

MEMO# 35391

August 2, 2023

ICI Files Supplemental Comment Letters on Proposed Names Rule Amendments and Proposed ESG Disclosure for Funds and Advisers

[35391]

August 02, 2023

TO: Advertising Compliance Advisory Committee RE: ICI Files Supplemental Comment Letters on Proposed Names Rule Amendments and Proposed ESG Disclosure for Funds and Advisers

On July 26 and July 31, respectively, ICI submitted supplemental comment letters on the Fund ESG Proposal[\[1\]](#) and the Names Rule Proposal[\[2\]](#) (together, the "Proposals"). In each letter, we point out that regulatory processes and requirements already exist to ensure that fund communications with the public contain key information. In support of our views, we describe how FINRA's review of fund sales material promotes consistency between a fund's prospectus and its marketing materials. We point out that SEC and FINRA rules, accompanied by comprehensive, multifaceted staff review, serve to ensure that fund communications are clear and not misleading. Additionally, in each supplemental comment letter, we describe a June 2023 Supreme Court decision that underscores that the First Amendment protects commercial speech as well as noncommercial speech,[\[3\]](#) and we state that each of the Proposals raises First Amendment concerns.[\[4\]](#)

In the Names Rule Proposal supplemental letter, we also expand upon our prior comments regarding the Commission's authority to adopt the Names Rule Proposal under Section 35(d) of the Investment Company Act.

We are bringing these supplemental letters to your attention given the letters' focus, in part, on fund advertising regulatory requirements. If you have any questions, please contact me.

Erica Evans
Assistant General Counsel

Notes

[1] See Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, SEC Release No. IC-34594 (May 25, 2022) ("Fund ESG Proposal").

[2] See Investment Company Names, SEC Release No. IC-34593 (May 25, 2022) ("Names Rule Proposal").

[3] See 303 Creative, LLC v. Elenis, 143 S. Ct. 2298, 2316 (2023)

[4] For a more detailed summary of the Names Rule Proposal supplemental letter, see ICI Memo 35388, available here: <https://www.ici.org/memo35388>. For a more detailed summary of the Fund ESG Proposal supplemental letter, see ICI Memo 35383, available here: <https://www.ici.org/memo35383>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.