

MEMO# 13544

May 25, 2001

SEC ADOPTS ELECTRONIC RECORDKEEPING RULES FOR INVESTMENT COMPANIES AND INVESTMENT ADVISERS

[13544] May 25, 2001 TO: INVESTMENT ADVISER MEMBERS No. 11-01 SEC RULES MEMBERS No. 46-01 ELECTRONIC COMMERCE ADVISORY COMMITTEE No. 13-01 OPERATIONS MEMBERS No. 13-01 SMALL FUNDS COMMITTEE No. 5-01 TECHNOLOGY ADVISORY COMMITTEE No. 7-01 TRANSFER AGENT ADVISORY COMMITTEE No. 38-01 UNIT INVESTMENT TRUST COMMITTEE No. 17-01 RE: SEC ADOPTS ELECTRONIC RECORDKEEPING RULES FOR INVESTMENT COMPANIES AND INVESTMENT ADVISERS The Securities and Exchange Commission has issued a release adopting amendments to its recordkeeping rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to expand the circumstances under which funds and advisers may keep and preserve their records on electronic storage media.¹ The amendments are in response to the Electronic Signatures in Global and National Commerce Act ("E-SIGN"), which encourages federal agencies to accommodate electronic recordkeeping. The final rules were adopted largely as proposed with a few changes that reflect the Institute's comments.² The Adopting Release is attached, and it is summarized below. The amendments become effective on May 31, 2001. As amended, Rule 31a-2 under the Investment Company Act and Rule 204-2 under the Advisers Act permit funds and advisers to maintain records electronically if they establish and maintain procedures that: (i) safeguard the records from loss, alteration, or destruction; (ii) limit access to the records to authorized personnel, the Commission, and (in the case of funds) fund directors; and (iii) ensure that electronic copies of non-electronic originals are complete, true, 1 Electronic Recordkeeping by Investment Companies and Investment Advisers, SEC Rel. No. IC-24991; IA-1945 (May 24, 2001) ("Adopting Release"). 2 See Letter from Barry E. Simmons, Associate Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, dated April 19, 2001. 2and legible. The Adopting Release adds that electronic retention is permitted regardless of how the records were originated.³ The final rules require funds and advisers to provide copies of their records to Commission examiners or other representatives promptly upon request. The Commission had proposed to define "provide promptly" in the rules as meaning within one business day of the request. In response to concerns raised by the Institute and others, the final rules do not define the "promptly" standard. The Adopting Release reiterates the Commission's expectation, however, that absent unusual circumstances, electronic records should be provided within 24 hours of a request, adding that in many cases funds and advisers could, and therefore will be required to, furnish records immediately or within a few hours of request. The Adopting Release confirms that Rules 31a-2 and 204-2 are the exclusive means by which

funds and advisers can comply with the recordkeeping provisions of E-SIGN. In response to the Institute's suggestion, the Release clarifies that the adopted amendments are intended to cover all of the records that funds and advisers are required to maintain and preserve by any rule under the Investment Company Act or Advisers Act.⁴ Thus, if funds and advisers keep records electronically, they must comply with the final rules. The Adopting Release notes one other technical change. The original proposal would have required funds and advisers, when presenting electronic records to Commission examiners, to provide a means to access, search, view, sort, and print the records. As the Institute recommended in its comment letter, however, the Commission has deleted the "search" and "sort" requirement from the final rules. The Adopting Release explains that the Commission did not intend to require funds and advisers to add these functions to recordkeeping systems that do not have that capability. Barry E. Simmons Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 13544. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format) 3 The Adopting Release notes that prior to the amendments, the use of electronic storage media was only permitted if the records were originally created or received in electronic format. The use of electronic storage media for records that were converted into an electronic format was permitted pursuant to SEC no-action relief. The adopted amendments effectively codify that relief while eliminating many of the conditions that apply only to electronic records created from non-electronic originals. 4 The Adopting Release provides examples of several rules that contain separate recordkeeping requirements, including among others, Rule 2a-7 (money market funds), Rule 17j-1 (codes of ethics), and Rule 12b-1 (distribution plans). Thus, under the Adopting Release, funds and advisers may satisfy all of their recordkeeping requirements electronically provided they comply with the conditions of the rules.