

**MEMO# 27715**

November 22, 2013

## **Update on Institute Activities Regarding Target Date Funds**

[27715]

November 22, 2013

TO: ADVERTISING COMPLIANCE ADVISORY COMMITTEE No. 18-13

PENSION COMMITTEE No. 30-13

PENSION OPERATIONS ADVISORY COMMITTEE No. 29-13

SEC RULES COMMITTEE No. 45-13

SMALL FUNDS COMMITTEE No. 21-13 RE: UPDATE ON INSTITUTE ACTIVITIES REGARDING TARGET DATE FUNDS

The purpose of this memorandum is to inform you of various activities Institute staff has undertaken recently in connection with possible future regulatory actions regarding target date funds. As you may recall, the Securities and Exchange Commission proposed amendments to its advertising rules to enhance the information provided to target date fund investors in 2010. [\[1\]](#) The Institute filed a letter with the Commission strongly supporting the spirit and core of the Commission's proposal and making several recommendations. [\[2\]](#)

More recently, a group of Institute members and staff met with Commission staff to discuss providing funds additional flexibility regarding presentation of the glide path in print marketing materials and making it easier for target date funds to satisfy their disclosure requirements in connection with retirement plan communications. Subsequently, in April 2013, the Commission's Investor Advisory Committee submitted recommendations to the Commission to require target date funds to include standardized risk information in marketing materials and related disclosure in prospectuses. In addition, the Committee recommended requiring target date funds to include a fee table in a fund's prospectus, summary prospectus, and marketing materials that depicts fees based on an investor's expected retirement date. [\[3\]](#)

Institute staff met with Commissioner Gallagher (who attended the Advisory Committee meeting at which the recommendations were discussed) and Commission staff on the Advisory Committee's recommendations. We pointed out that if the Commission were to mandate a risk measure and specify how to calculate this measure, it would unduly elevate its importance. Such a requirement would be akin to requiring bonds to have credit ratings and the Commission specifying the metrics for these ratings. Such a requirement would be a sharp departure for the Commission, which in the past has provided investors with

quantifiable information but has not told investors how to interpret the information and has never suggested that the information provided is predictive.

With respect to the Advisory Committee's recommendation on fee disclosure, we pointed out that the current fee table disclosure is sufficient as it clearly illustrates the trajectory of fund expenses and allows investors and/or retirement plan consultants to make comparisons among funds. In addition, we pointed out that measuring fund expenses based on the "expected retirement date" and/or the "average" or "typical" annual investment amount could be misleading.

Both Commissioner Gallagher and the staff seemed to understand our concerns with the Advisory Committee's recommendations. Attached are the talking points that we provided to Commission staff describing our views on the Advisory Committee's recommendations.

We also met with Department of Labor staff regarding the Advisory Committee's recommendation on risk disclosure. We made virtually the same points to them, and they too seemed to understand our concerns with the Advisory Committee's recommendation. We provided them with the same talking points that we provided to Commission staff. [\[4\]](#)

To date, the Commission has not taken any action on the 2010 proposal or the Advisory Committee's recommendations, and we do not believe they will do so in the near future. However, in anticipation of possible future Commission action, we have drafted a letter supplementing the views we expressed in our 2010 letter regarding the application of the Commission's "more than insubstantial focus" standard to marketing materials used in the retail and retirement markets. In particular, the draft letter requests that the Commission permit a fund to choose to either: (i) provide its glide path in its print marketing materials or (ii) provide a legend in its print marketing materials with reference to the fund's prospectus or summary prospectus, which would contain the fund's glide path. In addition, the draft letter recommends that the Commission refine the narrative disclosure required to appear in print marketing materials. Finally, the draft letter requests that the Commission permit target date funds to satisfy their disclosure requirements in connection with retirement plan communications through the use of a legend with reference to the annual disclosure document used to comply with any final Department of Labor rule on target date funds.

We have attached the draft comment letter for your review. Please provide comments on the draft comment letter by December 13th to Dorothy Donohue at [ddonohue@ici.org](mailto:ddonohue@ici.org) or David Abbey at [david.abbey@ici.org](mailto:david.abbey@ici.org). This letter will not be publicly available until it is filed with the Commission so please treat it as you would any committee business. Feel free to circulate it within your firm but do not circulate it more widely. We plan on submitting the letter if and when we believe the Commission will be considering taking up the 2010 proposal for further action.

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

David M. Abbey  
Senior Counsel - Pension Regulation

[Attachment](#)

## endnotes

[1] See Institute [Memorandum](#) No. 24389, dated June 25, 2010 (describing the proposal).

[2] See Institute [Memorandum](#) No. 24508, dated August 23, 2010 (summarizing the comment letter).

[3] The Committee's recommendation is available at <http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-target-date-fund.pdf>. Section 911 of the Dodd Frank Wall Street Reform and Consumer Protection Act established this committee to advise the Commission on various matters, including the effectiveness of disclosure, and authorizes it to submit recommendations for Commission review and consideration.

[4] While the Department of Labor had previously announced its intent to finalize its target date fund disclosure proposal by fall of 2013, consideration by Department of Labor staff as to what actions, if any, should be taken in response to the Advisory Committee's recommendations has clearly delayed issuance of a final rule.

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