

Comment Letter on SEC Proposal to Modernize Edgar System, April 2000

April 3, 2000

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, DC 20549-0609

Re: Rulemaking for EDGAR System (File No. S7-05-00)

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to express its views on the proposed rule amendments associated with the modernization of the EDGAR system.² The Commission has proposed rule amendments in anticipation of the next stage of EDGAR modernization (EDGAR Release 7.0). Among other things, EDGAR Release 7.0 will enable graphic and image files to be included in filings submitted in HyperText Markup Language. The Institute strongly supports the Commission proposal to eliminate the Financial Data Schedule for investment company filers. Our comments on specific aspects of the Commission's modernization plan and the related rule amendments follow.

Use of HTML

The Release notes that the Commission expects to require most filings to be submitted in HTML in the future. The Release requests comment on how soon filers will be able to submit most documents in HTML format. We understand that relatively few filings (as few as 5%) are currently submitted in HTML. Many investment company filers have not yet begun to develop HTML filing capability. Further, while certain filers may build applications that "EDGARize" documents into HTML, many will rely on purchased systems. We encourage the Commission to allow sufficient time for both over-the-counter applications and internally developed systems to be implemented and tested prior to mandating HTML. Accordingly, we recommend that the Commission provide a two-year phase-in period for mandatory HTML filings. The two-year phase-in period should start after the SEC takes final action on mandatory HTML filings.³

The Release notes that the Commission adopted HTML 3.2 as the required standard for HTML filings in order to maximize the likelihood of consistent document appearance across different web browsers. The Institute encourages the Commission to base its permissible tag set on HTML 4.0 as soon as practicable.

Graphics

The Commission proposal would require graphics to be included in HTML filings only where SEC rules or forms require graphics (e.g., the performance graph comparison required by Item 5 of Form N-1A, and the risk/return bar chart required by Item 2 of Form N-1A). We do not believe the Commission's proposed approach would be unduly burdensome to investment company filers. We understand that graph and image files supporting the performance graph comparison and the risk return bar chart are fairly simple to construct and do not require substantial storage space relative to photos and other visual effects.

Limitation on Hypertext Links

Currently, EDGAR permits hypertext links to different sections within a single HTML document. The Commission proposes to allow hypertext links within the same filing (i.e., links to exhibits) and to permit hypertext links to documents contained in other official filings in the EDGAR database. The Institute supports this limited hypertext linking proposed by the Commission. The Commission however, would continue to prohibit all links outside the EDGAR database, including links to web sites.

As we have previously indicated, we believe registrants should be permitted to link to documents outside the EDGAR database.⁴ Allowing such hyperlinks would enhance filer ability to present information and improve public access to additional information on the registrant. For example, the filing could include a link to an expense calculator that would enable a prospective investor to determine the effect of fund expenses on an investment. Alternatively, the filing could include a link to the fund's current top ten holdings.

The Institute reiterates its suggestion that the Commission consider following a similar approach to liability for the hyperlinked material as it follows for "attachments" to paper filings. For example, paper prospectuses filed with the Commission may attach a document (e.g., a prospectus "wrapper"), which is not considered part of the prospectus for liability purposes under the 1933 Act.⁵ Similarly, in the Internet context, a fund could attach a document to its online prospectus via a hyperlink, whereby a user is led to the document by a clearly delineated box, set apart in the prospectus, followed by a buffer page which alerts the user that he is leaving the prospectus and entering a third-party site.

Financial Data Schedules

The Commission proposes to eliminate the requirement to prepare and submit financial data schedules. The Release indicates that, with respect to investment companies, the SEC is considering retaining the requirement to file a financial data schedule as an exhibit to Form N-SAR, and in a future rulemaking, incorporating the information in the financial data schedule into the Form N-SAR itself. We do not believe the financial data schedule is useful to the public and strongly support its elimination. We believe the N-30D filing (the shareholder report) is much more useful to public investors. Screens 32 through 36 of Form N-SAR include most of the information in the N-30D, along with some additional detail. We understand that it can take up to an hour per financial data schedule exhibit to prepare, review, input, transmit and file a copy for retention purposes. Insofar as the financial data schedule simply duplicates information that is already available in either the N-30D or the N-SAR, the burden on filers does not seem justified.

In a prior EDGAR rulemaking the Commission eliminated the financial data schedule as an exhibit to the investment company registration forms.⁶ In its comment letter on that rulemaking, the Institute supported elimination of the financial data schedule as an exhibit to the registration forms, and further recommended that the financial data schedule be incorporated into Form N-SAR. The Institute's recommendation was intended solely to reduce the considerable burden on filers associated with preparation and submission of the financial data schedule assuming the Commission would retain a general requirement to prepare a financial data schedule. Our recommendation was not intended to suggest the financial data schedule serves a meaningful purpose.

When the requirement to file a financial data schedule was implemented by the SEC, the adopting release indicated that Commission staff would use the information for screening purposes and to help examiners review filings.⁷ If, as the Release suggests, the Commission now has alternative means of acquiring the financial information necessary for screening and staff review purposes, it does not seem reasonable to require investment companies continue to file the financial data schedule.

Multiple Primary EDGAR Documents

Currently, the primary EDGAR document in a filing may contain no more than one HTML file. The Release notes that this restriction may be cumbersome for filers and investors when a filing relates to multiple funds or portfolios. The Release requests comment on whether the Commission should accommodate the special circumstances of mutual fund filers by allowing or requiring these filers to include multiple primary EDGAR documents in certain submission types (e.g., N-1A, N-14AE, 485APOS, 497, or N-30D). In light of the unique manner in which mutual funds are organized (i.e., multiple portfolios within one investment company registrant) we recommend that these filers be permitted, but not required, to include multiple primary documents, each organized as a separate HTML file. Each HTML file could correspond to a separate prospectus or shareholder report. The filing could contain a table of contents with hyperlinks to each of the separate prospectuses. This structure would reduce download times and simplify navigation.

Possible Future Rulemaking Projects

The Release notes that the Commission is contemplating future rulemaking to bring additional filings into the EDGAR system on a mandatory basis (e.g., filings by foreign private issuers, notices of securities sales filed pursuant to Rule 144). Rule 17g-1 under the Investment Company Act requires every registered management investment company to obtain a bond from an insurance company against larceny and embezzlement covering certain officers and employees. The rule also requires a copy of the bond and certain related information to be filed with the Commission. Currently, this information must be filed in paper form per Rule 101 of Regulation S-T. The Institute recommends that the Commission consider rulemaking that would enable investment companies, at their option, to file this information electronically.

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The Institute appreciates the opportunity to express its views on modernization of the EDGAR system and the related rule

amendments. If you have any questions, please contact the undersigned at 202/326-5851.

Sincerely,

Gregory M. Smith
Director—Operations/Compliance & Fund Accounting

cc: Ruth Armfield Sanders, Division of Investment Management

ENDNOTES

¹ Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,021 open-end investment companies ("mutual funds"), 496 closed-end investment companies, and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.728 trillion, accounting for approximately 95% of total industry assets, and over 78.7 million individual shareholders.

² No. IC-24319, (February 25, 2000) (the "Release").

³ For example, if on July 1, 2000 the Commission approves a final rule that will require certain filing types to be submitted in HTML, filers should be able to continue to submit filings in the existing ASCII/SGML standard through June 30, 2002.

⁴ See Letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission from Gregory M. Smith, Director – Operations/Compliance & Fund Accounting, the Investment Company Institute, dated April 15, 1999 (commenting on Rulemaking for EDGAR System, File No. S7-9-99).

⁵ Additionally, in connection with authorizing mutual funds to use a "profile," the Commission indicated that advertisements permitted under rule 482 of the 1933 Act may be bound to or wrapped around a paper profile and would not be considered part of the profile for liability purposes under the 1933 Act. See Securities and Exchange Commission Release No. 33-7513 (Mar. 13, 1998), 63 FR 13968 (Mar 23, 1998) at footnotes 121 – 123 and accompanying text; Letter from Barry D. Miller, Associate Director, U.S. Securities and Exchange Commission to Craig S. Tyle, General Counsel, Investment Company Institute (Oct. 2, 1998) at Q&A No. 28, page 11.

⁶ See Rulemaking for EDGAR System, Release No. IC-23843 (May 21, 1999).

⁷ See Rulemaking for EDGAR System – Investment Companies and Institutional Investment Managers, Release No. IC-19284 (March, 1993) at page 28.