

MEMO# 22817

August 20, 2008

Draft ICI Comment Letter in Response to SEC's Reopening of Comment Period for Summary Prospectus Proposal

[22817]

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TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 27-08
BROKER/DEALER ADVISORY COMMITTEE No. 28-08
ETF ADVISORY COMMITTEE No. 20-08
OPERATIONS COMMITTEE No. 16-08
RESEARCH COMMITTEE No. 6-08
SEC RULES COMMITTEE No. 61-08
SMALL FUNDS COMMITTEE No. 24-08
TECHNOLOGY COMMITTEE No. 23-08
TRANSFER AGENT ADVISORY COMMITTEE No. 46-08 RE: DRAFT ICI COMMENT LETTER IN
RESPONSE TO SEC'S REOPENING OF COMMENT PERIOD FOR SUMMARY PROSPECTUS
PROPOSAL

As we previously informed you, [\[1\]](#) on July 31, 2008, the Securities and Exchange Commission reopened the comment period for its recently proposed amendments to the rules and forms used by open-end management investment companies to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933. [\[2\]](#) Among other things, the proposed amendments would permit a fund to satisfy its prospectus delivery obligation under Section 5(b)(2) of the Securities Act by providing investors with a "Summary Prospectus" containing certain key information, and making additional information, including the statutory prospectus, available on the Internet and in paper or by email upon request. [\[3\]](#)

In connection with the reopened comment period, the Commission requested comments on

its recently published investor research. This research included three focus groups on the Summary Prospectus, as well as excerpts relating to mutual fund prospectuses that were part of a larger telephone survey on disclosure to investors. [4] The Institute has prepared a draft comment letter in response to the Commission's request. The draft letter is attached and summarized below.

Comments on the proposal are due to the SEC by August 29th. We will hold a conference call on Tuesday, August 26th, from 2:00 - 3:00 p.m. Eastern time to discuss the draft letter. The dial-in number is 888-324-6913 and the pass code is 51569. If you plan to participate on the call, please send an email to Maureen Maher at mmaher@ici.org. If you are unable to participate on the call, please provide your comments to Mara Shreck (mshreck@ici.org, 202/326-5923) or Frances Stadler (frances@ici.org, 202/326-5822) before the call.

The Institute's Draft Letter

The draft letter begins by reiterating the Institute's support for the Summary Prospectus proposal, and applauds the Commission for its efforts to supplement its rulemaking initiatives with research, and for making the findings available for public comment. The draft letter cautions against placing undue emphasis on focus groups in making policy decisions. While acknowledging that focus groups can be a useful tool for certain purposes, the draft letter explores several limitations of focus groups that can limit the utility of the conclusions that can be drawn from them. These limitations include limited sample size and potential selection bias, as well as the level of subjectivity they incorporate, which create opportunities for bias.

Notwithstanding the Institute's concerns about the limitations of focus groups, the draft letter explains that, by and large, the results of the Commission's focus groups on the Summary Prospectus are in line with conclusions that have already been drawn from previous research. For example, consistent with previous Institute research, focus group participants were generally in favor of the concept of providing investors with a streamlined disclosure document and making additional information available online and upon request. The focus groups also offer reassurance that investors are able and willing to use the Internet to access additional investment information, including quarterly updates of performance information. The draft letter notes that these findings are also consistent with the Commission's telephone survey.

The draft letter expresses disagreement with one conclusion drawn from the focus groups – that top ten portfolio holdings should be disclosed in the Summary Prospectus. It explains that subjectivity bias was introduced into the focus group in both the questions posed by the moderators and the final report. The draft letter explores the focus group transcripts, which offer a much more nuanced impression of participants' views, and concludes that, once the subjectivity bias is considered, the focus group results are far less conclusive than the final report would suggest.

Finally, the draft letter notes that the focus group findings are consistent with the Institute's views on financial intermediary disclosure. The Institute has acknowledged the need for additional consideration of separate, more detailed disclosure requirements for financial intermediaries, earlier in the sales process. Some focus group participants expressed a desire for information on intermediary conflicts of interest at the beginning of their relationship with a financial adviser, as well as a reminder when they purchase a fund. The

focus groups were also consistent with the idea that there is demand for more detailed information than a fund disclosure document could realistically provide.

Mara Shreck
Associate Counsel

[Attachment](#)

endnotes

[1] See Institute Memorandum [22762], dated Aug. 4, 2008.

[2] See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release Nos. 33-8861 and IC-28064 (July 31, 2008), available at <http://www.sec.gov/rules/proposed/2008/33-8949.pdf>.

[3] See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release Nos. 33-8861 and IC-28064 (Nov. 21, 2007) (“Proposing Release”), available at <http://www.sec.gov/rules/proposed/2007/33-8861.pdf>.

[4] See Investor Testing of Mutual Fund Summary Prospectus and Related Disclosures (July 31, 2008), available at <http://www.sec.gov/comments/s7-28-07/s72807-142.htm>.

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