

**MEMO# 9747**

March 10, 1998

## **SEC TEMPORARY RULE PROPOSALS FOR TRANSFER AGENTS AND BROKER- DEALERS REGARDING YEAR 2000 READINESS**

1 Year 2000 Readiness Reports to Be Made by Transfer Agents, SEC Release No. 34-39726; File No. S7-8-98 (March 5, 1998); and Reports to Be Made by Certain Brokers and Dealers, SEC Release No. 34-39724, IC-23059, IA-1704; File No. S7-7-98 (March 5, 1998) (collectively, the "proposed temporary rules"). The Commission has also issued an advisory notice reminding transfer agents and broker-dealers of their books and records responsibilities under applicable provisions of the Securities Exchange Act of 1934 ("Exchange Act") relating to the Year 2000. [9747] March 10, 1998 TO: ACCOUNTING/TREASURERS COMMITTEE No. 13-98 COMPLIANCE ADVISORY COMMITTEE No. 8-98 INDEPENDENT ACCOUNTANTS ADVISORY COMMITTEE No. 3-98 INTERNAL AUDIT COMMITTEE No. 2-98 INVESTMENT ADVISERS COMMITTEE No. 10-98 OPERATIONS COMMITTEE No. 13-98 SEC RULES COMMITTEE No. 23-98 TRANSFER AGENT ADVISORY COMMITTEE No. 14-98 UNIT INVESTMENT TRUST COMMITTEE No. 9-98 RE: SEC TEMPORARY RULE PROPOSALS FOR TRANSFER AGENTS AND BROKER-DEALERS REGARDING YEAR 2000 READINESS

The Securities and Exchange Commission has proposed a temporary rule and a temporary rule amendment that would require non-bank transfer agents and certain broker-dealers, respectively, to file initial and follow-up progress reports regarding their Year 2000 readiness.<sup>1</sup> The proposed temporary rules would also require that the follow-up reports be accompanied by an independent public accountant's report attesting to the firm's Year 2000 status. The proposed temporary rules are attached, and are discussed below.

Comments on these proposals are due to the SEC no later than 30 days after their publication in the Federal Register. If there are issues you would like the Institute to consider in its comment letter, please contact me by phone at (202) 326-5923, by fax at (202) 326-5839, or by e-mail at [simmonbe@ici.org](mailto:simmonbe@ici.org) by Friday, March 20th. The proposed temporary rules would apply to transfer agents and broker-dealers as follows. For transfer agents, proposed temporary Exchange Act Rule 17Ad-18 would require all registered non-bank transfer agents that do not qualify for an exemption under Exchange Act Rule 17Ad-13 to file with the Commission an initial report and two follow-

==Γενεραλλη,=Ρυλε=17Αδ-13(δ)=εξεμπτ=ισουερ=τρανσφερ=αγεντσ,=σμαλλ=τρανσφε  
ρ=αγεντσ=εξεμπτ=υνδερ=Ρυλε

17Αδ-4(β),=ανδ=βανκ=τρανσφερ=αγεντσ=φορμ=τηε=ρυλεΓσ=αννυαλ=ρεπορτινγ=ρεθυ  
ιρεμεντσ.== 2 up reports.<sup>2</sup> The initial report would be filed no later than 45 days after the proposed rule is adopted. The follow-up reports would be due on or before August 31, 1998,

and on or before August 31, 1999, for the periods ending June 30, 1998 and June 30, 1999, respectively. For broker-dealers, proposed temporary rule amendment Exchange Act Rule 17a-5(e)(5) would require each registered broker-dealer (including market makers, dealers, and clearing firms) with a minimum net capital requirement of \$100,000 or more as of December 31, 1997 to file with the Commission and its designated examining authority ("DEA") an initial and a follow-up report regarding its readiness for the Year 2000. The first report would be filed no later than 45 days after the proposed temporary rule amendment is adopted. The follow-up report would be filed with the Commission and its DEA within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. The broker-dealer proposing release seeks comment on, among other things, whether the Commission should require registered investment advisers and investment companies to file reports with the Commission regarding Year 2000 compliance. Other features of the proposed temporary rules applicable to both transfer agents and broker-dealers (collectively, "service providers") follow.

**Initial and Follow-Up Reports** The proposed temporary rules would require that the initial and each follow-up report filed with the Commission address the following issues:

1. Whether the service provider's board of directors (or similar body) has approved and funded plans for preparing and testing the firm's computer systems for potential computer problems caused by Year 2000 problems.
2. Whether the service provider's plans exist in writing and address all of its computer systems wherever located throughout the world.
3. Whether the service provider has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 problems; and if so, the work that these individuals have performed as of the date of each report.
4. What is the service provider's current progress on each of various specified stages of preparation for potential computer problems caused by Year 2000 problems.
5. Whether the service provider has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 problems.
6. What levels of the service provider's management are responsible for addressing potential computer problems caused by Year 2000 problems.

**Accountant's Report** As mentioned, the proposed temporary rules would require each follow-up report to include an independent public accountant's report containing its opinion on whether a reasonable basis exists to support the service provider's assessment of its Year 2000 status. Specifically, the issues that the service provider must address, to which the independent public accountant must attest, include, among other things, the following issues:

1. Whether the service provider has developed (and its board of directors has approved) written plans for preparing and testing the service provider computer systems for potential Year 2000 problems, and whether a member of the board is responsible for their execution.
2. Whether the plans address the service provider's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions.)
3. Whether the service provider has assigned existing employees, hired new employees, or engaged third parties to implement the plans.
4. Whether the service provider has conducted internal, external, or industry-wide testing, whether such testing is on schedule and in accordance with the plans, and whether the service provider has determined as a result of the internal, external, or industry-wide testing that it has modified its software to correct Year 2000 problems.

**Requests for Comment** Among other things, the Commission requests comment on the following issues:

1. Whether the reports should include any additional material information specific to a service provider's management of the Year 2000 problem; and if so, then what that material information should include.
2. Whether service providers should report whether their Year 2000 plans are on schedule, and, if not, the reasons for the delay.
3. Whether materiality thresholds should be established for determining whether the

number and the nature of the exceptions resulting from internal and integrated or industry-wide testing needs to be reported; and if so, then how such thresholds should be determined. 4. Whether a particular officer of the service provider should be required to sign the reports on the firm's behalf. 5. Whether the accountant's report accompanying the follow-up reports can be combined with, or would already be part of, the independent public accountant's responsibilities, in accordance with Generally Accepted Accounting Principles, to opine on whether the service provider can continue as a going concern. 6. Whether the reports, or portions of them, should not be publicly available. 4Barry E. Simmons Assistant Counsel Attachments

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.