

**MEMO# 21356**

July 13, 2007

## **Draft ICI Letter in Response to SEC Request for Comments Regarding Rule 12b-1**

[21356]

July 13, 2007

TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 20-07  
BROKER/DEALER ADVISORY COMMITTEE No. 34-07  
OPERATIONS COMMITTEE No. 15-07  
SEC RULES COMMITTEE No. 58-07  
SMALL FUNDS COMMITTEE No. 28-07  
TAX COMMITTEE No. 31-07 RE: DRAFT ICI LETTER IN RESPONSE TO SEC REQUEST FOR  
COMMENTS REGARDING RULE 12B-1

On June 19, 2007, the Securities and Exchange Commission held a roundtable (“Roundtable”) on Rule 12b-1 under the Investment Company Act of 1940 addressing the history of the rule, the current uses of 12b-1 fees, the costs and benefits of 12b-1 plans, and the potential options for reform of Rule 12b-1. In connection with the press release announcing the panelists and final agenda for the Roundtable, the SEC encouraged all interested persons to comment on the topics discussed at the Roundtable and on any other issue relating to the use of fund assets to pay for the sale of fund shares. [\\*](#)

The Institute has prepared a draft comment letter that supports the SEC’s review of Rule 12b-1 but cautions against changes that would fundamentally alter the way Rule 12b-1 operates or that would fully or partially rescind the rule. Instead, the letter states that any changes to Rule 12b-1 should be limited to those that refine or enhance the rule, such as changes that would clarify the role of the board under the rule and provide better disclosure of 12b-1 fees. The most significant aspects of the draft letter, which is attached, are summarized below.

The SEC has requested comments by July 19, 2007. If you have comments on the draft letter, please contact the undersigned at 202-371-5410 or [jheinrichs@ici.org](mailto:jheinrichs@ici.org) by Tuesday, July 17th.

The draft letter first discusses the importance of an economic analysis in rulemaking. It states that in considering any possible changes to Rule 12b-1, the SEC should identify the need for any changes and should assess the economic costs and benefits of any proposed changes and relevant alternatives. The letter notes that hasty or ill-designed changes to the rule risk confusing or displacing investors, disturbing the vast market for mutual funds, and impairing market efficiency and competition.

The letter next provides a brief overview of the importance of Rule 12b-1 to mutual funds and their shareholders, including information about the primary uses of 12b-1 fees. It notes that the regulatory history of Rule 12b-1 has been the subject of recent discussion by regulators, the media and industry participants. The draft letter then discusses changes to Rule 12b-1 that have been offered by various Roundtable participants and other commentators, including: (i) revisiting board oversight under Rule 12b-1; (ii) improving disclosure and transparency of 12b-1 fees; (iii) assessing distribution and service charges on individual shareholder accounts; and (iv) fully or partially rescinding Rule 12b-1.

With respect to the board's responsibilities in approving 12b-1 plans, the letter states that the SEC should modify the role of directors to reflect current uses of 12b-1 fees, update or eliminate the board factors originally suggested by the SEC, and/or eliminate Rule 12b-1's quarterly reporting requirements because they do not provide any meaningful additional protection to investors. To improve investor awareness and understanding of 12b-1 fees and other fund fees and expenses, the letter states that the SEC should consider improving the disclosure provided to investors both by the fund in its disclosure documents and by the intermediary at the point of sale.

The letter recommends against changes that would fundamentally alter the way Rule 12b-1 operates, such as deducting distribution and servicing costs directly from shareholder accounts rather than from fund assets, or that would fully or partially rescind the rule. In general, the letter notes that such changes would limit investor choices, increase barriers to entry to the industry, cause shareholders to pay higher taxes on their funds, and impose significant operational and transitional costs on funds, intermediaries, and investors.

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Associate Counsel

## [Attachment](#)

### **endnotes**

\*The press release can be found on the SEC's website at <http://sec.gov/news/press/2007/2007-112.htm>.

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