

**MEMO# 21119**

May 7, 2007

# SEC SEMI-ANNUAL REGULATORY AGENDA

[21119]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 15-07  
INVESTMENT ADVISERS COMMITTEE No. 10-07  
SEC RULES COMMITTEE No. 39-07  
SMALL FUNDS COMMITTEE No. 14-07  
EQUITY MARKETS ADVISORY COMMITTEE No. 25-07  
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 7-07  
INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 9-07  
FIXED-INCOME ADVISORY COMMITTEE No. 8-07  
ETF ADVISORY COMMITTEE No. 18-07     RE: SEC SEMI-ANNUAL REGULATORY AGENDA

The Securities and Exchange Commission has published its semi-annual agenda of rulemaking actions. \* Listed below is a summary of agenda items relating to investment companies and investment advisers, which may be of interest to Institute members.

## **Division of Investment Management**

### *“Proposed Rule Stage”:*

- **Investment Company Disclosure Reform:** The Division is considering recommending that the Commission propose comprehensive reforms of the mutual fund disclosure requirements on Form N-1A, including streamlining the delivery of fund information through increased use of the Internet and other electronic means of delivery.
- **Exchange-Traded Funds:** The Division is considering recommending that the Commission propose new rules and rule amendments to codify prior exemptive relief granted for index-based exchange-traded funds.

- **Investment Company Governance:** In June 2006, after a federal appeals court vacated certain amendments adopted by the Commission relating to fund governance, the Commission requested additional comment regarding these provisions. The Commission reopened the comment period in December 2006 in order to permit public comment on two papers prepared by the Office of Economic Analysis. The comment period for the December release recently closed. The Commission has not yet determined its next action.
- **Books and Records to be Maintained by Investment Advisers:** The Division is considering recommending to the Commission that it update the books and records requirements for investment advisers.
- **Disclosure and Recordkeeping Requirements for Investment Advisers Regarding Brokerage Allocation and Soft Dollar Practices:** The Division is considering recommending to the Commission that it propose rules that would require investment advisers to create a report and maintain records regarding their direction of brokerage transactions and receipt of research and other services in connection with those transactions.
- **Political Contributions by Certain Investment Advisers:** The Commission proposed new Rule 206(4)-5 under the Investment Advisers Act of 1940 to prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or any of its partners, executive officers, or solicitors makes a contribution to certain elected officials or candidates.
- **Amendments to Registration Form and Rules for Registration of Certain Investment Company Securities:** The Division is considering recommending that the Commission amend the rule and the form under the Investment Company Act of 1940 that prescribe the method by which certain investment companies calculate and pay registration fees under the Securities Act of 1933 and Rule 457 under the Securities Act that allows for the offset of registration fees in cases of overpayment.
- **Investment Company Portfolio Transaction Costs:** The Commission sought comment on ways to improve disclosure of portfolio transaction costs. The Division is considering whether to recommend to the Commission amendments to investment company registration statements to improve that disclosure.
- **Interagency Proposal to Consider Alternative Forms of Privacy Notices under the Gramm-Leach-Bliley Act:** The Commission, together with other governmental agencies, requested comment on whether the agencies should amend the regulations that implement the privacy provisions of the GLB Act to allow or require financial institutions to provide alternative types of privacy notices that would be easier for consumers to understand.
- **Definition of "Issued Ratably" Under Section 18(d) of the Investment Company Act:** The Division is considering recommending that the Commission propose new Rule 18d-1 under the Investment Company Act that would define the term "issued ratably" under Section 18(d) of the Act to clarify that a fund does not issue ratably to its shareholders rights to acquire additional shares when, by their terms, the rights do not entitle each owner to exercise the rights and obtain the additional shares.
- **Frequency of Distribution of Capital Gains:** The Division is considering recommending that the Commission propose amendments to Rule 19b-1 under the Investment Company Act, which governs the frequency of capital gains distributions by funds.
- **Rulemaking for EDGAR System; Mandatory Electronic Submission of Applications Under the Investment Company Act:** The Division is considering recommending that the Commission propose rules for mandatory EDGAR submission of applications under any section of the Investment Company Act.
- **Fund of Funds Investments:** The Division is considering recommending that the

Commission propose amendments to the exemptive rules under the Investment Company Act that permit certain arrangements under which one fund may invest in other funds.

- **Custody of Securities with Members of National Securities Exchanges and Registered Management Investment Companies:** The Division is considering recommending that the Commission propose amendments to the rules under the Investment Company Act that govern investment companies' use of members of national securities exchanges and registered management investment companies as custodians for the investment companies' securities and similar investments.
- **Amend Filing Requirements for Form N-SAR, Semiannual Report of Registered Investment Companies:** The Division is considering whether to recommend that the Commission amend the information filed on Form N-SAR to incorporate series and class identifiers, and to make other software-related improvements.
- **Amendments to Cash Solicitation Rule:** The Division is considering recommending that the Commission propose amendments to update and modernize the cash solicitation rule, Rule 206(4)-3 under the Investment Advisers Act.
- **Definition of "Equal Voting Rights" Under Section 18(l) of the Investment Company Act:** The Division is considering recommending that the Commission propose Rule 18i-1 under the Investment Company Act that would define the term "equal voting rights" under section 18(i) of the Act.
- **Employees' Securities Companies:** The Division is considering recommending that the Commission propose a rule under the Investment Company Act to codify certain exemptions the Commission has granted to employees' securities companies.

*"Final Rule Stage":*

- **Extension of XBRL Voluntary Reporting Program on the EDGAR System to Mutual Fund Risk/Return Summary Information:** The Commission issued a release proposing to extend the current Voluntary Financial Reporting Program on the EDGAR System to allow open-end management investment company filers to voluntarily furnish Risk/Return Summary information in XBRL format.
- **Amendments to Form ADV:** The Division is considering recommending that the Commission seek further public comment regarding amendments to Form ADV, Part II.
- **Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles; Accredited Investors in Certain Private Investment Vehicles:** The Commission proposed a new antifraud rule under the Investment Advisers Act that would prohibit fraud by investment advisers that provide advice to certain pooled investment vehicles, including hedge funds. The Commission also proposed two rules that would revise the definition of accredited investor as it relates to natural persons, in connection with the offer and sale of interests in certain privately offered investment pools.
- **Exemption From Shareholder Approval for Certain Sub-advisory Contracts:** The Commission proposed a new rule to allow certain types of funds or their investment advisers to enter into sub-advisory agreements for investment management services without obtaining shareholder approval.
- **Amendments to Rules Governing Pricing of Mutual Fund Shares:** The Commission proposed amendments to Rule 22c-1 that would provide that an order to purchase or redeem mutual fund shares would receive the current day's price only if the fund, designated transfer agents, or a registered securities clearing agency receives the order by the time the fund establishes for calculating its net asset value.
- **Disposal of Consumer Report Information:** The Fair and Accurate Credit Transactions

Act of 2003 required the Commission to promulgate rules related to (i) limitations on affiliate marketing, and (ii) the disposal of consumer report information. The Commission adopted amendments to Regulation S-P to implement the disposal rule, and proposed Regulation S-AM to implement the affiliate marketing provisions. The Division is considering recommending that the Commission adopt proposed Regulation S-AM.

- **Definition of Eligible Portfolio Company Under the Investment Company Act:** The Commission proposed two new rules under the Investment Company Act to modernize the definition of “eligible portfolio company” by creating a new standard for delineating those companies that do not have ready access to the public capital markets.

#### *“Completed Actions”:*

- **Certain Thrift Institutions Deemed Not to be Investment Advisers:** The Commission had proposed excepting thrift institutions providing investment advice to certain clients from the definition of investment adviser. In light of amendments to the Investment Advisers Act made by Congress in the Financial Services Regulatory Relief Act of 2006, the Commission is withdrawing this item from the Agenda.
- **Amendments to Investment Company Registration Statements to Protect Certain Private Information:** The Division is withdrawing this item from the Unified Agenda because it does not expect the Commission to consider this item in the next 12 months, but the Commission may consider the item at a later date.

### **Division of Market Regulation**

#### *“Proposed Rule Stage”:*

- **Amendments to Financial Responsibility Rules for Broker-Dealers:** The Division is considering recommending that the Commission propose amendments to the broker-dealer financial responsibility rules, including the net capital rule (rule 15c3-1), the customer protection rule (rule 15c3-3), the books and records rules (Rules 17a-3 and 17a-4), and the notification rule (rule 17a-11).
- **Concept Release Concerning Self-Regulation:** The Commission issued a concept release on SRO structure to solicit comment on a wide range of issues related to the efficacy of the SRO system.
- **Electronic Filing of Municipal Securities Disclosure:** The Division is considering recommending that the Commission propose amending Rule 15c2-12 under Section 15 of the Exchange Act to establish the concept of a “central post office” (“CPO”) and to require the use of a CPO to satisfy the Rule 15c2-12 requirements.
- **Oversight of Credit Agencies:** The Commission proposed for comment rules to implement provisions of the Credit Rating Agency Reform Act of 2006, which defines the term “nationally recognized statistical rating organization.” The Act directs the Commission to adopt final rules no later than June 26, 2007.

#### *“Final Rule Stage”:*

- **Municipal Securities Disclosure:** The Commission proposed amending Rule 15c2-12 under Section 15 of the Exchange Act to delete the reference to the Municipal Securities Rulemaking Board (MSRB) as a recipient of material event notices filed by municipal securities issuers.
- **Definition of Terms and Exemption Relating to the “Broker” Exceptions for Banks:** The Commission, in conjunction with the Board of Governors of the Federal Reserve System, proposed rules to define and clarify a number of the statutory exceptions from the definition of “broker” under section 3(a)(4) of the Exchange Act, and grant new conditional exemptions from the “broker” definitions to banks.
- **Rule 15c2-2 and 15c2-3: Confirmation of Transactions and Point-of-Sale Disclosure of Purchases in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings:** The Commission proposed new Rules 15c2-2 and 15c2-3 under the Securities Exchange Act of 1934, together with accompanying Schedules 15C and 15D, that would provide for improved confirmation and pre-transaction “point-of-sale” disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and UITs. The Commission also proposed related amendments to Rule 10b-10 under the Exchange Act that, in part, would reflect the new rules and would provide improved confirmation disclosure about certain callable securities.
- **Fair Administration and Governance of Self-Regulatory Organizations:** The Commission proposed new rules and amendments to existing rules and forms under the Exchange Act pertaining to the oversight and operation of SROs that are national securities exchanges or national securities associations.
- **Rule 105, Short Selling in Connection With a Public Offering:** The Commission proposed amendments to Rule 105 or Regulation M to further facilitate market prices and offering prices that can be fairly determined by the natural forces of supply and demand. The amendments are intended to safeguard the integrity of the capital raising process and protect issuers from potentially manipulative activity.
- **Regulation SHO and Rule 10a-1:** The Commission proposed amendments to Rule 10a-1 and Regulation SHO to modernize and simplify short sale regulation in light of current trading systems and strategies used in the marketplace, while providing greater regulatory consistency.
- **Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings:** The Commission proposed amendments to Regulation M to prohibit certain activities by underwriters and other distribution participants that can undermine the integrity and fairness of the offering process, particularly with respect to allocation of offered securities.
- **Regulation SHO (Short Sales):** The Commission proposed amendments to Rule 200(e)(3) and 203(b)(3) of Regulation SHO. The proposals are intended to reduce the frequency that stock is not delivered after it is sold, by eliminating the grandfather provision and narrowing the options market maker exception to the delivery requirement.

## **Division of Corporation Finance**

### *“Final Rule Stage”:*

- **Universal Internet Availability of Proxy Materials:** The Commission proposed amendments to require the Internet availability of proxy materials.
- **Security Holder Director Nominations:** The Commission proposed amendments to the

proxy rules and related rules and regulations regarding the inclusion of shareholder director nominations in company proxy materials.

- Proxy Disclosure Regarding Executive Compensation and Related Party Transactions: The Commission proposed rule amendments to enhance disclosure regarding executive compensation, the independence of a registrant's board of directors, related party transactions between executive officers and directors, and related party transactions with an issuer.

*"Completed Actions":*

- Internet Availability of Proxy Materials: The Commission adopted rule amendments that relax existing requirements regarding the Internet availability of proxy materials.

Mara Shreck  
Assistant Counsel

**endnotes**

\* See SEC Release Nos. 33-8783, 34-55396, IA-2596 and IC-27746, File No. S7-07-07; 72 Fed. Reg. 23616 (Apr. 30, 2007), available at <http://edocket.access.gpo.gov/ua070430/pdf/ua070459.pdf>

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