

MEMO# 10365

October 12, 1998

SEC REPROPOSES BROKER-DEALER BOOKS AND RECORDS RULES

1 Securities and Exchange Commission Release No. 34-40518 (Oct. 2, 1998), 63 Fed. Reg. 54409 (Oct. 9, 1998). 2 See Memorandum to SEC Rules Committee No. 121-96 (Nov. 15, 1996). 3 The ICI submitted comments on the original proposal recommending that broker-dealers that only serve as mutual fund underwriters be exempt from the proposal because, due to their limited activities, they are not subject to suitability requirements. The SEC's release does not discuss the ICI's comments. 1 [10365] October 12, 1998 TO: SEC RULES COMMITTEE No. 101-98 RE: SEC REPROPOSES BROKER-DEALER BOOKS AND RECORDS RULES

The Securities and Exchange Commission has repropoed amendments to its books and records rules (Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934).¹ The SEC originally proposed amendments to these rules in 1996 in response to concerns raised by members of the North American Securities Administrators Association about the adequacy of the SEC's books and records rules.² The SEC received numerous comments on the original proposal and has repropoed amendments to these rules. Significant aspects of the proposed amendments are summarized below, and a copy of the SEC's release is attached. The amendments would require a broker-dealer ("broker") to identify on each order ticket the associated person and any other person that accepted or entered the order on behalf of a customer. Unlike the original proposal, the current amendments would not require an order ticket to indicate whether the order was solicited or unsolicited. A broker also would be required to record on an order ticket the time at which the broker received a customer order, even if the order were subsequently executed. Current Rule 17a-3 only requires this information if an order is not executed. The amendments would require brokers to maintain additional records on their associated persons, such as records of agreements between associated persons and the broker-dealer, customer complaint information, and client trading records for each associated person. These records would not be required for persons whose functions are solely clerical, ministerial or not related to securities business. Unlike the original proposal, the repropoed amendments would not require brokers to maintain an account form for each customer; however, brokers still would have to maintain certain records for each natural person customer account, including the customer's investment objectives or risk tolerance.³ A broker would have to update a customer's investment objectives at least once every 36 months. A broker also would have to furnish a customer's account record to the customer within 30 days of opening the account and thereafter at least once every 36 months or when the account record is otherwise updated. The amendments also would require a broker to record whether a customer is an associated person of a broker. If an account is a discretionary account, the records would have to contain the dated signatures of each customer granting

4 As an alternative to

maintaining a record of each customer complaint, a broker-dealer could keep a copy of the written complaint along with a record of the disposition of the complaint. 2 the discretionary authority and the person to whom such authority has been granted. Brokers also would have to create records indicating whether they have complied with applicable rules governing the information required when opening or updating an account, such as those applicable to accounts trading in penny stocks or options. Unlike the original proposal, brokers would not have to document and retain records of oral complaints. However, brokers would have to keep records of all written complaints, including records at each local office of written complaints against each associated person that conducts business at that office.⁴ Additionally, brokers would have to create records indicating that they notified each customer of the address and telephone number to which complaints may be directed. This requirement would apply to both introducing brokers and clearing brokers. The amendments would require brokers to create commission and compensation records for each associated person, but would allow brokers some flexibility in how they retain these records. Unlike the original proposal, brokers would not have to produce reports monitoring unusual occurrences in customer accounts, such as frequent trading or unusually high commissions. However, brokers would be required to retain these reports, if created, or be able to recreate them upon request. The amendments contain detailed recordkeeping and retention requirements for each broker "local office," defined as a location where two or more associated persons regularly conduct securities business. The amendments also would require brokers to retain any written approvals of outgoing communications and any written procedures they use to review such communications. Brokers also would have to maintain records of any written procedures for reviewing marketing materials and records listing each principal responsible for ensuring compliance with applicable standards. Finally, brokers would have to retain for three years all reports requested or required by a securities regulatory authority and any regulatory authority's examination reports. Comments on these amendments are due to the SEC no later than November 9, 1998. If you have any comments on these amendments that you would like the Institute to include in its comment letter, please contact me (telephone: 202/326-5819, fax: 202/326-5839, or e-mail: savage@ici.org) no later than October 23, 1998. Joseph P. Savage Assistant Counsel Attachment

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