

ICI Comment Letter on Bond Fund Volatility Rating Proposal, December 2005

November 28, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: Bond Mutual Fund Volatility Ratings (File No. SR-NASD-2005-117)

Dear Mr. Katz:

The Investment Company Institute¹ is writing to comment on the NASD's proposed rule change seeking permanent approval of the pilot program permitting bond mutual fund volatility ratings in supplemental fund sales literature.³ The Institute's long-standing position that the use of volatility ratings in fund sales literature raises serious investment protection concerns has not changed.³ Accordingly, the Institute opposes the permanent approval of NASD Rule 2210(c)(3) and Interpretive Material 2210-5, which are the subject of the pilot program, and recommends instead that the NASD prohibit the use of bond fund volatility ratings altogether.

If, notwithstanding our opposition, the Commission determines to approve the pilot program on a permanent basis, it is important that, at a minimum, all of the critical investor protections of the original pilot program remain intact. In addition, we believe that changes should be made to Rule 2210(c)(3) and IM-2210-5 to further ensure that investors are properly protected. These changes are discussed below.

First, we recommend prohibiting the use of a single symbol, number or letter to describe a volatility rating.⁴ This prohibition is a critical safeguard for investor protection. As we have previously stated, permitting ratings to be designated by a single symbol, number or letter will increase the likelihood that an individual investor will not evaluate the risk of a bond fund based on his or her investment objectives and risk tolerance, and instead will look to the single symbol, number or letter to make this crucial decision. Allowing their use thus caters to the needs of the rating agencies at the risk of compromising investor protection.

Second, the Release requests comment on whether the timeliness requirements of IM-2210-5(b)(2) should be modified to mirror the requirements of Rule 482 under the Securities Act of 1933, in light of changes to that rule since the adoption of Rule 2210(c)(3) and IM-2210-5. The Institute supports modifying the timeliness requirements in this manner to further ensure that investors are not relying on stale volatility ratings.

The Institute urges NASD to continue to vigorously enforce regulations concerning the use of bond fund volatility ratings and to carefully monitor the use of these ratings in supplemental sales literature. If you have any questions regarding our comments, please feel free to contact me at 202/326-5824.

Sincerely,

Amy B.R. Lancellotta
Senior Counsel

cc: Meyer Eisenberg, Acting Director
Division of Investment Management

Thomas M. Selman, Senior Vice President
Investment Companies/Corporate Financing

ENDNOTES

¹ The Investment Company Institute is the national association of the U.S. investment company industry. The Investment Company Institute's membership includes 8,518 open-end investment companies ("mutual funds"), 663 closed-end investment companies, 148 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about \$8.500 trillion. These assets account for more than 95% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 86.7 million, representing 51.0 million households.

² Securities Exchange Act Release No. 52709 (November 1, 2005), 70 FR 67509 (November 7, 2005) ("Release"). The pilot program currently is scheduled to expire on December 29, 2005.

³ The Institute has continually expressed serious reservations about the use of volatility ratings in mutual fund sales literature. See, e.g., Letters from Amy B.R. Lancellotta, Senior Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, dated September 10, 2003 and [September 21, 2001](#); Letter from Craig S. Tyle, General Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, [dated November 30, 1998](#); Letter from Craig S. Tyle, General Counsel, ICI, to Mary L. Schapiro, President, NASD Regulation, Inc., dated October 29, 1997; and Letters from Paul Schott Stevens, Senior Vice President and General Counsel, ICI, to Joan Conley, Office of the Corporate Secretary, NASD Regulation, Inc., dated September 10, 1997 and February 24, 1997.

⁴ This prohibition was included in the NASD's original proposal but was subsequently removed in a later amendment to the pilot program.