MEMO# 35171

March 14, 2023

Input Requested on Tax-Related Aspects of Names Rule

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TO: Tax Committee RE: Input Requested on Tax-Related Aspects of Names Rule

During the March 9 Tax Committee meeting, members and ICI staff discussed the SEC's proposed changes to the Names Rule. The proposed rule would impose an 80% investment policy requirement on names that include terms suggesting that a fund focuses on investments that have, or whose issuers have, particular characteristics (see pages 19–28 of the release). The "80% basket" means "investments that are invested in accordance with the investment focus that the fund's name suggests." The name "tax-exempt fund," for example, is addressed expressly (see page 199 of the release). Temporary departures from the 80% requirement would be permitted only in certain specified circumstances (see pages 33–42 of the release); funds would be required to return to compliance with their 80% investment policies, in most circumstances, within 30 days. More information can be found in the linked ICI memos on the proposed rule and the ICI's initial response.

One disclosure-related change arising from the proposed rule would be a change to N-PORT to require reporting of all temporary departures from the 80% requirement. Specifically, as provided on page 208 of the release, a registrant would be required to report:

b. If applicable, the number of days that the value of the Fund's 80% basket, as defined in rule 35d-1(g)(1), fell below 80% of the value of the Fund's assets during the reporting period (or, if the Fund has adopted a policy as described in rule 35d-1(a)(3)(i)(B), the number of days that less than 80% of the income that the Fund distributed was exempt, as applicable, from federal income tax or from both federal and state income tax).

Tax Committee members were asked for their thoughts on tax-related issues that could be included in a supplemental response being prepared by the ICI's securities law and accounting policy colleagues. The Committee's thoughts are welcome on all points, with special focus on these two issues:

First, what tax-related concerns arise from the proposed rule's focus on investments that have "particular characteristics"? To what extent might issues arise, for example, for tax managed funds?

Second, what compliance issues would arise from (1) the proposed requirement that funds monitor compliance with their 80% investment policies daily and generally return to compliance with their 80% investment policies within 30 days and (2) the proposed change to N-PORT to disclose temporary departures including both specific transaction types and/or current system limitations? The Committee focused most particularly on the impact on municipal bond funds that would be required to disclose "the number of days that less than 80% of the income that the Fund distributed was exempt."

Any thoughts you have on the tax-related impact of the proposal should be shared with Dorothy Donohue, ICI Deputy General Counsel, Securities Regulation (at ddonohue@ici.org or 202-218-3563), Erica Evans, ICI Assistant General Counsel, Securities Regulation (at erica.evans@ici.org or 202-218-3573), and Jason Nagler, ICI Senior Director, Accounting and Compliance (at jason.nagler@ici.org or 202-961-5506). Please copy Katie (katie.sunderland@ici.org) and me (lawson@ici.org) on any written response.

Thank you.

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