The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

MEMO# 13402

April 10, 2001

SEC PROPOSAL REGARDING ELECTRONIC RECORDKEEPING BY INVESTMENT COMPANIES AND INVESTMENT ADVISERS

[13402] April 10, 2001 TO: INVESTMENT ADVISERS COMMITTEE No. 11-01 SEC RULES COMMITTEE No. 34-01 ELECTRONIC COMMERCE ADVISORY COMMITTEE No. 8-01 OPERATIONS COMMITTEE No. 14-01 TRANSFER AGENT ADVISORY COMMITTEE No. 28-01 UNIT INVESTMENT TRUST COMMITTEE No. 13-01 RE: SEC PROPOSAL REGARDING ELECTRONIC RECORDKEEPING BY INVESTMENT COMPANIES AND INVESTMENT ADVISERS The Institute has prepared the attached draft comment letter on the SEC's proposed amendments to its recordkeeping rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The Commission's proposal would expand the circumstances under which registered investment advisers and registered investment companies may use electronic storage media to maintain and preserve records. Comments on the Commission's proposal are due April 19, 2001. Please submit any comments you may have on the draft letter to me or Frances Stadler no later than Monday, April 16, 2001. You may reach me by phone at (202) 326-5923, by facsimile at (202) 326-5827, or by e-mail at bsimmons@ici.org. Frances Stadler may be contacted by phone at (202) 326-5822, by facsimile at (202) 326-5827, and by e-mail at frances@ici.org. The Institute's draft letter generally supports the Commission's proposal but makes several recommendations. First, the draft letter opposes the Commission's proposal to define in the rule what it means to "provide promptly" the records requested by SEC examiners and others. (The rule amendments would specify that information would have to be provided within one business day of the request.) The letter notes that the time needed to provide requested information can vary based on a number of factors, including, among others, the amount of advance notice provided, the amount of information requested, and the location of the information at the time the request is made. The letter adds that codifying a one business day time frame in the rule inevitably will result in rule violations despite good faith efforts to comply, and will create another layer of regulation not otherwise justified. 2General Requirements The draft letter also seeks clarification that the proposed subsections entitled "General requirements" in Rule 31a-2 under the Investment Company Act of 1940 and Rule 204-2 under the Investment Advisers Act of 1940 apply only to micrographic and/or electronic storage and not to paper records. The letter also discusses the proposed requirement in both rules that funds and advisers provide to Commission staff and others a means to access, search, view, sort, and print requested records. The letter notes that it would be useful if the Commission were to clarify that the ability to "search" and "sort" records may vary depending on the medium on which the record is stored and the capability of that medium. In this regard, please provide any examples of micrographic or electronic storage media that would not necessarily have "search" or "sort" capabilities. Status of Other

Recordkeeping Requirements The draft letter notes that Rule 2a-7 under the Investment Company Act contains recordkeeping requirements for money market funds that are in addition to those contained in Rule 31a-2 under the Act. The letter expresses concern that because the recordkeeping requirements of Rule 2a-7 technically are not covered by Rule 31a-2, the proposed rule amendments may not apply to records retained pursuant to Rule 2a-7. In order to ensure consistent standards for all records maintained by funds, the letter urges the Commission to clarify that the ability to retain electronic records and the requirements applicable to electronic record retention to be set forth in Rule 31a-2 will also extend to records required under Rule 2a-7. The draft letter also notes that the Commission previously had proposed, but never adopted, amendments to Rule 17Ad-7 under the Securities Exchange Act of 1934 to allow registered transfer agents to use micrographic or electronic storage media to produce and preserve required records. The letter points out that many funds have an affiliated transfer agent that performs recordkeeping functions for the funds, and that E-SIGN will permit such transfer agents to use electronic storage media as of June 1, 2001. The letter thus asks the Commission to clarify what standards will apply to such recordkeeping, and requests that any such standards be consistent with those for fund and adviser records and should accommodate existing practices that have developed pursuant to SEC staff no-action letters. Are these comments appropriate in light of the Commission’s outstanding transfer agent proposal and the existing no-action letters? Should we make any more specific recommendations concerning recordkeeping requirements for transfer agents? Barry E. Simmons Associate Counsel Attachment 3Attachment (in .pdf format)
