

MEMO# 25624

November 7, 2011

ICI Files Comment Letter on SEC Notice of Proposed Rulemaking on Treatment of Asset-Backed Issuers

[25624]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 76-11
FIXED-INCOME ADVISORY COMMITTEE No. 77-11
SEC RULES MEMBERS No. 129-11
SMALL FUNDS MEMBERS No. 63-11 RE: ICI FILES COMMENT LETTER ON SEC NOTICE OF PROPOSED RULEMAKING ON TREATMENT OF ASSET-BACKED ISSUERS

On November 7, 2011, ICI filed a comment letter on the advance notice of proposed rulemaking issued by the Securities and Exchange Commission (the "Commission") regarding Rule 3a-7 under the Investment Company Act of 1940 (the "Investment Company Act"), a rule that provides certain asset-backed securities ("ABS") issuers with a conditional exclusion from the definition of investment company. [*] Our comment letter is attached, and is summarized briefly below.

The comment letter states that, to the extent the Commission believes it is necessary to replace the credit rating conditions currently in Rule 3a-7, ICI recommends that the Commission bear in mind several principles as it considers possible replacements. These principles are that:

- Any new conditions, in addition to addressing investor protection concerns under the Investment Company Act, should be related closely to Rule 3a-7's purpose of distinguishing those ABS issuers that rely on the rule from registered investment companies.
- If the Commission is considering adding new conditions that are drawn from rules already applicable to ABS issuers, it should ensure that those conditions would not be duplicative of, and are consistent with, requirements that already are applicable to ABS. It also should ensure that applying those conditions would not result in unintended consequences in the ABS markets. These consequences could include costs that exceed the benefits of any new conditions, such that they would impair supply and capital formation, or potential regulatory arbitrage.

- The Commission should take a holistic view of the potential implications for the ABS markets and investors of any new or revised conditions it may consider. It should consider the potential implications not just under Rule 3a-7, but also in combination with any potential changes to Section 3(c)(5)(C) of the Investment Company Act, as well as the rule that recently has been proposed to implement the “Volker Rule.”

In addition, the letter raises a concern about the implications for registered investment companies if the Commission were to adopt an interpretation in which it deems a Rule 3a-7 issuer to be an “investment company” as defined in the Investment Company Act, as such an interpretation could unintentionally and unnecessarily limit registered investment companies’ investments in ABS.

Sarah A. Bessin
Senior Counsel

[Attachment](#)

endnotes

[*] See ICI Memorandum No. 25482 (Sept. 13, 2011), available at http://www.ici.org/my_ici/memorandum/memo25482.

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