

MEMO# 32040

November 6, 2019

Draft ICI Comment Letter on SEC's Proposal for Exemptive Order Applications; Comments Due November 14

[32040]

November 6, 2019 TO: Closed-End Investment Company Committee
ETF (Exchange-Traded Funds) Committee
SEC Rules Committee
Small Funds Committee RE: Draft ICI Comment Letter on SEC's Proposal for Exemptive Order Applications; Comments Due November 14

As previously reported, the SEC recently proposed new timeframes and procedures for Division of Investment Management staff to use in their review of applications for exemptive relief.^[1] The Commission also proposed to release staff comments on applications and responses publicly through EDGAR. ICI's draft comment letter responding to the proposal is attached for your review.

Please provide any written comments to Bridget Farrell at bridget.farrell@ici.org on **Thursday, November 14 by close of business**. Comments on the proposal are Friday, November 29.

ICI's draft letter strongly supports the Securities and Exchange Commission's proposal to ease burdens on funds seeking exemptive relief from certain aspects of the Investment Company Act of 1940. While we recommend improving the proposal to increase its utility, we generally believe the proposal will promote modernization, foster certainty, and greatly improve what is often a costly, and time-consuming, administrative process for the fund industry.

The draft letter consists of three substantive parts. We summarize each below.

- **Expedited Review Process:** We support streamlining the consideration of requests for exemptive relief through an expedited review process. We recommend that the Commission improve the process further by broadening expedited review to include other types of applications and narrowing the timeframe for staff to review application amendments.
- **Standard Review Timeframe:** We generally support the Commission's proposal to

provide a non-binding timeframe for review of exemptive order applications that do not meet the expedited review requirements. We believe, however, that the Commission should further limit staff extensions of the timeframe, particularly for the review of amended applications.

- **EDGAR Publication:** We do not support proactively publishing staff comments on and applicant responses to exemptive applications on EDGAR. While we recognize that certain information already is subject to public Freedom of Information Act requests, we are concerned that this aspect of the proposal will impede industry innovation and unnecessarily increase burdens on staff and applicants.^[2]

Our draft letter discusses each of these items in greater detail.

Bridget Farrell
Assistant General Counsel

[Attachment](#)

endnotes

^[1] *Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940*, Investment Company Act Release No. 33658 (Oct. 18, 2019), available at <https://www.sec.gov/rules/proposed/2019/ic-33658.pdf>.

^[2] The Commission also proposes to amend rule 0-5 to deem an application withdrawn if the application does not respond in writing to staff comments. While we do not have any further recommendations regarding this proposal, we request clarification of how the Commission would treat an application that the staff requests to be withdrawn and an applicant declines to withdraw under this amended rule.