

COMMENT LETTER

May 24, 2004

Comment Letter on Proposed Changes to EDGAR System (pdf)

May 24, 2004 Mr. Jonathan G. Katz Secretary Securities and Exchange Commission 450 Fifth Street, N.W. Washington, DC 20549-0609 Re: Rulemaking for EDGAR System (File No. S7-16-04) Dear Mr. Katz: The Investment Company Institute¹ appreciates the opportunity to express its views on proposed amendments to rules relating to electronic filings on the Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.² The proposed amendments will require open-end management investment companies and insurance company separate accounts to include electronic identifiers corresponding to their series, classes or contracts in their EDGAR filings. These identifiers will enable Commission staff and the investing public to easily search the EDGAR database for filings relating to a particular series, class or contract. In addition, the proposed amendments add certain filings currently made in paper form to the list of mandatory electronic filings. The Institute supports the Commission's proposal to include identifiers in open-end fund filings, enabling EDGAR to identify the series, class or contract to which the filing relates. In our comments below, we make several recommendations intended to ensure that the proposal to include identifiers does not disrupt or delay investment company filings. As described more fully below, we believe the proposal to require mandatory electronic filing of Investment Company Act Section 33 litigation materials entails significant costs and practical problems and we urge the Commission to permit, but not require, these materials to be filed electronically. 1 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,632 open-end investment companies ("mutual funds"), 621 closed-end investment companies, 126 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about \$7.545 trillion. These assets account for more than 95% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households. 2 SEC Release No. IC-26388 (March 16, 2004), 69 Fed. Reg. 13689 (March 23, 2004) ("Proposing Release"). 2 A. Identification of Series, Classes and Contracts As explained in the Proposing Release, many mutual funds are organized as a single registrant with multiple series or portfolios, each of which may offer several classes of shares. Often, a mutual fund may market its series and classes of shares separately without reference to any of its other series, or to the registrant's name. Individual contracts of insurance company separate accounts are also marketed separately and make filings under the name of the Investment Company Act registrant. The EDGAR system keeps records of filings on an investment company registrant basis. However, EDGAR cannot identify the particular series, class or contract to which a filing relates.³ As a result, investors using the EDGAR System often find it difficult to locate filings relating to a particular series, class or

contract, since they often do not know the name of the Investment Company Act registrant. Further, even if an investor knows the name of the registrant, a particular filing by that registrant may contain information relating to some, but not all of the series or classes in the investment company. The Commission proposes to require mutual funds to obtain unique identifiers for their series, classes and contracts and include them in EDGAR filings. The proposal will facilitate the ability of the investing public and Commission staff to easily locate EDGAR filings made on behalf of a particular series, class or contract.⁴ In addition, the proposed identifiers will enhance the ability of EDGAR users to obtain investment company information through the Commission's website. For these reasons, the Institute supports the proposal. Under the proposal, failure to include correctly the required identifiers would mean that a filing for that series, class or contract has not been made. On and after the mandatory identification date, filings will be suspended if they do not include identifiers, or if the identifiers included are not associated with the investment company registrant. In such circumstances, investment companies will be required to re-submit the filing with corrected identifiers. Since failure to meet a required filing deadline can have serious adverse consequences for an investment company registrant, we urge the Commission to notify the investment company registrant immediately upon suspension and to provide the registrant with ample opportunity to correct and re-submit the filing. We have the following specific recommendations: 1. The electronic notice describing the status of the filing (i.e., acceptance or rejection) should be sent to the investment company registrant immediately after the filing is processed by EDGAR; 3 As the Proposing Release explains, the Commission does not currently have in place the programming capabilities needed to keep records on a series, class or contract basis. Proposing Release at 13691. 4 The benefits associated with the proposal to include identifiers may not be realized in connection with Form N- SAR. The Commission's software application supporting Form N- SAR is not designed to accommodate multiple series and classes within a registrant. 3 2. The electronic notice describing the status of the filing should indicate the names of the series, classes and contracts and their corresponding identifiers, so that the registrant can verify receipt by the Commission; 3. Where a filing contains information relating to several series within an investment company and the identifier for one of those series is missing or incorrect, the investment company should not be required to re-submit the entire filing. Series with valid identifiers should be deemed accepted and only information pertaining to the series with the incorrect identifier should be required to be re-submitted; 4. Filers should have ample opportunity to re-submit filings suspended due to any type of identifier-related problem. We urge the Commission to consider an automatic twenty- four hour deadline extension whenever filings are suspended due to identifier-related problems. An automatic extension could save Commission staff from having to respond to numerous requests for filing date adjustments; and 5. Investment companies typically obtain fidelity bonds on a joint basis, covering all the funds in the complex. Accordingly, a particular fidelity bond filing may relate to dozens of investment companies and hundreds of series, classes or contracts. EDGAR should be designed with sufficient capacity to accommodate identifiers for all series, classes and contracts within any particular complex on fidelity bond filings. Further, we urge the Commission to provide tools enabling investment companies to "cut and paste" identifiers into EDGAR submissions so as to avoid re-keying. Mandatory Electronic Filings Investment companies currently file Section 17(g) fidelity bonds and Section 33 litigation materials with the Commission in paper form. In addition, those investment companies required to file sales literature with the SEC must submit those filings in paper form.⁵ The Commission proposes to amend Rule 101 of Regulation S-T to add these filings to the list of mandatory electronic submissions. A. Section 33 Litigation Materials According to the Proposing Release, Section 33 litigation materials include a wide variety of documents, such as (1) all pleadings, verdicts, or judgments filed with the court

or served in connection with such action or claim; (2) any proposed settlement, compromise, or discontinuance of such action or claim; and (3) motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. Documents described in (1) or (2) above, delivered to the investment company, must be filed with the Commission no later than ten days after receipt by the company. We understand from our member firms that these documents typically are served on the investment company in paper form. In certain instances, however, the investment company may be provided with a PDF copy of the paper documents. 5 Most investment company registrants file sales literature with the National Association of Securities Dealers, in lieu of filing with the SEC, as permitted by Rule 24b-3. The Commission is not proposing any changes to Rule 24b-3. 4 The Commission's proposal would require investment companies to convert paper litigation materials into electronic documents for filing over the EDGAR system.6 This would necessitate funds "re-keying" litigation materials into word processing software or utilizing scanning technology combined with character recognition software. Both of these methods, however, are costly, time-consuming and will create difficulty meeting the ten-day filing deadline. For the reasons discussed below, we urge the Commission to consider more practical alternatives. First, we note that litigation materials typically are very lengthy. In many cases, the materials served on investment companies are several hundred pages long and often include extensive exhibits or supporting materials, such as Commission releases or law review articles. Converting this volume of paper into electronic form effectively requires the use of scanning technology combined with character recognition software, which many investment companies do not have. While firms can engage outside vendors to perform this service, this would be costly.7 Second, even if a firm were able to perform the conversion process, the ten-day timeframe specified in Section 33 for filing litigation materials with the Commission introduces practical difficulties. Investment companies would need to 1) convert the materials into electronic form, and 2) proof the electronic version, since the accuracy of character recognition software may be less than 100%. We anticipate the proofreading would be performed by professional staff, further increasing cost. For the foregoing reasons, we urge the Commission to permit investment companies to file Section 33 litigation materials either electronically or in paper form. Alternatively, we urge the Commission to accept PDF copies of Section 33 litigation materials as official filings. By accepting PDF copies of litigation materials, the Commission would enable investors to access these materials electronically and at the same time provide investment companies with a practical means to comply with the ten-day filing requirement.

B. Section 17(g) Fidelity Bonds We understand insurance companies currently provide paper copies of fidelity bonds to their investment company clients. Paper copies facilitate distribution of an official, unalterable version of the fidelity bond. In response to the Commission's proposal, we anticipate that insurance companies will provide electronic copies of fidelity bonds suitable for filing with the Commission to their clients. Insurers will, however, need to consider how distribution of (alterable) electronic copies affects their business and make appropriate modifications to their systems. For these reasons, we urge the Commission to provide an appropriate transition period for mandatory electronic filing of fidelity bonds. 6 Registrants may include unofficial PDF copies of required electronic filings in their EDGAR submissions. However, PDF documents are not accepted by EDGAR as official filings. See Rule 104 under Regulation S-T. 7 We understand that outside vendors may charge from \$12.00 to \$30.00 per page to perform the conversion process with the stipulated timeframes. 5 We appreciate the Commission's consideration of our comments. If you have any questions or need additional information, please contact me at (202) 326-5851. Sincerely, Gregory M. Smith Director - Operations/ Compliance & Fund Accounting cc: Ruth Armfield Sanders, Senior Special Counsel Carolyn A. Miller, Senior Financial Analyst Division of

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