

MEMO# 35435

September 15, 2023

ICI and 25 Other Trade Associations File Joint Comment Letter on SEC's Safeguarding Advisory Client Assets Proposal

[35435]

September 14, 2023

TO: ICI Members SUBJECTS: Compliance
Investment Advisers

Operations RE: ICI and 25 Other Trade Associations File Joint Comment Letter on SEC's Safeguarding Advisory Client Assets Proposal

The SEC recently issued its Safeguarding Advisory Client Assets Proposal (Proposal),[\[1\]](#) which would expand the scope of the current Investment Advisers Act custody rule (Rule 206(4)-2) and impose significant new requirements on qualified custodians and investment advisers that have custody of client assets. On May 8, ICI filed a comment letter raising significant concerns about the Proposal,[\[2\]](#) and on August 23, the SEC reopened the comment period for the Proposal for an additional 60-day period.[\[3\]](#)

On September 12, ICI, along with 25 other trade associations, filed the attached supplemental joint comment letter (Joint Letter) with the SEC urging the Commission not to adopt the Proposal in its current form. The Joint Letter further urges the Commission to gain a better understanding of the current custodial framework and to seek to preserve that framework's strengths in any rulemaking. The Joint Letter asserts that, if the Commission seeks to make changes to the current custodial framework that represent a material change from the approach in the Proposal, the Commission should withdraw the Proposal and re-propose those changes. The Joint Letter also calls for the Commission to base any future proposed rulemaking on an updated economic analysis.

The Joint Letter then highlights that many organizations, including ICI, have previously submitted detailed comments discussing "how the Proposal adversely affects the market participants we represent, in many cases by creating requirements that are inconsistent with, and duplicative of, existing safeguards enforced by the . . . CFTC, federal banking agencies, and state insurance regulators, as well as certain preexisting Commission requirements." The Joint Letter states that the Proposal's flaws are fundamental and that "material changes to substantial components of the Proposal are necessary to avoid . . .

potential negative outcomes."

Finally, the Joint Letter notes that "the potential harmful effects of the Proposal would likely be compounded by the impacts of many other new rules that the Commission has recently proposed or finalized" and that "the Commission has made no attempt to assess" the cumulative effects of these proposals.

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Notes

[1] For a summary of the Proposal, please see ICI Memorandum No. 34961 (Feb. 16, 2023), available at <https://www.ici.org/memo34961>.

[2] Letter from Dorothy M. Donohue, Deputy General Counsel, ICI to Vanessa Countryman, Secretary, SEC, Safeguarding Advisory Client Assets (File No. S7-04-23) (May 8, 2023), available at <https://www.ici.org/system/files/2023-05/23-cl-sec-safeguarding-advisory-client-assets.pdf>.

[3] See ICI Memorandum No. 35423 (Aug. 29, 2023), available at <https://www.ici.org/memo35423>.

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