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Filed Electronically to zfmorton@securities.ok.gov

Oklahoma Department of Securities
City Place
204 North Robinson Avenue, Suite 400
Oklahoma City, OK 73102-7001
Attn: Faye Morton, General Counsel

Re: 2020 Notice of Rulemaking Intent, Title 660 Department of Securities, Chapter 11. Oklahoma Uniform Securities Act of 2004

Dear Sir or Madam:

The Investment Company Institute¹ appreciates the opportunity to provide comments to the Oklahoma Department of Securities (“Department”) regarding its 2020 Notice of Rulemaking Intent.² The Department has proposed a number of amendments to Chapter 11 of the Oklahoma Uniform Securities Act of 2004, including an amendment to Section 660:11-7-42 that would define as a “dishonest or unethical practice” an investment adviser or investment adviser representative “failing to act in accordance with a fiduciary duty to a client.”

The proposed amendments to Section 660:11-7-42 include a clarification in subsection (a) that the standards for dishonest or unethical practices listed in subsection (b) apply “to federal covered investment advisers only to the extent that the conduct alleged is fraudulent or deceptive or if application is permitted by the National Securities [Markets] Improvement Act of 1996 (Pub. L. No. 104-290) [NSMIA].” We commend the Department for drafting its amendments in a manner that

¹ The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$25.2 trillion in the United States, serving more than 100 million US shareholders, and US\$7.7 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](http://www.ici.org), with offices in London, Hong Kong, and Washington, DC.

² The Notice of Rulemaking Intent is available at <https://www.securities.ok.gov/Act-Rules/Rulemaking/2020/Chapter-11/>. The proposed amendments to 660:11-7-42 (Standards of Ethical Practice) are available at <https://www.securities.ok.gov/Act-Rules/Rulemaking/2020/Chapter-11/660%2011-7-42%20Standards%20of%20Ethical%20Practice%20Amended.pdf>.

demonstrates its commitment to respect the limits of NSMIA. We do, however, suggest that the Department clarify its intent with respect to the application of NSMIA, by modifying the reference in subsection (a) to NSMIA to read as follows:

The standards set forth in this Section apply to federal covered investment advisers and representatives of federal covered investment advisers only to the extent that the conduct alleged is fraudulent or deceptive (i.e., if application is permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290)).

Our suggested language references federal covered investment advisers and their representatives. We added this language because the standards for dishonest or unethical practices listed in subsection (b) of 660:11-7-42 apply to both investment advisers and investment adviser representatives.³ Second, our suggested modification clarifies that the phrase “to the extent that the conduct alleged is fraudulent or deceptive” is used to describe NSMIA’s reach.

In addition, as a technical point, we believe there is a drafting error in subsections (b)(24)(D) and (E), which appear to incorrectly reference “paragraph (23)” when, instead, they should reference “paragraph (24).”

* * *

ICI appreciates the opportunity to provide these comments to the Department. We would be glad to answer any questions or provide further assistance. Please feel free to contact me at (202) 326-5813 or Shannon Salinas at (202) 326-5809.

Sincerely,



Susan M. Olson
General Counsel
Investment Company Institute

³ We suggest this clarification to reflect that fact that NSMIA prohibits a state from doing indirectly what it is prohibited from doing directly—including imposing the requirements of this section on the representatives of an SEC--registered investment adviser.