

**MEMO# 34137**

May 12, 2022

## **ICI Draft Letter on SEC Proposed Changes to the Definitions of "Dealer" and "Government Securities Dealer" - Your Comments Requested by May 20**

[34137]

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TO: Equity Markets Advisory Committee

Fixed-Income Advisory Committee RE: ICI Draft Letter on SEC Proposed Changes to the Definitions of "Dealer" and "Government Securities Dealer" - Your Comments Requested by May 20

On March 28, the Securities and Exchange Commission (SEC or "Commission") proposed new rules ("Proposal") that would further define the phrase "as part of a regular business," as used in the definitions of "dealer" and "government securities dealer" under Sections 3(a)(5) and 3(a)(44), respectively, of the Securities Exchange Act of 1934 ("Exchange Act").[\[1\]](#) Comments on the Proposal are due to the SEC on May 27, 2022.

ICI, with the assistance of our outside counsel at Davis Polk, has prepared the attached draft letter for your review and comment. Please provide your comments in writing to Sarah Bessin at [sarah.bessin@ici.org](mailto:sarah.bessin@ici.org) no later than Friday, May 20. ICI's draft letter is summarized briefly below.

ICI's letter strongly supports the SEC's exclusion from the proposed rules of investment companies registered under the Investment Company Act of 1940 ("registered funds"). The Commission appropriately recognizes that registered funds already are subject to comprehensive regulation under the federal securities laws and that further regulation as a "dealer" or "government securities dealer" is not necessary to achieve the objectives of the Proposal.

The letter also supports the Commission's proposed treatment of registered investment advisers that manage client assets on a discretionary basis—these advisers typically would not be required to aggregate their trading activity with that of the accounts they manage, for purposes of determining whether the adviser is engaged in activity that would cause them to meet the definition of a "dealer." Similarly, with respect to clients of an adviser, the Commission would not require aggregation among the clients, based on them being under

"common control" of the adviser, unless the accounts constitute a "parallel account structure."

Similar to the complete exclusion for advisers from aggregating their client accounts solely because the adviser has discretion over the accounts, ICI's letter urges the Commission to not require aggregation of trading activity among the accounts managed by a common investment adviser pursuant to substantially the same investment objectives and strategies in the ordinary course of business. An adviser's client accounts engaging in common investment strategies should not trigger regulation of those accounts as dealers. The letter explains that regulation as a dealer in this situation is not necessary to accomplish the Commission's regulatory objectives and would be wholly impractical. Such an approach would instead impair the ability of registered investment advisers to efficiently provide investment advisory services and strategies in the best interests of their clients.

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#### **endnotes**

[1] For a summary of the Proposal, please see ICI Memorandum No. 34116 (Apr. 19, 2022), available at <https://www.ici.org/memo34116>.

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