

MEMO# 31440

October 17, 2018

SEC Provides No-Action Relief Permitting Fund Boards to Rely on Written Representations from CCOs in Lieu of Approving Transactions Effected Pursuant to Exemptive Rules

[31440]

October 17, 2018 TO: Chief Compliance Officer Committee RE: SEC Provides No-Action Relief Permitting Fund Boards to Rely on Written Representations from CCOs in Lieu of Approving Transactions Effected Pursuant to Exemptive Rules

On October 12, 2018, the staff of the SEC's Division of Investment Management granted no-action relief to the Independent Directors Council that will relieve fund boards of having to approve transactions effected pursuant to certain exemptive rules. The Commission's letter affirms that it would not recommend an enforcement action under Sections 10(f), 17(a), or 17(e) of the Investment Company Act "if a fund's board of directors receives, no less than quarterly, a written representation from the [CCO] that transactions effected in reliance on Rules 10f-3, 17a-7, or 17e-1 under the Act (each, an 'Exemptive Rule') complied with the procedures adopted by the board pursuant to the relevant Exemptive Rule, instead of the board itself." [\[1\]](#)

The IDC's request for this relief noted that granting it would better align the directors' responsibilities under the Exemptive Rules with the board's oversight role following the adoption of the Compliance Rule, Rule 38a-1. In granting the relief, the staff noted that the number and scope of directors' responsibilities "have grown significantly as a result of market, regulatory, and technological developments." It also noted that such relief "is consistent with the Commission's approach in adopting Rule 38a-1 and would allow boards to avoid duplicating certain functions commonly performed by, or under, the supervision of the CCO."

A copy of the letter is available on the Commission's website at:

<https://www.sec.gov/divisions/investment/noaction/2018/independent-directors-council-101218.htm>.

Tamara K. Salmon
Associate General Counsel

endnotes

[\[1\]](#) Rule 10f-3 provides an exemption for the acquisition of securities during the existence of an underwriting or selling syndicate. Rule 17a-3 provides an exemption for affiliated transactions. Rule 17e-1 governs commissions paid in connection with brokerage transactions on a securities exchange.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.