

MEMO# 34260

August 18, 2022

ICI Comment Letter on SEC's Names Rule Proposal

[34260]

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TO: ICI Members

Investment Company Directors

SEC Rules Committee SUBJECTS: Disclosure

ESG RE: ICI Comment Letter on SEC's Names Rule Proposal

At the end of May, the Securities and Exchange Commission proposed amendments to Rule 35d-1 (Names Rule) under the Investment Company Act of 1940 and new requirements related to disclosure and reporting by funds.[\[1\]](#) ICI filed comments (attached) on August 16. In our letter, we described serious concerns with the proposal explaining that the changes would introduce new interpretive issues as well as substantial and unnecessary complexity, burdens and costs without commensurate benefits. We urged a more targeted approach.

We also recommended that the Commission complete its disclosure reform work and evaluate how those changes improve investor understanding of funds before seeking to change the Names Rule. We also described substantial shortcomings in the Commission's economic analysis. We explained that the academic studies provided by the Commission did not suggest fund names are inaccurate (and one study pre-dated the Names Rule). We also described how the Commission had significantly underestimated the implementation and ongoing compliance costs of the new requirements. Further, we explained that the Commission had not considered unintended consequences.

Our comments on some of the proposed amendments included:

- Expansion of the rule's scope: We opposed expansion of the scope of the rule to include terms suggesting investments with particular characteristics. We opposed including terms such as value, growth, global and international.
- Temporary departures: We did not support the SEC's change to the "at the time of purchase" standard.
- Derivatives: While we generally supported the proposed use of notional value, we recommended that funds be permitted to test each derivatives instrument type consistent with a reasonable exposure metric and method that best measures the economic exposure that the derivatives instrument obtains synthetically.
- Unlisted closed-end funds (CEFs) and business development companies (BDCs): We

recommended that the Commission provide an alternative mechanism to allow unlisted CEFs and BDCs to maintain non-fundamental 80% investment policies.

- Enhanced prospectus disclosure and Plain English: We supported allowing funds to define terms, consistent with Plain English and established industry use, in their names and the criteria used to select investments in their prospectuses.
- Safe harbor and antithetical guidance: We urged the Commission to rescind the guidance, including related to index-based funds, or provide better clarity.
- Use of ESG terminology: We encouraged the Commission to use their ESG fund disclosure proposal to improve investor understanding of such funds. We did not support expanding the Names Rule to encompass ESG-related terms.
- N-PORT and recordkeeping: We supported only a legend on N-PORT (or N-CEN) if a fund has an 80% investment policy. We identified significant issues and costs with the recordkeeping.

Susan Olson
General Counsel

endnotes

[1] ICI Memo 34168 (June 1, 2022) available at <https://www.ici.org/memo34168>.

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