows and executing them by matching and/or bunching them. Folio[fn] is registered with the SEC as a broker-dealer, but not as an investment adviser, and its products are not registered under either the Securities Act or the Investment Company Act. The submission concludes that Folio[fn] is issuing, offering, and selling securities that are separate from the underlying securities in investors' portfolios because of investors' reliance on the investment expertise built into the "Ready-to-go" Folios and periodic changes in the Folio compositions, as well as the continuing need for Folio[fn] to maintain a market in odd-lot and fractional shares if the program is to be economically viable. Accordingly, the submission asserts that the Folios should be registered under the Securities Act. Furthermore, the submission states that the program and the Folios constitute investment companies under the Investment Company Act and that the policies underlying that Act and the Securities Act - especially the anti-self-dealing provisions, constraints on management fee increases, independent director oversight, and disclosure and advertising requirements - justify regulation of this and similar programs. Amy B.R. Lancellotta Senior Counsel Attachment 2 Attachment (in .pdf format)