

COMMENT LETTER

August 10, 1998

Comment Letter on SEC's Year 2000 Rule Proposals, August 1998

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Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Year 2000 Readiness Reports—Accountant's Review
(File Nos. S7-7-98 and S7-8-98)

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to provide further comments on the Securities and Exchange Commission's proposal to require an independent public accountant to review certain Year 2000 readiness reports prepared by nonbank transfer agents and certain broker-dealers.² The Institute is pleased that the Commission did not adopt its original proposal that would have required an independent public accountant to attest to specific assertions by management in these reports. The Attestation Releases indicate that the American Institute of Certified Public Accountants (AICPA) has proposed an alternative approach—an "agreed-upon procedures" engagement. As discussed below, however, we are not convinced that this approach will be feasible or that it will necessarily reinforce the Year 2000 compliance efforts of transfer agents and broker-dealers.

In a comment letter to the Commission regarding the transfer agent and broker-dealer rule proposals, the Institute opposed the proposed attestation requirement and recommended that it be deleted or instead modified to address the concerns raised in the letter.³ In deciding to defer consideration of the attestation requirement, the Commission acknowledged the concerns raised by the Institute, the AICPA, and others that the attestation requirement as proposed would be unworkable.⁴ We continue to oppose the proposed attestation requirement for the reasons previously stated.

According to the Adopting Releases, the AICPA believes that an agreed-upon procedures engagement would more effectively meet the Commission's goals. Accordingly, the Commission has requested comment on whether this proposal is feasible or desirable.⁵

The Institute notes that an agreed-upon procedures engagement, as we understand the concept, could mitigate some of the Institute's concerns with the proposed attestation requirement. For example, it appears that it would be less time-consuming, less costly, and less disruptive operationally than the attestation approach. Nevertheless, the agreed-upon procedures approach also has certain inherent limitations. For example, as described by the AICPA, an agreed-upon procedures engagement generally is not designed to provide assurances as to the adequacy or effectiveness of the assertions made by the client/registrant. Thus, in the context of a Year 2000 engagement, an independent public accountant would not provide any assurance that a nonbank transfer agent or a broker-dealer is or will be Year 2000 compliant. Nor would it provide assurance that such registrant's remediation plan will be successful, in whole or in part, or that any party doing business with the registrant will be Year 2000 compliant. Without these assurances, it is unclear how this approach would provide any added value to the present Year 2000 reporting scheme. And the cost of having this type of review, even if it is less than that of an attestation engagement, almost certainly outweighs any benefits it would provide.⁶

Moreover, the specific procedures that would form the basis for a Year 2000 agreed-upon procedures engagement have not yet been determined.⁷ In order to have consistent reports, an agreed-upon procedures engagement should have agreed-upon procedures that are applied consistently among all nonbank transfer agents and all covered broker-dealers so as to ensure that the results of the review would be susceptible to consistent evaluation by the Commission. We are highly skeptical that it will be feasible to formulate uniform, "one size fits all" procedures for this purpose. For example, it seems likely that the appropriate procedures for verifying that a particular action has occurred might vary depending on the size, structure, and/or specific functions performed by individual broker-dealer or transfer agent firms. Yet, efforts to maintain flexibility for diverse circumstances likely would lead to weaker procedures.

If the Commission decides to pursue this approach despite its shortcomings, there should be an opportunity to comment on any specific proposed procedures before they are adopted. An agreed upon procedures engagement must be performed under the conditions specified in SSAE No. 4, Agreed Upon Procedures Engagements.⁸ These conditions require that the accountant and the specified users of the report agree upon the procedures to be performed and that the specified users take responsibility for the sufficiency of the agreed upon procedures for their purposes. We are concerned that the procedures to be performed are being developed by the AICPA, without opportunity for comment or input from industry participants. To the extent the procedures to be performed are promulgated by the AICPA,⁹ broker-dealers and transfer agents would not have an opportunity to "agree upon" those procedures. Accordingly, under the AICPA's professional standards, a registrant would not be deemed a "user" of the report and would have no responsibility for the sufficiency of the procedures performed by the independent accountant.

In sum, in response to the Commission's request for comments, the Institute believes the proposed agreed-upon procedures engagement approach is not desirable because it would add little, if any, value to the present Year 2000 reporting scheme. In addition, we doubt that it will be feasible to develop meaningful procedures that are appropriate in all circumstances.

* * *

The Institute appreciates the opportunity to comment on the Attestation Releases. Any questions on our comments may be directed to the undersigned at (202) 326-5923 or to

Greg Smith at (202) 326-5851.

Sincerely,

Barry E. Simmons
Assistant Counsel

cc: Richard R. Lindsey, Director
Michael A. Macchiaroli, Associate Director
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ENDNOTES

1 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7,301 open-end investment companies ("mutual funds"), 436 closed-end investment companies, and 9 sponsors of unit investment trusts. Its mutual fund members have assets of about \$5.097 trillion, accounting for approximately 95% of total industry assets, and have over 62 million individual shareholders. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 501 associate members which render investment management services exclusively to noninvestment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.

2 Reports to be Made by Certain Transfer Agents, SEC Release No. 34-40165; File No. S7-8-98 (July 2, 1998); and Reports to be Made by Certain Brokers and Dealers, SEC Release No. 34-40164; File No. S7-7-98 (July 2, 1998) ("Attestation Releases"). In two companion releases, the Commission adopted and amended rules requiring these registrants to prepare and file with the Commission Year 2000 readiness reports, but in doing so, deferred consideration of whether to adopt an attestation requirement for the follow-up reports, deciding instead to reopen the comment period to obtain additional views on the issue. See Year 2000 Readiness Reports to be Made by Certain Transfer Agents, SEC Release No. 34-40163; File No. S7-8-98 (July 2, 1998); and Reports to be Made by Certain Brokers and Dealers, SEC Release No. 34-40162; File No. S7-7-98 (July 2, 1998) ("Adopting Releases").

3 See Letter from Barry E. Simmons, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 13, 1998 (the "ICI Letter").

4 Specifically, the ICI Letter stated that: (1) having independent public accountants conduct a thorough review of a firm's systems and operations in order to opine on the reasonableness of management's assertions could be very costly, time-consuming, and operationally disruptive; (2) independent public accountants may not have the requisite expertise to perform an attestation engagement given that their focus primarily is on

financial audits; (3) the Year 2000 readiness reporting rules do not provide criteria against which to measure the quality of management's actions—such as the reasonableness of a Year 2000 plan, the accuracy and validity of related test results, etc.; and (4) independent public accountants may not have the capacity collectively to perform all of the attestations that would be required given that the followup reports for all nonbank transfer agents (and certain broker-dealers with the same fiscal yearend) would have to be filed at the same time.

5 The Institute notes that the AICPA suggestion is more of a "concept" proposal, inasmuch as it has not been modified to apply to a Year 2000 engagement. As such, our comments focus primarily on general conceptual issues, rather than specific recommendations.

6 Another inherent limitation of an agreed-upon procedures engagement is that, because it is a contractual arrangement between the independent public accountant and the registrant/client, the results of the review generally are not made available to the general public without the registrant's consent. Rather, the results typically are provided only to those persons as directed by the registrant, such as its management and/or board of directors. Given that the Commission is contemplating requiring that the results of this type of review be publicly available, this issue would need to be addressed.

7 According to the Attestation Releases, the AICPA has offered to work with the Commission staff in developing specific procedures for a Year 2000 engagement.

8 See AICPA, Professional Standards, Vol. 1, AT sec. 600.

9 See Letter from Alan W. Anderson and Deborah D. Lambert, AICPA, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 13, 1998.