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General Counsel's Address, 2018 Mutual Funds and Investment Management Conference

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As prepared for delivery.

Hello—a very good morning and welcome to everyone! I’m so pleased to be here with you today in Texas.

To echo Chuck, I’d like to share my deep appreciation to our planning committee, our speakers and panelists, our Conferences staff, and our sponsors. Thank you all for your support and hard work.

I’ve been ICI’s general counsel for nearly four months now—so, not too long, but long enough for me to get a sense of how best to incorporate my earlier work experience into this new role.

I began my career in private practice before serving for a decade at the SEC’s Division of Investment Management. While there, I worked in the division’s Office of Insurance Products and the Office of the Chief Counsel on a variety of ’40 Act fund matters—including exemptive applications, reviewing disclosure, rulemaking, and no-action letters. Of course, I also answered public inquiries on my phone day!

But when I joined ICI as senior counsel for international affairs in 2007—and later became chief counsel of ICI Global—my US background provided a foundation for me to shift my focus to regulatory issues arising outside the United States.

Just the other day, I found myself thinking about how closely the evolution of my career—from a US-centric focus, to a broader, global approach—aligns with the evolution in our industry—and, I think, matches the experience of many of you in the audience.

I thought about how grateful I am to have been given the opportunity to work on issues that span both the US and global regulatory spheres. I have been able to speak with so many talented experts and policymakers from different backgrounds—and from different places—about what were often very tough regulatory questions.

And I thought about some of the things I learned along the way.

One of those is the need to keep an open mind.

Early in my career, I learned that our industry's regulatory framework in the United States is extremely robust. Yet learning about other countries' markets and their laws for regulated funds opened my thinking to many new ideas. It forced me to step back and think—maybe there's another way. On some questions, I found myself turning from supporter to skeptic; on others, from opponent to advocate.

I also learned to be creative.

In efforts to secure favorable policy outcomes for regulated funds and their investors, my colleagues and I often had to adjust our strategy—or, sometimes, we'd have to modify our goals.

I learned to be careful, too.

Whenever we'd make a recommendation, we'd have to take great care to ensure:

- that we had data and evidence to back it up …
- that it accounted for operational considerations—in other words, that our members could implement the idea we were proposing …
- and that we appreciated how the recommendation could affect regulated funds and their investors. After all, what might be workable in one market may not be so in another.

And, finally, I learned to be patient.

In today's complex global regulatory environment, progress can take time. There are a lot of constituencies with whom we need to work.

In my view, an open mind, creativity, care, and patience are some of the most important qualities you can have when working on the policy issues affecting regulated funds and investors. And they are what I plan to bring to my work as ICI's general counsel.

So, what opportunities are we pursuing these days? Well, if the conference program is any guide, we've got a lot on our plate. But four in particular stand out for me this morning.

The first involves establishing a robust best-interest standard of conduct for broker-dealers who provide recommendations to retail investors.

It wasn't too long ago that prospects for such a standard looked bleak. But the Department of Labor's new leadership has delayed some of the fiduciary rule's most harmful provisions. And the DOL is now coordinating with the SEC, so there's still time to get this right.

Indeed, the ruling by the Fifth Circuit last week—vacating the rule and questioning what the court called “overreach” and “a regulatory abuse of power” on the part of the DOL—makes it even more imperative that the SEC act—and act promptly.

As the Commission pursues work in this area, we believe that it must establish and enforce a new best-interest standard of conduct for broker-dealers that applies consistently across retirement and non-retirement accounts—and that it must coordinate with the DOL in doing so.

For its part, the DOL needs to recognize this new SEC standard by adopting a streamlined exemption covering the intermediaries that are subject to it.

Last month, we were pleased to hear SEC Chairman Jay Clayton recognize the need for clarity, consistency, and coordination here. Our approach would provide all three. It would strengthen protections for all investors, whether they’re saving for retirement or other important goals. And it would preserve their ability to obtain the guidance, products, and services they need to reach those goals.

A second opportunity we’re pursuing involves streamlining ETF approval and listing.

Many in this room know how long it can take—and how expensive it can be—to get an ETF approved and listed:

- First, you have to secure exemptive relief from the Division of Investment Management ...
- And then, in many cases, you have to wait for the Division of Trading and Markets to approve the listing on an exchange.

All told, these steps can keep an ETF off the market for more than a year. And because not all exemptive orders are the same, some ETF sponsors have more flexibility in product offerings than other ETF sponsors do.

Clearly—with the rising demand for ETFs showing no signs of slowing down—reform in this area is now more important than ever. That’s why we’re urging the SEC to propose a rule that lays out conditions for most new ETFs to operate without having to obtain an exemptive order.

This more-uniform regulatory framework would enable ETF sponsors to bring most ETFs to market more quickly and at lower cost. It would help level the playing field among ETF sponsors. And it would free the SEC staff to focus on exemptive relief for more-novel ETFs.

We’re also urging the Commission to consider ways that IM and Trading and Markets could establish a single process for ETF approval and listing—which would eliminate the possibility of conflicting requirements, and simplify this whole undertaking.

A third opportunity we’re pursuing involves modernizing fund board responsibilities.

Let’s not forget...

Our shareholders—all 100 million of them—rely on independent directors to promote and protect their interests. So, it’s imperative that board responsibilities position directors to do their job as best they can.

Unfortunately, many of the responsibilities imposed on boards today—however well intended they may be—fall short of that goal. Instead, many have become counterproductive, out of date, or out of sync with directors' proper oversight role—and an update is long overdue.

With the support of the fund director community, our colleagues at the Independent Directors Council have taken up this cause. They have asked the Division of Investment Management to take a fresh look at all the board responsibilities that have accumulated over the years, and have outlined areas in need of reform.

IDC's research and experience tell us that IM should focus on three areas:

- First, it should relieve boards of responsibilities that have become ritualistic and duplicative, or that would be handled better by others ...
- Second, it should revise board responsibilities to better reflect how the industry has evolved ...
- And third, it should make fund governance requirements more flexible ... and efficient.

A fourth opportunity we're pursuing involves modernizing the delivery and content of fund shareholder reports.

You'd think that—in 2018—it would be quite obvious that our industry's paper-dependent, snail-mail framework for delivering shareholder reports is hopelessly outdated. Antiquated, wasteful, and expensive are words that immediately come to mind.

Yet here we are—facing special interests who continue to fight against an entirely sensible rule that would allow funds to mail shareholders a paper notice telling them how to access their reports online, or how to ask for a paper copy, instead of mailing a full report.

For nearly two years, ICI and its members have been fighting efforts to use government spending bills to block the SEC from adopting this rule. We're still hoping that Congress won't allow such a rider on the government's funding. This would enable the Commission to remain free to carry out its responsibilities—and finally bring our industry's delivery framework into the 21st century.

We believe that it's crucial for the Commission to adopt the rule right away—before another protracted battle can begin. Online delivery would save shareholders nearly 2 billion dollars over its first decade in effect. It would save nearly 2 million trees a year. And it would enable any shareholder who prefers to receive a full paper report to continue doing so, with just a phone call.

With online delivery in place, the SEC could then act to make the content of shareholder reports more useful. To that end, we are working with members to develop recommendations for the Commission on the content and structure of a summary shareholder report.

So, we're looking at:

- a best-interest standard for broker-dealers ...
- a simpler path to getting ETFs on the market ...
- an update of fund board responsibilities ...
- and a smarter way of delivering information to fund shareholders.

There’s no question that this is an ambitious list. But we’re seeing plenty of reasons to be confident that the work will get done:

- One reason is that the SEC’s Fall 2017 Reg Flex agenda outlines near-term plans to work on a best-interest standard, on an ETF rule, and on the shareholder report delivery rule.
- Another reason is that the Division of Investment Management—under new leadership—has a pair of forward-thinking initiatives in the works for our industry. One is aimed at reviewing and reevaluating what the SEC asks fund boards to do. The other is aimed at the investor experience and improving fund disclosure.
- Finally, we’re encouraged that the SEC has a full complement of commissioners for the first time since October 2015.

In fact, this regulatory climate is already bearing fruit.

Just recently, the SEC took action to modify important aspects of the liquidity risk management program rule to make it more workable for funds—and more useful for shareholders.

That reminds me of one more thing I’ve learned over the course of my career—how important it is to make the most of your opportunities.

Because even when everything seems to be falling into place, opportunities ultimately amount to nothing if one is not there to seize them. As ever, how well we seize ours will depend on how constructively we engage with the good people at the SEC—toward our shared goal of sound, investor-centered regulation.

This means that our deep respect for each other’s role, knowledge, and dedication to the investing public must never waver—especially on the occasions that we disagree. Opportunities like ours don’t come along every day, and we’ll need to work together if we’re going to turn them into wins for fund shareholders.

Thank you for your time and attention.
