

MEMO# 32256

March 2, 2020

Coronavirus Situation and In-Person Fund Board Meetings

[32256]

March 2, 2020 TO: ICI Members
Investment Company Directors
Chief Compliance Officer Committee
SEC Rules Committee SUBJECTS: Advisory Contract Renewal
Audit Committees
Fund Governance RE: Coronavirus Situation and In-Person Fund Board Meetings

We have received questions about the in-person board approval requirements under the Investment Company Act of 1940, in light of current concerns relating to the Coronavirus Disease 2019 (COVID-19).

As a reminder, SEC staff issued a no-action position to the Independent Directors Council last year^[1] that permits boards to give their approvals telephonically, by video conference or by other means by which all participating directors may participate and communicate with each other simultaneously during a meeting, instead of meeting in person as required under the 1940 Act and rules thereunder, in cases where:

1. the directors needed for the approval cannot meet in person due to unforeseen or emergency circumstances, provided that (i) no material changes to the relevant contract, plan and/or arrangement are proposed to be approved, or approved, at the meeting, and (ii) such directors ratify the applicable approval at the next in-person board meeting ("Request for Relief 1"); or
2. the directors needed for approval previously fully discussed and considered all material aspects of the proposed matter at an in-person meeting, but did not vote on the matter at that time, provided that no director requests another in-person meeting ("Request for Relief 2").

The no-action position applies only with respect to the following actions:

- a. renewal (or approval or renewal in the case of Request for Relief 2) of an investment advisory contract or principal underwriting contract pursuant to Section 15(c) of the 1940 Act;
- b. approval of an interim advisory contract pursuant to Rule 15a-4(b)(2) under the 1940 Act (with respect to Request for Relief 2 only);

- c. selection of the fund's independent public accountant pursuant to Section 32(a) of the 1940 Act (with respect to Request for Relief 1, such accountant must be the same accountant as selected in the immediately preceding fiscal year); and
- d. renewal (or approval or renewal in the case of Request for Relief 2) of the fund's 12b-1 Plan.

IDC's request stated that unforeseen or emergency circumstances include:

any circumstances that, as determined by the board, could not have been reasonably foreseen or prevented and that make it impossible or impracticable for directors to attend a meeting in-person. Such circumstances would include, but not be limited to, illness or death, including of family members, weather events or natural disasters, acts of terrorism and disruptions in travel that prevent some or all directors from attending the meeting in person.

Fund complexes should determine for themselves whether this no-action position is available in their circumstances. We have spoken to SEC staff, who are appreciative of the travel and health concerns associated with this novel situation.

If your circumstance is not covered by the no-action position and you are interested in obtaining additional relief, please contact us or SEC staff directly.

Annette Capretta
Deputy Managing Director
Independent Directors Council

Susan Olson
General Counsel

endnotes

[1] See [Memorandum No. 31631](https://www.sec.gov/divisions/investment/noaction/2019/independent-directors-council-022819) for a summary of the no-action letter. The no-action letter is available at <https://www.sec.gov/divisions/investment/noaction/2019/independent-directors-council-022819>, and IDC's incoming letter is available at <https://www.sec.gov/divisions/investment/noaction/2019/independent-directors-council-022819-incoming.pdf>.