

**MEMO# 13263**

March 14, 2001

# **SEC PROPOSAL REGARDING ELECTRONIC RECORDKEEPING BY INVESTMENT COMPANIES AND INVESTMENT ADVISERS**

[13263] March 14, 2001 TO: INVESTMENT ADVISERS COMMITTEE No. 5-01 SEC RULES COMMITTEE No. 25-01 ELECTRONIC COMMERCE ADVISORY COMMITTEE No. 5-01 OPERATIONS COMMITTEE No. 10-01 TRANSFER AGENT ADVISORY COMMITTEE No. 22-01 RE: SEC PROPOSAL REGARDING ELECTRONIC RECORDKEEPING BY INVESTMENT COMPANIES AND INVESTMENT ADVISERS The Securities and Exchange Commission has issued a release proposing amendments to its recordkeeping rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to expand the ability of registered investment advisers ("advisers") and registered investment companies ("funds") to use electronic storage media to maintain and preserve records.<sup>1</sup> The Commission's proposal is in response to the Electronic Signatures in Global and National Commerce Act ("E-SIGN"), which encourages federal agencies to accommodate electronic recordkeeping. The Commission's proposal is attached, and it is summarized below. Comments on the Commission's proposal are due April 19, 2001. If there are comments that you would like the Institute to consider in its comment letter, please submit them to me or Frances Stadler no later than Friday, March 30, 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](mailto: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](mailto:frances@ici.org). Under the proposal, the Commission would amend Rule 31a-2 under the Investment Company Act and Rule 204-2 under the Advisers Act to expand the circumstances under which funds and advisers may keep their records on electronic storage media. The Proposing Release notes that while these rules presently allow the use of electronic media for recordkeeping purposes provided the records were originally created or received in electronic format, the Commission has provided no-action relief to permit the conversion of non-electronic records into electronic format. The Commission's proposal would codify these no-action letters, but would eliminate certain of the conditions so as to ensure that electronic records, however <sup>1</sup> Electronic Recordkeeping by Investment Companies and Investment Advisers, SEC Rel. No. IC-24890; IA-1932 (March 13, 2001) ("Proposing Release"). <sup>2</sup>originated, would be subject to uniform requirements. Consequently, the proposed amendments provide that the records required to be maintained and preserved under Rules 31a-2 and 204-2 may be maintained and preserved on micrographic media (e.g., microfilm, microfiche, or any similar medium) or electronic storage media (e.g., any digital storage medium). The proposed amendments also clarify the obligations of funds and advisers to provide copies of their records to Commission examiners. Specifically, the amendments would require funds and advisers to arrange and index the records in a way that permits easy location, access, and retrieval of any particular

record. Such records must also be provided promptly to Commission examiners or other representatives upon request. For this purpose, the proposed amendments clarify that (1) “provide promptly” means no more than one business day after the request, (2) printouts or copies of a storage medium include legible, true, and complete printouts or copies of the records (or the information necessary to generate the records) in the medium and format in which they are stored, and (3) the fund or adviser must provide a means to access, search, view, sort, and print the records. The proposed amendments also require the fund and the adviser to store separately, for the requisite time period of the original record, a duplicate copy of the electronic record. Finally, the Commission proposes to adopt certain technical amendments that incorporate the terminology used in electronic recordkeeping rules under the Securities Exchange Act of 1934 into Rules 31a-2 and 204-2. Barry E. Simmons  
Associate Counsel Attachment Attachment (in .pdf format)

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