

Comment Letter on Proposed Householding Rules for Proxies, January 2000

January 18, 2000

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re:Delivery of Proxy and Information Statements to Households (File No. S7-26-99)

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to comment on proposed amendments to rules under the Securities Act of 1933 and the Securities Exchange Act of 1934 that would permit companies and intermediaries to satisfy the proxy and information statement delivery requirements, with respect to two or more shareholders sharing the same address, by sending or forwarding a single proxy or information statement to these shareholders.² The ICI supports the expansion of householding to cover proxy and information statements; however, we recommend certain changes to the proposed amendments to establish uniform rules for the householding of shareholder communications. We also are taking this opportunity to urge certain changes to the final householding rules governing prospectuses and shareholder reports and the proposed rules concerning proxy materials to allow funds and their shareholders to realize the full benefits of householding.

Background

Institute members strongly support the concept of householding of shareholder communications, and have householded shareholder reports for several years pursuant to Commission staff no-action letters. The industry's position reflects the views of fund shareholders, who frequently express their disapproval of the delivery of multiple copies of the same disclosure document to the same household. Shareholders note that multiple copies waste paper and unnecessarily increase printing and mailing costs, which are ultimately borne by the shareholders themselves.

Accordingly, the Institute has supported the adoption of rules permitting the householding of shareholder communications.³ Under final rules adopted in November 1999,⁴ investment companies generally can household a prospectus or shareholder report without obtaining written consent from shareholders if: (1) the document is delivered to members of the same family with the same last name sharing a common home address or post office box;⁵ (2) the shareholders are given advance notice of householding; and (3) the shareholders do not object to householding.

The final rules contain several specific requirements concerning the advance notice component of the implied consent rules. New Rule 154 under the Securities Act and amended Rule 30d-1 under the Investment Company Act of 1940⁶ require that the investment company send the investor a notice with respect to prospectuses and shareholder reports at least 60 days before householding begins. The notice must be a separate written statement and (1) state that only one prospectus or shareholder report will be delivered to the shared address unless the fund receives contrary instructions; (2) include a toll-free telephone number, or be accompanied by a reply form that is pre-addressed with postage provided, that the investor can use to notify the fund that he or she wishes to receive a separate prospectus or shareholder report; (3) state the duration of the consent; (4) explain how an investor can revoke consent; (5) state that the fund will begin sending individual copies to an investor within 30 days after receiving revocation of the investor's consent; and (6) contain a prominent statement that generally must also appear on the envelope in which the notice is delivered.⁷

The proposed rules with respect to the householding of proxy and information statements, which were issued on the same day as the final prospectus and shareholder report rules were adopted, generally would be similar to the final rules. They would, however, differ in two important respects. First, the proposed rules would require that the notice concerning proxy materials be sent at least 90 days before householding could begin (rather than 60 days).⁸ Second, the proposed rules would require the notice to be mailed separately from other communications (rather than contained in a separate statement that could be mailed with other documents).⁹

For the reasons set forth below, the ICI urges the Commission to apply consistent rules concerning the householding of various types of shareholder communications by allowing a 60-day notice period and eliminating the separate mailing requirement. We also are taking this opportunity to request certain changes to the final rules to permit householding by implied consent to shareholders who do not share the same last name, and to allow flexibility in the addressing of householded material. In addition, this letter contains specific responses to certain requests for comment contained in the Proposing Release.

The Implied Consent Notice

As noted above, the proposed conditions concerning the implied consent notice for proxy materials would differ in two key respects from the final rules governing prospectuses and shareholder reports. The Institute believes that the proposal should be revised to eliminate these inconsistencies. Such a change would reduce unnecessary burdens on mutual funds, and it would make it easier to design systems to household shareholder communications. This, in turn, could facilitate householding and reduce fund (and fund shareholder) expenses. Furthermore, the application of straightforward, consistent rules could avoid shareholder confusion.

Notice Period. The proposed increase in the notice period from 60 days to 90 days for proxy materials would be costly for funds and confusing for shareholders. Mutual funds' computer systems are being designed to implement the 60-day period for prospectuses and shareholder reports. They would have to be further programmed to distinguish between these documents and proxy materials and to impose a 90-day notice period for proxy materials. Furthermore, funds do not anticipate that the extra 30 days will be necessary with respect to their proxy mailings. If other issuers require additional time,¹⁰ such variations could be accommodated under the same "at least 60 day" notice period under the final rules applicable to prospectuses and shareholder reports.

The Institute also notes that the Proposing Release appears to contemplate that the two types of notices might be mailed together. The Release states that "companies choosing to household all of these documents (prospectuses, annual reports and proxy and information statements) may wish to consider mailing the householding notice after the Commission has considered the revisions proposed in this release," in order to avoid the need to mail two separate notices.¹¹ If the notice were to contain a 90-day deadline for shareholders who wished to revoke consent with respect to proxy materials and a 60-day deadline with respect to prospectuses and shareholder reports, shareholder confusion likely would result.

Separate Delivery Requirement. The Institute recommends elimination of the proposed requirement that the proxy material householding notice be delivered separately from other communications. The Institute notes that the Proposing Release does not cite any specific basis for this difference from the prospectus and shareholder report rules, and there is no apparent justification for this difference.¹² Under Rule 154 and amended Rule 30d-1, the householding notice for prospectuses and shareholder reports must be a separate document but need not be mailed separately; therefore, most funds intend to add this notice to another mailing. Such mailings must include a prominent legend on both the notice and the envelope that the mailing contains an "Important Notice Regarding Delivery of Shareholder Documents." Thus, investors would be sufficiently alerted to the fact that the mailing includes information regarding a fund's plans to begin householding. A separate mailing requirement for the notice concerning proxy materials in addition to the legend therefore would impose unnecessary costs upon funds (and, ultimately, fund shareholders) that could potentially discourage funds from householding proxy materials.¹³

Recommended Changes to Final Rules

The Institute wishes to take this opportunity to urge the Commission to consider two changes to both the final rules concerning prospectuses and shareholder reports and the proposed rules concerning proxy materials to allow funds and their shareholders to receive the full benefits of householding. First, the Institute recommends a change in the requirement that householding pursuant to implied consent may only be used for persons who share the same last name.¹⁴ Individuals often share a household without sharing the same last name or otherwise belonging to the same family. For example, many married women no longer take their husbands' last names. Although the final rules for prospectuses and shareholder reports would permit a fund to household under implied consent if it reasonably believed that the investors were members of the same family, most funds with large shareholder databases would not be able to perform an account-by-account examination in order to form such a reasonable belief. Accordingly, we urge the Commission to eliminate the requirement that implied consent may only be used for persons who share the same last name.

Second, the Institute requests that the rules provide greater flexibility concerning the addressing of householded material. Under the final (and the proposed) rules, the envelope in which the householded material is sent must be addressed in one of two ways: (1) to

the investors as a group (for example, "Jane Doe and Household"), or (2) to each of the investors individually (for example, "John Doe and Richard Jones"). These conventions for addressing householded communications conflict with the actual practice of many funds that currently household shareholder reports pursuant to Commission staff no-action letters.¹⁵ The no-action letters do not contain specific requirements concerning the addressing of householded materials, and, therefore, fund groups have already developed a variety of systems in this regard. Furthermore, if the mailing contains the correct street address, each shareholder will have access to the material regardless of what text appears on the first line of the address.

In order to allow funds the flexibility to build upon their existing householding systems rather than replace them with the addressing conventions specified in the rule, the Institute urges the elimination of these requirements. The Commission also could consider replacing the addressing rules with a requirement that the implied consent notice or written consent form contain disclosures describing how the householded material would be addressed to ensure that investors are fully aware of the procedures that the company will follow.¹⁶

Householding by Intermediaries

The proposed amendments would permit intermediaries to household proxy materials to beneficial owners under the same rules as would apply to householding by issuers to record shareholders. In the Proposing Release, the Commission raised several questions concerning the relationship between issuers and intermediaries in this context.

As noted in the Proposing Release, intermediaries are not required to forward information to beneficial shareholders if the issuer does not provide assurance of reasonable reimbursement of the intermediaries' reasonable expenses, both direct and indirect, incurred in performing these obligations.¹⁷ Under the proposed amendments, intermediaries or their agents could offer to shareholders the option of consenting to householding, on an implied or written consent basis, but the rules would not require that shareholders be given this option.

The Commission also requested comment as to whether issuers should be required to provide reimbursement of the expenses incurred in obtaining consent "even if the company has not directed or approved the intermediary's decision to household."¹⁸ In addition, the Commission asked the converse question—whether the rules should require intermediaries to household to beneficial owners at the direction of the company.

The Institute urges the Commission to allow investment companies as well as other issuers to decide whether intermediaries should household these documents and to permit intermediaries to household only at the direction of the issuer. As noted above, funds must reimburse the intermediaries' expenses, which might include the costs of soliciting written consent or sending implied consent notices if they householded, and the costs of duplicative mailings if they did not household. Accordingly, issuers, who retain the ultimate responsibility to provide these disclosure documents, should decide whether householding should occur in this context.

Householding to Investment Advisers and ERISA Investment Managers

The Proposing Release notes that the proposed rules do not include any specific provisions regarding the householding of proxy materials to registered investment advisers and investment managers of ERISA plans who have been designated to vote proxies and receive proxy materials on behalf of multiple shareholder accounts. According to the Release, however, the general provisions of the proposed rules would permit householding to investment advisers and investment managers upon their written consent.¹⁹

The Commission also requested comment as to whether companies should be able to household proxy materials to such investment advisers and managers without having to rely on the rules, or, if the rules should apply, whether householding should be permitted pursuant to implied consent. The Institute recommends that the Commission permit householding to such investment advisers and managers without reliance on the proposed householding rules. As the Commission noted in the Proposing Release, investment advisers and investment managers are not likely to need more than one copy of the proxy materials. In the event that the investment adviser or manager required extra copies, they could be provided upon request.

Proposed Expansion of Rule 154

Securities Act Rule 154 currently does not permit the householding of prospectuses required to be delivered in connection with business combination transactions, exchange offers and reclassifications of securities. Based on comments received in response to the 1997 proposal of Rule 154 and the fact that the current proposals would permit the householding of proxy statements, the Commission has proposed to expand the coverage of Rule 154 to permit the householding of such prospectuses. The Institute supports the proposed expansion of Rule 154 to cover such prospectuses as a logical extension of the householding rules to promote consistency and further reduce duplicative mailings.

We appreciate the opportunity to comment on this proposal. If you have any questions about these matters, please do not hesitate to call me at (202) 371-5432.

Sincerely,

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U.S. Securities and Exchange Commission

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,004 open-end investment companies ("mutual funds"), 494 closed-end investment companies, and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.404 trillion, accounting for approximately 95% of total industry assets, and over 78.7 million individual shareholders.

² SEC Release Nos. 33-7767, 34-42102 and IC-24124 (Nov. 4, 1999) (the "Proposing Release"). Specifically, the Commission has proposed to amend Rule 154 under the Securities Act of 1933 and Rules 14a-2, 14a-3, 14a-7, 14b-1, 14b-2 and 14c-3 under the Securities Exchange Act of 1934. The amendments to Rule 154 would expand its applicability to all prospectuses.

³ See Letter to Jonathan G. Katz, Secretary, SEC, from Joseph P. Savage, Assistant Counsel, Investment Company Institute (Feb. 2, 1998) ("1998 Comment Letter").

⁴ See SEC Release Nos. 33-7766, 34-42101 and IC-24123 (Nov. 4, 1999). The final rules became effective on December 20, 1999.

⁵ The rules also permit householding to other shareholders who share an address, if the investment company reasonably believes that the shareholders are members of the same family. Rules 154(b)(1) and 30d-1(f)(2)(i).

⁶ The Commission also amended Rule 30d-2 under the Investment Company Act to permit unit investment trusts to household shareholder reports.

⁷ The final rules require the following statement, or a similar clear and understandable statement, in bold-face type: "Important Notice Regarding Delivery of Shareholder Documents." See Rule 154 (b)(2)(vi).

⁸ Proposed Rule 14a-3(e)(1)(ii)(B).

⁹ Proposed Rule 14a-3(e)(1)(ii)(B)(1).

¹⁰ The Proposing Release states that the additional time may be necessary to avoid interfering with the company's proxy statement mailing schedule and the time frames applicable to the delivery of proxy materials to beneficial owners. See Proposing Release at 10-11.

¹¹ Proposing Release at 12-13.

¹² Furthermore, on its face, such a requirement could be read to preclude the single mailing of the householding notice that the Proposing Release appears to contemplate, and, indeed, recommend, in the text quoted above. See note 11 supra and

accompanying text. The Institute therefore requests that the Commission at least clarify that the implied consent notice for proxy materials may be combined with the notice for prospectuses and shareholder reports.

¹³ The Commission also requested comment on whether companies should be required to re-solicit implied and/or written consent to householding periodically. Proposing Release at 14. The Institute would oppose a requirement that consent be re-solicited. The rules would already provide annual notice of the right to revoke consent, and any re-solicitation would be costly to funds and their shareholders.

¹⁴ The Institute also raised this issue in its comments concerning the 1997 proposal of the prospectus and shareholder report householding rules. See 1998 Comment Letter, *supra* note 3, at 4.

¹⁵ See Oppenheimer Management Corp., SEC No-Action Letter (pub. avail. July 20, 1994); Scudder Group of Funds, SEC No-Action Letter (pub. avail. June 19, 1990).

¹⁶ If the Commission is inclined to make these changes, it would be helpful if it notified issuers of such changes at the earliest practicable time so that they do not make unnecessary changes to their systems in connection with householding prospectuses and shareholder reports.

¹⁷ Rules 14b-1(c)(2) and 14b-2(c)(2).

¹⁸ Proposing Release at 25.

¹⁹ Proposing Release at 28-29.