

**MEMO# 31563**

January 16, 2019

# **ICI and IDC File Amicus Brief in Support of SEC in Litigation Challenging Rule 30e-3**

[31563]

January 16, 2019 TO: ICI Members

Investment Company Directors

SEC Rules Committee

Transfer Agent Advisory Committee SUBJECTS: Disclosure

Litigation & Enforcement RE: ICI and IDC File Amicus Brief in Support of SEC in Litigation Challenging Rule 30e-3

The Investment Company Institute and Independent Directors Council filed an *amicus curiae* (“friend of the court”) brief in *Twin Rivers Paper Company, LLC. et. al. v. United States Securities and Exchange Commission*.<sup>[1]</sup> The case concerns a challenge to recently adopted Investment Company Act Rule 30e-3, which provides a new optional “notice and access” method for registered investment companies to provide shareholder reports online.<sup>[2]</sup>

ICI’s and IDC’s amicus brief supports the rule. The Petitioners are paper industry representatives and a consumer organization, and the SEC is the respondent. Their briefs and ICI’s and IDC’s amicus brief are summarized below.

*Petitioners’ Brief.* The Petitioners, in summary, argue that Rule 30e-3 should be vacated because the rule forces a new burden on investors who want to continue receiving paper shareholder reports. They argue that:

[since some investors] may not understand or successfully carry out the procedures to continue receiving [paper] reports ... [there may be] decreased readership, which ... has negative implications for investor ability to efficiently allocate capital across funds and competition among funds. This cascade of adverse consequences on investors, competition, and capital formation cannot be justified by a rule that offers at best speculative, marginal benefits for shareholders, given that those preferring to receive electronic reports already have the ability to ensure that outcome.<sup>[3]</sup>

Petitioners also argue that:

- the Commission improperly disregarded its statutory duties to consider and respond to recommendations of its Investor Advisory Committee;
- the Commission failed to adequately assess the costs and benefits of Rule 30e-3; and
- the final rule is not a logical outgrowth of the proposal because the final rule completely eliminated the requirement that funds must mail a stand-alone Initial Statement that advised of the upcoming change to electronic delivery, accompanied by a postage-paid, reply form.[\[4\]](#)

*SEC Brief.* The SEC's brief argued that the Court should deny the petition for review because:

- one petitioner (Consumer Action) did not establish standing and all of the other petitioners (Industry Petitioners[\[5\]](#)) fall outside the zone of interests protected by the securities law;
- the Commission reasonably determined that Rule 30e-3 will increase the accessibility of fund information and reduce fund printing and mailing expenses, while ensuring that investors who prefer paper delivery can still receive paper reports;
- the Commission considered the potential economic consequences of Rule 30e-3, analyzing empirical data where available and providing comprehensive qualitative analysis of the rule's effects;
- the Commission satisfied its obligations under the Administrative Procedure Act to consider the alternative approach recommended by the Investor Advisory Committee; and
- the final rule is a logical outgrowth of the proposed rule.

*ICI/IDC Amicus Brief.* The ICI and IDC filed an amicus brief in support of the SEC, urging the Court to deny the petition for review. The brief argued that:

the merits of [Rule 30e-3] are obvious – it reduces costs for funds and shareholders, reflects the public's widespread use of the internet and shareholders' increasing preference for accessing information online, permits funds to use technology to communicate more effectively, and accommodates shareholders who cannot or do not want to review reports online.[\[6\]](#)

The brief further argued that “flipping the default rule from paper delivery to online access increases efficiency, preserves fund assets, promotes capital formation, and protects investors.”[\[7\]](#) As to the Petitioners' complaint that the Commission eliminated the Initial Statement and pre-paid reply card from the final rule, the brief pointed out that the Commission reasonably explained why it dropped those inefficient and costly requirements in favor of multiple notices over a two-year period and a toll-free number that shareholders can call to request paper.

Finally, the brief argued that:

[u]ltimately, petitioners' stated objection to the Rule boils down to the far-fetched complaint that shareholders who read and make investment decisions based on complex reports will be unable to understand the paper notices they receive, or unable to complete a simple call to express their preference for a hard copy. Indeed, petitioners' concerns with the Rule are so remote and evanescent that they fall outside the “zone of interests” of the federal statutes they seek to invoke, and lack standing to proceed in this Court.[\[8\]](#)

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#### **endnotes**

[1] The Petitioners' brief and the other briefs referenced in this memorandum are available on the ICI's Rule 30e-3 Resource Center at <https://www.ici.org/rule30e3>.

[2] See ICI Memorandum No. 31243 (June 8, 2018) (summarizing final Rule 30e-3), available at [https://www.ici.org/my\\_ici/memorandum/memo31243](https://www.ici.org/my_ici/memorandum/memo31243).

[3] Petitioners' brief at page 15.

[4] One amicus brief was filed in support of petitioners. Domtar Corporation, EMA, Monadnock Paper Mills, Inc., Boise Paper, the Printing Industry of the Carolinas, Inc., National Grange of the Order of Patrons of Husbandry, and the National Association of Letter Carriers filed the brief, which largely repeats points made in Petitioners' brief.

[5] The SEC defines Industry Petitioners as the Twin Rivers Paper Company LLC, American Forest and Paper Association, the Coalition for Paper Options, and Printing Industries Alliance.

[6] ICI/IDC Brief at page 7.

[7] *Id.*

[8] ICI/IDC Brief at page 8.