

**MEMO# 34162**

May 27, 2022

# **ICI Files Comment Letter on SEC Proposed Changes to the Definitions of "Dealer" and "Government Securities Dealer"**

[34162]

May 27, 2022

TO: ICI Members

Equity Markets Advisory Committee

Fixed-Income Advisory Committee

Investment Advisers Committee SUBJECTS: Fixed Income Securities

Investment Advisers

Trading and Markets RE: ICI Files Comment Letter on SEC Proposed Changes to the Definitions of "Dealer" and "Government Securities Dealer"

On May 27, ICI filed a comment letter on the Securities and Exchange Commission's (SEC or "Commission") proposed new rules 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").[\[1\]](#) The letter is attached and is summarized 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 proposed rules.

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 it to meet the definition of a "dealer." Similarly, with respect to clients of an adviser, the Commission would not require aggregation of the trading activity of client accounts managed by the adviser, based on the accounts being under "common control" of the adviser, unless the accounts constitute a "parallel account structure."

For the same reasons we support the exclusion for advisers from aggregating their trading activity with that of their client accounts when the adviser has a solely discretionary management relationship with those accounts, we urge the Commission to eliminate the proposed "parallel account structure" provision and instead adopt a general anti-evasion provision similar to Rule 13h-1(c)(2) under the Exchange Act. An adviser's client accounts pursuing substantially the same investment objectives and strategies in the ordinary course of business should not trigger potential regulation of those client accounts as dealers. 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 proposed rules, please see ICI Memorandum No. 34116 (Apr. 19, 2022), available at <https://www.ici.org/memo34116>.

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