

**MEMO# 35323**

May 24, 2023

# ICI Files Supplemental Comment Letter on Proposed Names Rule Amendments

[35323]

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TO: Accounting/Treasurers Committee

SEC Rules Committee

Tax Committee SUBJECTS: Disclosure

Fund Accounting & Financial Reporting

Tax RE: ICI Files Supplemental Comment Letter on Proposed Names Rule Amendments

On May 22, ICI submitted the attached letter supplementing our comments[\[1\]](#) on the Commission's proposed amendments ("Proposal") to Rule 35d-1 under the Investment Company Act of 1940 ("Names Rule").[\[2\]](#) The supplemental letter focuses on certain aspects of the Proposal's approach to tax-exempt funds that choose to adopt an 80% investment policy based on the tax character of income distributed ("income test").[\[3\]](#) In the letter, we argue that certain aspects of the Proposal are unworkable and detrimental for tax-exempt funds using the income test and make the following recommendations.

- We request in the letter that the Commission confirm that a tax-exempt fund should monitor compliance with the income test by looking only at income distributed.
- The Proposal would permit a fund to deviate from its 80% investment policy only in certain enumerated circumstances and would require a fund to return to compliance with its 80% investment policy as soon as reasonably practicable and, in any event, within 30 days, with certain specified exemptions. In the letter, we oppose this proposed approach. We state in the letter that, if the Commission moves forward with the proposed standard, the Commission must confirm that tax-exempt funds that use an income test can measure compliance with their 80% investment policies over the period of the fund's fiscal year, as of the fund's fiscal year end. The Internal Revenue Code bases a fund's eligibility to pay tax-exempt income on the fund's fiscal year, and we submit in the letter that the income test likewise should be based on a fund's fiscal year.
- We request in the letter that the Commission permit tax-exempt funds using the income test to count taxable market discount toward their 80% baskets. Taxable market discount often results from proper and desired investment management of tax-exempt funds, is disclosed to investors in year-end tax statements, and is well understood by the investing public.

- The Proposal would require that a fund publicly report on Form N-PORT the number of days for which it was not in compliance with its 80% investment policy. In the letter, we strongly oppose this proposed requirement, and we submit that this proposed requirement is particularly concerning and meaningless for tax-exempt funds that use the income test.
- In the letter, we request that the Commission permit tax-exempt funds that use the income test to count income from derivatives providing exposure to market risk factors toward their 80% baskets. Although tax-exempt funds using the asset test may count certain derivatives toward their 80% baskets under the proposal, the proposal is silent as to any fund with an 80% investment policy under the income test. The letter asserts that there is no reason for this disparate treatment.

Erica Evans  
Assistant General Counsel

#### Notes

[1] See Letter from Eric J. Pan, President & CEO, ICI, and Susan M. Olson, General Counsel, ICI, to Vanessa A. Countryman, Secretary, SEC, dated August 16, 2022, available at <https://www.ici.org/system/files/2022-08/22-ici-cl-names-rule.pdf>.

[2] See Investment Company Names, SEC Release No. IC-34593 (May 25, 2022), available at <https://www.sec.gov/rules/proposed/2022/ic-34593.pdf>.

[3] See Proposed Rule 35d-1(a)(3)(i)(B). We refer herein to the kind of 80% investment policy set forth in Proposed Rule 35d-1(a)(3)(i)(A) as the "asset test."

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