

COMMENT LETTER

March 28, 2001

Letter on Mutual Fund Protections for Portfolio Investors

October 17, 2001

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: Petition for Rulemaking

Dear Mr. Katz:

The Investment Company Institute¹ acknowledges receipt of the Commission's decision, set forth in a letter dated August 23, 2001, to deny the Institute's Petition for a rule that would define certain portfolio investment programs ("PIPs") as investment companies under the Investment Company Act of 1940, because they do not "at this time appear to raise interpretive issues that warrant [Commission] rule-making." While the Institute disagrees with Commission's decision, we are pleased by the Commission's statement that it is interested in the concerns raised in our Petition and that it will continue to monitor PIPs for investor protection concerns.

In this regard, we would urge the Commission to focus its review on the extent to which investors in these programs in fact individually manage their holdings. The Commission's letter describes PIPs as "provid[ing] investors with the opportunity to make their own investment decisions and to create and manage portfolios of securities based on each investor's individual needs and objectives." While this statement describes some of the features of PIPs, as our Petition pointed out, PIPs also offer investors the opportunity to purchase pre-packaged portfolios and portfolio updates based on model portfolios managed by investment professionals. To the extent that investors who purchase pre-packaged portfolios and updates will rely upon the program sponsor to manage their investments, their accounts collectively form an investment company managed by the program's sponsor. It is these accounts and these features of PIPs that raise the investor protection concerns discussed in our Petition.

We note that the Commission has left open the decision as to "what action, if any, may be necessary" in response to the development of PIPs. We also note that Paul Royce, the

Director of the Division of Investment Management, stated in a recent speech that “through the inspection process and otherwise, the evolution of these products will be scrutinized carefully to assure that they are appropriately regulated” Such continuing scrutiny will yield key information about PIPs and about the investors who in fact will rely upon the programs’ sponsors to manage their investments. We believe that this information will be critical to the Commission in determining how to proceed.

Sincerely,

Craig S. Tyle
General Counsel

cc: Harvey L. Pitt, Chairman
Laura S. Unger, Commissioner
Issac C. Hunt, Jr., Commissioner
Paul F. Roye, Director, Division of Investment Management

ENDNOTE

1 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,710 open-end investment companies (“mutual funds”), 481 closed-end investment companies and 7 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.673 trillion, accounting for approximately 95% of total industry assets, and over 88.6 million individual shareholders.

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