

MEMO# 32203

February 10, 2020

Investment Company Institute's Comment Letter on the SEC's Advisers Act Advertising and Cash Solicitation Rule Proposal

[32203]

February 10, 2020 TO: ICI Members
Advertising Compliance Advisory Committee
Broker/Dealer Advisory Committee
Investment Advisers Committee
SEC Rules Committee
Small Funds Committee SUBJECTS: Advertising
Compliance
Disclosure
Operations
Recordkeeping RE: Investment Company Institute's Comment Letter on the SEC's Advisers
Act Advertising and Cash Solicitation Rule Proposal

In December, the Securities and Exchange Commission issued a proposal amending the Advisers Act Advertising and Cash Solicitation Rules. [\[1\]](#)

Today, ICI submitted the attached comment letter that addresses the proposal.

We believe that, overall, the proposed rules would reduce compliance burdens for advisers and facilitate investors' ability to make sound investment decisions. We recommend that the Commission go further and, either on its own, or in coordination with FINRA, more closely align requirements for registered fund advertising with any final requirements for advisers. We believe doing so would enhance investor understanding, facilitate comparisons among products, and promote informed decision-making.

In particular, we recommend that the Commission:

- Explicitly exclude from any final Advertising Rule: (i) all registered fund communications; (ii) any communications that are subject to FINRA Rule 2210; (iii) any communications for institutional use only; and (iv) advertisements by, or on behalf of, any regulated non-U.S. funds;

- Align advertising requirements for registered funds with any final Advertising Rule to permit funds more flexibility to report related, extracted, and hypothetical performance;
- Align the treatment of testimonials under FINRA rules and the Advertising Rule and clarify that advisers may establish policies and procedures reasonably designed to moderate third-party comments on social media or websites;
- Explicitly exclude all registered fund, as well as all regulated non-U.S. fund, solicitations from the Cash Solicitation Rule; and
- Review and rationalize the various regulatory categories of investors.

Bridget Farrell
Assistant General Counsel

[Attachment](#)

endnotes

[1] See Investment Adviser Advertisements; Compensation for Solicitation, Investment Advisers Act Release No. 5407 (Nov. 4, 2019), *available at* <https://www.sec.gov/rules/proposed/2019/ia-5407.pdf>. See also ICI's memorandum discussing the release: https://www.ici.org/my_ici/memorandum/memo32054.

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