

MEMO# 24690

November 5, 2010

IDC Comment Letter on SEC's Proposal To Replace Rule 12b-1 With New Regulatory Framework

[24690]

November 5, 2010

TO: BOARD OF GOVERNORS No. 9-10

INVESTMENT COMPANY DIRECTORS No. 28-10

SEC RULES MEMBERS No. 116-10

SMALL FUNDS MEMBERS No. 71-10 RE: IDC COMMENT LETTER ON SEC'S PROPOSAL TO REPLACE RULE 12B-1 WITH NEW REGULATORY FRAMEWORK

IDC today filed the attached comment letter on the SEC's proposal to replace Rule 12b-1 under the Investment Company Act of 1940 with a new regulatory framework. [\[1\]](#) IDC's letter commends the SEC for undertaking its comprehensive review of Rule 12b-1. IDC notes that the proposal is sweeping and raises numerous and complex operational and other issues and urges the SEC to carefully consider the potential costs and other impacts of the proposal, which ultimately may be borne by fund shareholders, before enacting any significant Rule 12b-1 reform. The letter focuses on two aspects of the proposal: modernizing the role of fund directors and enhancing shareholder understanding of fees.

IDC's letter applauds the SEC for seeking to provide "a more appropriate role for fund directors." The SEC proposes to eliminate the board-related requirements of Rule 12b-1 as well as the factors included in the Rule 12b-1 adopting release. Because these changes would further the stated goal, IDC expresses strong support for these parts of the proposal.

On the other hand, the SEC proposes guidance relating to board oversight of ongoing sales charges, which IDC states is contrary to the stated goal. IDC's letter notes that experience has shown that setting forth specific factors in the nature of guidance can impede, rather than assist, effective and efficient board oversight as such factors can become too prescriptive and outmoded over time. Moreover, IDC asserts that the proposed guidance is not grounded in law, is inconsistent with long-standing board practices overseeing other kinds of distribution arrangements, and suggests an inappropriate role for fund boards. IDC's letter notes that fund directors are well guided by their fiduciary duties to provide appropriate oversight of fund distribution arrangements and expresses strong opposition to the issuance of Commission guidance to fund directors in this regard.

IDC's letter states that it shares the Commission's goal of promoting investor understanding of fees. The letter notes that the proposed amendments to the prospectus disclosure requirements—which would require disclosure of distribution fees using plain English terms, rather than references to rule numbers—further that goal, and expresses support for these changes. The letter questions, however, the proposal to add disclosures to confirmation statements before the SEC has completed its consideration of point-of-sale disclosure, which would seem to be the next logical step. The letter urges the SEC to not adopt additional confirmation disclosure requirements before it has first completed its review and consideration of comprehensive point-of-sale disclosure.

In short, IDC's letter urges the SEC to:

- Eliminate the Rule 12b-1 board requirements and factors regardless of: (i) whether it takes any other action with respect to Rule 12b-1 reform, or (ii) how it may address other matters, such as caps on fees;
- Not issue guidance to fund directors in connection with their oversight of fund distribution arrangements; and
- Amend prospectus disclosure requirements to require plain English disclosures of distribution fees but not add to confirmation statement disclosures until after it has completed consideration of enhanced point-of-sale disclosure.

Annette Capretta
Deputy Managing Director

[Attachment \(in .pdf format\)](#)

endnotes

[1] See [Memorandum 24450 \(July 29, 2010\)](#) for a summary of the proposal. For additional information on the history of Rule 12b-1, ICI research related to fund distribution, and IDC and ICI positions on reform, visit the 12b-1 Resource Center at <http://www.ici.org/rule12b1fees>.

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