

ICI Responds to Amendments to SEC Dealer Rules

Washington, DC, February 6, 2024—Investment Company Institute (ICI) Deputy General Counsel Sarah Bessin released the following statement regarding the Securities and Exchange Commission’s (SEC) vote to finalize rules to further define what it means to be a dealer under the 1934 Act:

“ICI understands the Commission’s interest in further defining what it means to be a dealer. Registered investment funds and advisers have benefited American investors for decades. As the SEC recognizes, registered funds do not act as dealers and are not defined as dealers under the final rules. The SEC also recognizes that registered investment advisers with discretionary authority over client accounts are not acting as dealers when they are merely trading on behalf of their clients.

“The final rule eliminates provisions from the proposal that would have potentially treated as a ‘dealer’ an adviser’s separate client accounts that are managed with substantially the same investment objectives and strategies in the ordinary course of business. It would make no sense to aggregate these separately owned accounts and treat them as dealers.

“We also appreciate that the Commission has eliminated two other provisions from the proposal to more appropriately calibrate the trading activity that may trigger dealer status and to avoid including certain ordinary investment and trading activities. However, we remain concerned that some of the remaining qualitative tests under the final rules are overly broad and may cause certain ordinary investment and trading strategies by registered advisers or their clients to inappropriately trigger treatment as a dealer. ICI and our members are continuing to review the final rules to understand how the final rules will apply in practice.”
