

MEMO# 24010

December 11, 2009

ICI Draft Comment Letter on SEC Credit Ratings Disclosure Proposal

[24010]

December 11, 2009

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 32-09
EQUITY MARKETS ADVISORY COMMITTEE No. 57-09
FIXED-INCOME ADVISORY COMMITTEE No. 32-09
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 53-09
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 61-09
SEC RULES COMMITTEE No. 71-09 RE: ICI DRAFT COMMENT LETTER ON SEC CREDIT RATINGS DISCLOSURE PROPOSAL

The Institute has prepared the attached draft comment letter on the SEC's proposal to require disclosure of certain information about credit ratings when a registrant uses a rating in connection with a registered offering. The draft letter supports the proposal and states that the proposal should assist investors to better understand individual ratings, their reliability and their limitations.

Comments on the proposal are due to the SEC on Monday, December 14. If you have comments on the attached draft letter, please provide them to Ari Burstein by e-mail at aburstein@ici.org or by phone at 202-371-5408 by COB Monday, December 14.

Disclosure of Information About Ratings Used by Registrants

The proposal would provide for the disclosure of the elements of the securities that the credit rating addresses; the material limitations or qualifications on the credit rating; and any related published designation assigned by the credit rating agency with respect to the security. The draft letter states that this information should contribute to investors' overall understanding of the ratings used in registration documents. Most significantly, the inclusion of descriptive information about the characteristics of the rating and the information taken into consideration by the rating agency in developing the rating should prove useful to investors in reviewing registration documents as part of their investment decisionmaking process.

The proposal also would require disclosure of certain information regarding credit ratings to address potential conflicts of interest. The draft letter supports these disclosures. By requiring the inclusion of ratings in registration materials, investors will have a better understanding of the relationship between the issuer and the rating agency, including areas in which conflicts of interest may be present.

The draft letter supports the proposed disclosure of information that will permit investors to evaluate whether ratings shopping or inflation has occurred. The letter states that such disclosure should provide investors with a more complete picture of any conflicts of interest associated with a registrant's efforts to obtain a favorable rating and a rating agency's efforts to obtain business. Similarly, this information will be important for investors to assess whether a rating may require additional scrutiny because of the potential for ratings inflation.

Finally, the proposal would require registrants to file updated disclosure on Form 8-K under the Securities Exchange Act of 1934 when a previously disclosed rating is changed, e.g., withdrawn or no longer being updated. The draft letter notes that one of the primary concerns raised by investors during the credit crisis was the absence of regularly updated information on ratings. The draft letter states that the proposal would address these concerns and assist in providing investors with current information on a timelier basis.

Impact of Proposal on Closed-End Funds

The proposal would require disclosure of information regarding credit ratings used by closed-end funds in connection with a registered offering of securities. Specifically, the proposal would amend Form N-2 under the Investment Company Act to require that closed-end funds include credit ratings disclosure in their registration statements under the Securities Act and the Investment Company Act. The draft letter states that the content of the proposed disclosure requirements is of similar relevance to closed-end fund investors as for investors of corporate issuers and therefore appropriate for closed-end funds.

The proposal also would require a closed-end fund to file a current report on Form 8-K containing the disclosures regarding changes to a credit rating unless substantially the same information has been previously reported by the fund. The draft letter urges the Commission not to adopt the Form 8-K filing requirement for closed-end funds. The draft letter notes that unlike corporate issuers, closed-end funds typically are not subject to the Form 8-K reporting regime and we do not believe it is necessary or appropriate to require them to notify their shareholders of credit rating changes in this manner. Rather, the draft letter recommends that the Commission require closed-end funds to disseminate information regarding credit rating changes through another method (or combination of methods) of disclosure that is reasonably designed to provide notice to their shareholders.

Ari Burstein
Senior Counsel - Securities Regulation

[Attachment](#) (pdf)

should not be considered a substitute for, legal advice.