

MEMO# 30912

October 17, 2017

IDC Letter to SEC Staff on Modernizing Directors' Responsibilities

[30912]

October 17, 2017 TO: Investment Company Directors

SEC Rules Committee

Small Funds Committee SUBJECTS: Fund Governance RE: IDC Letter to SEC Staff on Modernizing Directors' Responsibilities

IDC submitted the attached letter to Dalia Blass, the SEC's new Director of the Division of Investment Management. As Ms. Blass begins her tenure in this position, IDC submitted the letter to request that she prioritize an initiative of great interest to the independent director community: modernizing fund directors' regulatory responsibilities.

The letter points out that the collective set of regulatory requirements applicable to directors today is the cumulative result of SEC initiatives over the years that have added responsibilities on directors, without a concomitant wholesale review of directors' responsibilities to consider whether any specific responsibility is outdated or unnecessary or whether, in the aggregate, the current set of responsibilities continues to be appropriate. The letter encourages the Division to conduct a long-overdue review of fund independent directors' responsibilities and take staff actions and make recommendations to the Commission for modifications, as appropriate.

The letter:

- summarizes significant developments in the fund industry, technology, and regulations that should serve as a backdrop to a review of directors' responsibilities;
- suggests a framework for considering the nature of responsibilities that are appropriate to impose on directors, consistent with their oversight role under the Investment Company Act of 1940; and
- offers preliminary recommendations for regulatory modifications that would enhance fund directors' effectiveness on behalf of shareholders.

Among the significant developments noted in the letter are the growth and increased complexity of the fund industry, greater use of technology, and certain regulatory changes, such as rule 38a-1 under the 1940 Act and the fund governance standards. For example, the letter points to rule 38a-1 as having established a successful framework for board oversight that should serve as a model for modernizing other regulatory responsibilities of fund directors.

IDC's framework for evaluating directors' responsibilities suggests that regulations should focus on board oversight of potential conflicts of interest. Regulations should not require directors to duplicate the chief compliance officer's responsibilities and should recognize that directors' value is in providing oversight, not performing management-type responsibilities.

IDC's preliminary recommendations for modifications include modernizing board responsibilities for fair valuation and under rule 12b-1; eliminating ritualistic requirements that are more appropriately handled by fund management or the fund's CCO; and revising certain governance standards—such as the in-person meeting requirement for advisory contract approval in unforeseen circumstances that prevent one or more directors from attending—to address changes in the industry.

Annette Capretta
Deputy Managing Director

[Attachment](#)

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