

## COMMENT LETTER

October 20, 2004

# ICI Comments on Proper Disposal of Consumer Information (pdf)

October 20, 2004 Mr. Jonathan G. Katz Secretary U.S. Securities and Exchange Commission  
450 Fifth Street, NW Washington, DC 20549-0609 Re: Disposal of Consumer Report  
Information; File No. S7-33-04 \_\_\_\_\_ Dear Mr. Katz: The Investment Company  
Institute<sup>1</sup> appreciates the opportunity to express its support for the Securities and  
Exchange Commission's proposal to require SEC-registered investment companies  
("funds"), investment advisers, and others to adopt policies and procedures to safeguard  
the disposal of consumer report information.<sup>2</sup> The proposal is a reasonable approach to  
enhancing the protection of consumer privacy. The Institute and its members have long  
recognized the importance of protecting the privacy of investors' personal financial  
information.<sup>3</sup> Investors must have confidence that the funds and investment advisers to  
whom they entrust their personal financial information will protect the sanctity and integrity  
of such information. The Commission's proposal will provide greater protection against the  
unauthorized disclosure of sensitive information, thereby reducing the risk of fraud or  
related crimes, such as identity theft. We support adoption of the proposal. According to  
the Release, in order to be consistent with the requirements of the Fair Credit Reporting Act  
(FCRA) and the Fair and Accurate Credit Transactions Act (FACTA), the proposed rule's  
requirements would not apply to consumer report information that does not identify any  
particular individual.<sup>4</sup> We support this limitation <sup>1</sup> The Investment Company Institute is the  
national association of the American investment company industry. More information about  
the Institute is available at the end of this letter. <sup>2</sup> See Disposal of Consumer Report  
Information, SEC Release Nos. 34-50361, IA-2293, IC-26596 (Sept. 14, 2004), 69 Fed. Reg.  
56304 (Sept. 20, 2004) (the "Release"). The proposal would amend Section 248.30 of  
Regulation S-P, which requires registered funds, investment advisers, and broker-dealers to  
adopt policies and procedures that address safeguards for the protection of customer  
records and information. <sup>3</sup> See, e.g., Letter from Craig S. Tyle, General Counsel, ICI, to Mr.  
Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 2000. <sup>4</sup>  
See Release at p. 53605. and concur that including such information within the rule is  
unnecessary to protect investors. We note, however, that the proposed rule's definition of  
"consumer report information," does not include this distinction. To address this and ensure  
that the proposed rule's definition is consistent with federal law and the Commission's  
intent, we recommend that the definition of "consumer report information" be revised to  
limit the term to "any personally identifiable record about an individual . . ." In response to  
the Commission's request for comment as to whether it is necessary to add other elements  
to the proposed rule, such as an information security governance framework, we do not  
believe additional elements are necessary. <sup>5</sup> We support the flexible standard the  
Commission proposes for the disposal of information, under which covered entities must

“take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” This standard will allow entities subject to the rule to take into account their particular circumstances and will avoid excessive disruption of their existing effective practices. At the same time, we welcome the guidance provided in the Release concerning what might be considered “reasonable” disposal methods. The Commission’s non-exclusive examples should facilitate compliance efforts. We recommend that the Commission’s adopting release reiterate this guidance. We further recommend that the adopting release include overwriting existing data as an additional example of a reasonable disposal method in the case of electronic media. The Institute appreciates the opportunity to submit comments in support of the Commission’s proposed amendments. If you have any questions concerning these comments or would like additional information, please contact the undersigned by phone at 202-326-5825. Sincerely, Tamara K. Salmon Senior Associate Counsel

5 Indeed, pursuant to Rule 38a-1 under the Investment Company Act of 1940, boards of directors of registered funds already are required to approve policies and procedures reasonably designed to prevent violations of the federal securities laws, including those relating to Regulation S-P. About the Investment Company Institute The Investment Company Institute’s membership includes 8,727 open-end investment companies (“mutual funds”), 631 closed-end investment companies, 135 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about \$7.377 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.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.