

MEMO# 10153

July 28, 1998

ICI DRAFT COMMENT LETTERS ON SEC YEAR 2000 RULE PROPOSALS

1 See Memorandum to Accounting/Treasurers Committee No. 27-98, Compliance Advisory Committee No. 18-98, Internal Audit Committee No. 6-98, Investment Advisers Committee No. 24-98, Operations Committee No. 26-98, SEC Rules Committee No. 68-98, and Transfer Agent Advisory Committee No. 37-98, dated July 6, 1998 (investment adviser rule proposal). 2 See Memorandum to Accounting/Treasurers Members No. 18-98, Compliance Advisory Committee No. 19-98, Internal Audit Committee No. 7-98, Investment Advisers Committee No. 26-98, Operations Committee No. 27-98, SEC Rules Committee No. 73-98, and Transfer Agent Advisory Committee No. 41-98, dated July 14, 1998 (attestation request for additional comment). [10153] July 28, 1998 TO: ACCOUNTING/TREASURERS COMMITTEE No. 32-98 COMPLIANCE ADVISORY COMMITTEE No. 21-98 INTERNAL AUDIT COMMITTEE No. 9-98 INVESTMENT ADVISERS COMMITTEE No. 27-98 OPERATIONS COMMITTEE No. 31-98 SEC RULES COMMITTEE No. 74-98 TRANSFER AGENT ADVISORY COMMITTEE No. 45-98 RE: ICI DRAFT COMMENT LETTERS ON SEC YEAR 2000 RULE PROPOSALS

Attached are drafts of the Institute's comment letters on the Securities and Exchange Commission's recent Year 2000 rule proposals. The first letter comments on the SEC's proposed rules regarding Year 2000 readiness report filings by registered investment advisers.¹ The second letter responds to the SEC's request for additional comment on their proposed attestation requirement for non-bank transfer agents and certain broker-dealers.² The draft comment letters are attached and are summarized below. Comments on the investment adviser rule proposal and the attestation request for additional comment are due to the SEC on Monday, August 10, 1998 and Wednesday, August 12, 1998, respectively. The Institute intends to file both letters on August 10th. Please provide any comments on these draft letters to me by Wednesday, August 5, 1998. You may reach me by phone at (202) 326-5923, by fax at (202) 326-5839, or by e-mail at simmonbe@ici.org. Investment Adviser Rule Proposal The Institute's draft letter generally supports the investment adviser rule proposal and notes our appreciation that the proposed rule would not require an attestation report prepared by an independent public accountant. The letter focuses primarily on Part II of proposed new Form ADV-Y2K, which applies to registered investment advisers to registered investment companies, and recommends certain modifications to it to make it more workable. In particular, the letter recommends that Part II be tailored specifically to apply to investment companies. It notes that this is necessary because investment companies typically do not have their own management information systems, Year 2000 plan, dedicated computer systems, contingency plan, or employees. The letter notes our concern that many of the questions in Part II may go unanswered because technically they do not apply to the investment company, or the responses given may merely replicate the responses given in Part I to the form. The letter also recommends that the instructions to

Part II be revised to reflect that primary responsibility for completing and filing the form rests with the fund's investment adviser or sponsor. This is in recognition of the limited role that sub-advisers have in fund management. The letter indicates that to impose primary responsibility on a sub-adviser to one fund to complete and file these reports for all funds in the same fund complex would be unreasonable. The letter also comments on the facsimile filing requirement, and requests guidance on the consequences for late filings, particularly if a filing is late because of heavy volume on the Commission's facsimile machine or because some other communication glitch occurs. Attestation Request for Additional Comment The Institute's draft letter expresses our appreciation that the recently-adopted rules for Year 2000 readiness reporting requirement for non-bank transfer agents and certain broker-dealers do not impose an attestation requirement, as was originally proposed. The letter focuses on the Commission's request for comment on the feasibility or desirability of an "agreed-upon procedures" engagement, as was suggested by the American Institute of Certified Public Accountants (AICPA). The letter notes our concern that this approach may not provide added value in reinforcing the Year 2000 compliance efforts of transfer agents and broker-dealers. The letter discusses the inherent limitations of an agreed-upon procedures engagement -- namely that it is not designed to provide assurances as to the adequacy or effectiveness of any of the procedures performed, which, in the context of a Year 2000 engagement, means that an independent public accountant would not provide any assurance that a non-bank transfer agent or a broker-dealer is or will be Year 2000 compliant, that the registrant's remediation plan would be successful, or that any party doing business with it will be Year 2000 compliant. Without these assurances, the letter questions whether this approach would provide any added value to the present Year 2000 reporting scheme. Finally, the letter notes that the specific procedures have not yet been determined and should be applied consistently among all non-bank transfer agents and broker-dealers so as to ensure that the results of the review would be subject to consistent evaluation by the Commission. The letter adds that if the SEC decides to pursue this approach, despite its shortcomings, there should be an opportunity to comment on any specific procedures before they are adopted. Barry E. Simmons Assistant Counsel
Attachments