



December 23, 2005

Mr. Robert L.D. Colby
Acting Director
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Third Party Administrators and Transfer Agent Registration and Regulation

Dear Mr. Colby:

The Investment Company Institute¹ urges the Commission staff to address third-party administrators ("TPAs") in connection with its development of rule proposals for transfer agent registration and regulation. In particular, we recommend that TPAs to retirement plans and other employee benefit plans ("Plans") that perform the functions of transfer agents delineated under the Securities Exchange Act of 1934 be required to register as transfer agents, and that appropriately tailored regulatory requirements apply to registered TPAs. The need for rulemaking in this area has become increasingly important as Plan assets have grown in recent years.² Our specific recommendations follow.

TPA and Transfer Agent Functions

The term "transfer agent" is defined in Section 3(a)(25) of the Exchange Act as a person who engages in one or more of the following functions with respect to securities: "(A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates." Except in certain limited circumstances, Section 17A(c)(1) of the Exchange Act provides that transfer agents must be registered with the Commission to perform the function of a transfer agent with respect to any security issued by a registered investment company.

In carrying out their responsibilities in connection with mutual fund holdings, TPAs engage in transfer agent functions that fall within the scope of the above definition. For example, TPAs often process Plan participants' purchases, redemptions and exchanges and update their accounts accordingly. In addition, in some cases, TPAs interface directly with a fund to update a Plan's position on the fund's books. As such, these TPAs are engaged in

¹ The Investment Company Institute is the national association of U.S. investment companies. More information about the Institute is available at the end of this letter.

² Plan assets represent a significant percentage of total U.S. mutual fund assets - approximately 20% (more than \$1.5 trillion) as of the end of 2004. See Investment Company Institute, *2005 Investment Company Fact Book* at 38.

registering the transfer of securities and transferring record ownership of securities on the books of the issuer.³ Under the terms of Section 17A of the Exchange Act, TPAs that perform these functions should be registered with the Commission.

Registration of TPAs as Transfer Agents

Registration with the Commission of TPAs that meet the definition of a “transfer agent” under the federal securities laws will provide important protections to Plan participants. In particular, while mutual fund trading activities are generally conducted through, and overseen by, Commission-registered entities, fund transactions initiated by Plan participants often are administered by TPAs that are not subject to any regulatory requirements or oversight.⁴ Registration with, and regulation by, the Commission will address this anomaly.

Moreover, the registration of TPAs will enable the Commission to impose appropriate regulatory responsibilities on TPAs in connection with certain Plan trading activity, such as the responsibility to address abusive short-term trading.⁵ TPAs are frequently in a better position to monitor trading activity than mutual funds and other fund service providers. For example, while each Plan is responsible for maintaining records on behalf of its participants, mutual funds typically know only the identity of the specific Plan that holds shares in a fund. In fact, if participants’ activity on a given day nets out evenly (*i.e.*, the participants’ total purchases for that day equal the total redemptions), funds are not aware of any Plan activity for that day. The Plan’s TPA, however, generally is in a position to identify all of the participants’ purchases and redemptions that roll up into the Plan’s net daily activity and, as such, is the entity that appropriately should be responsible to address Plan trading issues.

Tailored Regulatory Requirements

While TPAs that meet the definition of a “transfer agent” should be required to register with the Commission, we recognize that subjecting TPAs to all the requirements applicable to registered transfer agents may not be necessary for the protection of Plan participants. Accordingly, we recommend that the Commission develop specifically tailored exemptions from certain regulatory requirements based on the functions TPAs perform and the resulting investor protection needs.

³ TPAs also provide many services to Plans and Plan participants similar to those provided by registered transfer agents to funds including, most significantly: disseminating participant enrollment forms and information; processing changes in participant addresses, contribution amounts and investment preferences; providing general information regarding the investment choices available in a given Plan and the availability of related tax benefits; and providing tax compliance services (*e.g.*, preparation of IRS Forms 1099-R).

⁴ In addition to not being subject to regulation under Commission rules, TPAs are not subject to regulation under other regulatory regimes, such as ERISA.

⁵ See Letter from Elizabeth Krentzman, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 9, 2005 (File No. S7-11-04) (Mutual Fund Redemption Fees).

Given the importance of this matter and the issues that will need to be considered by the staff, we would appreciate the opportunity to further discuss these issues with you and your colleagues as soon as possible. Accordingly, we will contact you shortly to discuss a convenient time to schedule a meeting. In the meantime, if you have any questions or need additional information, please contact me at (202) 326-5815.

Sincerely,

Elizabeth Krentzman
General Counsel

cc: The Honorable Christopher Cox
The Honorable Cynthia A. Glassman
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Annette L. Nazareth

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About the Investment Company Institute

The Investment Company Institute's membership includes 8,571 open-end investment companies ("mutual funds"), 671 closed-end investment companies, 148 exchange-traded funds and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$8.404 trillion (representing more than 95 percent of all assets of U.S. mutual funds); these funds serve approximately 86.7 million shareholders in more than 51 million households. 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 190 associate members, which render investment management services exclusively to non-investment company clients. These Institute members and associate members manage a substantial portion of the total assets managed by registered investment advisers.