

**MEMO# 24083**

January 14, 2010

# **IDC Letter On SEC Proposal To Facilitate Shareholder Director Nominations**

[24083]

January 14, 2010

TO: INVESTMENT COMPANY DIRECTORS No. 2-10  
ETF ADVISORY COMMITTEE No. 2-10  
SEC RULES MEMBERS No. 7-10  
SMALL FUNDS MEMBERS No. 5-10  
CLOSED-END INVESTMENT COMPANY MEMBERS No. 4-10 RE: IDC LETTER ON SEC  
PROPOSAL TO FACILITATE SHAREHOLDER DIRECTOR NOMINATIONS

The Independent Directors Council filed the attached comment letter with the Securities and Exchange Commission on a proposal that is intended to facilitate shareholders' ability to nominate directors of companies, including investment companies. [\[1\]](#) The Commission re-opened the comment period to allow interested persons to comment on a variety of data and analyses submitted or added to the public comment file at or after the close of the initial comment period. [\[2\]](#)

IDC's letter notes that during the initial comment period, several commenters explained how the application of the proposal to investment companies would be potentially disruptive and costly to fund operations, and states that IDC is writing to reinforce this critical point from the perspective of independent directors. The letter states that, while IDC is not opposed to the concept of enhancing shareholder access in the investment company context, it believes that the proposal, in its current form, could significantly impede, rather than enhance, the efficient and effective governance of funds.

The letter urges the Commission to exclude investment companies from the current proposal and, instead, undertake a thorough consideration of the threshold issue of whether it should apply to investment companies, and if the Commission determines that it should, it should develop a more appropriate proposal tailored for investment companies.

IDC's letter highlights the overall regulatory structure for investment companies under the Investment Company Act of 1940 (1940 Act), the significant shareholder protections it provides, and the critical role of fund independent directors under its framework. Against

this backdrop of shareholder protections, the letter questions the policy basis for extending the proposed requirements to investment companies.

The letter explains that extending the proposal to investment companies would be problematic because of the unique governance models that most funds employ – the unitary and cluster board models. Citing the IDC task force report, Director Oversight of Multiple Funds, the letter details the many advantages of these models, including: common regulatory structures, which create a common set of issues for directors to consider and duties to discharge; common personnel and service providers; complex-wide oversight mechanisms; and enhanced board influence.

The letter states that if the proposal were applied to investment companies, it would create the possibility for a complex to lose the unitary or cluster board model it had established if a shareholder of one of the registered funds in the complex or cluster were to nominate a director for that fund who is elected. The letter states that the change in governance structure would cause the fund to incur additional costs, which would ultimately be borne by shareholders, and experience administrative difficulties. The letter states that over time, this situation could be exacerbated, with many different boards overseeing many different funds in the complex, and that the benefits of the unitary and cluster board models would be diminished, if not eliminated, to the detriment of efficient and effective fund governance on behalf of fund shareholders.

Annette Capretta  
Deputy Managing Director

#### [Attachment](#)

#### **endnotes**

[1] See [Memorandum](#) to Investment Company Directors No. 20-09 [23647], dated July 24, 2009 (summarizing the proposal).

[2] See SEC Release Nos. 33-9086; 34-61161; IC-29069 (December 14, 2009).

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