

Comment: Washington Post Mischaracterizes the Strongest Federal Securities Law

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ICI President and CEO Paul Schott Stevens comments on an article in the Washington Post article published April 19, 2012:

Without a doubt, our federal securities laws and the regulations that implement them may be improved and are worthy subjects for journalistic scrutiny. David Hilzenrath wasted an opportunity to advance that discussion with his recent article. Rather than focus on genuine weaknesses in the system, he mischaracterizes and criticizes the strongest law in the federal securities arsenal and a regulatory tool that has brought untold benefits to investors.

That law is the Investment Company Act of 1940, the most detailed and prescriptive law of the four federal securities laws. When Congress passed this landmark legislation, it recognized that the Act's tight limits on mutual funds and other registered investment companies could stifle innovation and flexibility. So Congress intentionally gave the SEC, as the qualified regulator with a strong investor-protection mission, an important tool: the ability to provide exemptive orders in cases where an exemption is "necessary or appropriate in the public interest" and "consistent with the protection of investors," and therefore in keeping with the purposes of the law.

Exemptive orders allow the SEC to update and modernize its regulations in light of market developments or industry innovations. Without exemptive orders, today's investors would be denied many investment options, including exchange traded funds, money market funds, funds of funds, multi-manager funds, variable annuities and much more.

The SEC does not grant exemptions easily. Each application is carefully considered by the SEC's staff, and only granted under detailed conditions fully satisfying the staff that investors will remain protected from any potential abuse. It often takes funds months, or even years, to obtain an exemptive order.

The flexibility to authorize exemptions has long been considered an invaluable tool for securities regulation. That is why Congress expressly gave the SEC this authority. Characterizing what the SEC does pursuant to that authority as "giving companies permission to ignore the law" is altogether inaccurate and unfair.

Reporting of this kind is a disservice to your readers.

Paul Schott Stevens
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