

MEMO# 23951

November 13, 2009

ICI Draft Comment Letter on SEC's Proposal to Remove References to Credit Ratings from Certain SEC Rules

[23951]

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TO: COMPLIANCE ADVISORY COMMITTEE No. 5-09
EQUITY MARKETS ADVISORY COMMITTEE No. 50-09
FIXED-INCOME ADVISORY COMMITTEE No. 26-09
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 47-09
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 54-09
SEC RULES COMMITTEE No. 66-09 RE: ICI DRAFT COMMENT LETTER ON SEC'S PROPOSAL
TO REMOVE REFERENCES TO CREDIT RATINGS FROM CERTAIN SEC RULES

As you know, the Securities and Exchange Commission has re-opened the comment period for proposed rule and form amendments that would eliminate references to credit ratings of nationally recognized statistical rating organizations ("NRSROs") from certain rules under the Investment Company Act of 1940—most significantly, Rule 5b-3, the rule governing repurchase agreements. [\[1\]](#) The Institute has prepared a draft comment letter, which is attached and briefly summarized below.

Comments are due to the SEC no later than Tuesday, December 8, 2009. Comments to the Institute's draft letter should be sent by email to jheinrichs@ici.org by Friday, December 4.

The draft letter expresses ICI's strong support for the SEC's recent efforts to address concerns regarding the ratings process through reforms designed to strengthen its oversight of credit ratings agencies, enhance disclosure, and improve the quality of credit

ratings. The letter notes, however, that the SEC's proposal to remove references to NRSRO ratings from Rule 5b-3 is unnecessary to address the SEC's concerns, and could have serious unintended consequences.

The draft letter states that the reference to NRSRO ratings in Rule 5b-3 is an objective standard that was designed to ensure the stability of the market value of the collateral underlying the repurchase agreement and the ability of a fund to liquidate the collateral quickly in the event of a default. The draft letter notes that it is unclear why the SEC has chosen to remove references to NRSRO ratings from this provision of Rule 5b-3, other than as an overall desire to remove references to ratings from SEC rules. The letter also notes that there is no suggestion in the Release that this provision has not proven to be effective and efficient. To the contrary, the letter states that removing this objective standard and replacing it with a subjective, discretionary test would impose additional burdens on fund boards and investment advisers in assuring compliance with the rule. It also may increase uncertainty or cause confusion among investors who could no longer depend on a consistent and transparent standard across all funds. For these reasons, the letter notes ICI's opposition to removing references to NRSRO ratings from Rule 5b-3.

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Senior Associate Counsel

[Attachment](#)

endnotes

[\[1\]](#) See References to Ratings of Nationally Recognized Statistical Rating Organizations, SEC Release No. 33-9069 (October 5, 2009), 74 FR 52374 (October 9, 2009) ("Release"), available on the SEC's website at <http://sec.gov/rules/proposed/2009/33-9069.pdf>.

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