

**MEMO# 35318**

May 16, 2023

## **Comments Requested by COB May 18th - Supplemental SEC Names Rule Letter on Tax Issues**

[35318]

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TO: Tax Committee RE: Comments Requested by COB May 18th – Supplemental SEC Names Rule Letter on Tax Issues

At the March 9th Tax Committee meeting, members and ICI staff discussed the SEC's proposed changes to the [Names Rule](#) and tax concerns with the proposal's approach to tax-exempt fund.<sup>[1]</sup> 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](#).<sup>[2]</sup>

The attached draft supplemental letter focuses on certain aspects of the Proposal's approach to tax-exempt funds. Specifically, the proposed temporary departures standard is especially unworkable for tax-exempt funds using an 80% investment policy based on the tax character of income distributed ("income test"). Instead, the letter recommends that the Commission permit any tax-exempt fund using an income test to:

- monitor compliance with its 80% investment policy by looking only at income distributed, rather than income that has been accrued and/or declared, but not yet distributed;
- satisfy its 80% investment policy as of the fund's fiscal year end;
- count taxable market discount and derivatives that provide exposure to market risk factors toward its 80% basket; and
- not report on Form N-PORT the number of days that it did not comply with its 80% investment policy.

Please review the attached draft letter and submit any comments by close of business Thursday, May 18th to Keith Lawson at [lawson@ici.org](mailto:lawson@ici.org) or the undersigned at [katie.sunderland@ici.org](mailto:katie.sunderland@ici.org).

Katie Sunderland  
Associate General Counsel

**Notes**

[1] See ICI Memorandum No. 35171, dated March 23, 2023.

[2] See ICI Memorandum No. 34260, dated August 18, 2022.

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