

**MEMO# 32220**

February 20, 2020

# **SEC Issues Exemptive Order on Section 15(c) In-Person Board Voting Requirement for Certain Sub-Advisory Contracts**

[32220]

February 20, 2020 TO: ICI Members

Investment Company Directors

Chief Compliance Officer Committee SUBJECTS: Compliance  
Fund Governance

Investment Advisers RE: SEC Issues Exemptive Order on Section 15(c) In-Person Board  
Voting Requirement for Certain Sub-Advisory Contracts

The Securities and Exchange Commission has issued an exemptive order<sup>[1]</sup> that permits, subject to certain conditions, a fund's board of trustees, including the independent trustees, to approve new sub-advisory agreements and material amendments to existing sub-advisory agreements for the fund without complying with the in-person meeting requirement of Section 15(c) of the Investment Company Act of 1940. Instead, the independent trustees can approve a sub-advisory agreement at a meeting at which board members participate by any means of communication that allows them to hear each other simultaneously during the meeting.

The applicants for exemptive relief (a registered investment company with multiple series and the funds' investment adviser) explained that the board typically holds in-person meetings on a quarterly basis but that market conditions may change or investment opportunities may arise such that the adviser may wish to make a change with respect to sub-advisers between the quarterly meetings. The applicants stated that it may be impractical and costly to hold an additional in-person board meeting for this purpose.

The Commission stated that while it continues to believe a board's decision-making process may benefit from the trustees' having the opportunity to interact in person, it recognized that under the circumstances described by the applicants, the need to act promptly for the benefit of the fund may justify the board's meeting on a non-in-person basis and that technological advances enable trustees to hold such meetings in a manner where the directors can be personally present and able to assure themselves that they are informed as to the matter that requires action by the board.

Annette Capretta  
Deputy Managing Director  
Independent Directors Council

**endnotes**

[1] See Investment Company Act Release No. 33801 (Feb 19, 2020) (Order), *available at* <https://www.sec.gov/rules/ic/2020/ic-33801.pdf> and Investment Company Act Release No. 33748 (Jan. 21, 2020) (Notice), *available at* <https://www.sec.gov/rules/ic/2020/ic-33748.pdf>.

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