

BOARD UPDATE

May 2, 2021

Board Update June 2020

IDC News

- [Virtual Roundtables Underway](#)
- [ICYMI: Webinar on Proposed Fair Valuation Rule](#)

Regulatory and Legislative News

- [SEC Extends Exemptive Relief from In-Person Fund Board Meeting Requirement](#)
- [SEC Staff Permits Funds to Opt In to State Control Share Acquisition Statutes](#)
- [DOL Issues Proposal on ESG Investments in Retirement Plans](#)
- [Executive Order on Regulatory Relief to Support Economic Recovery](#)
- [Financial Regulators Modify Volcker Rule](#)

ICI News and Research

- [ICI Applauds Approval of Labor Department E-Delivery Rule](#)
- [ICI Education Foundation Awards Grant to the Maryland Council on Economic Education](#)
- [ICI's COVID-19 Resource Center](#)
- [The Latest ICI Research](#)

Upcoming Events

IDC News

Virtual Roundtables Underway

IDC has just successfully concluded its June round of Industry Segment Calls and Virtual Roundtables. More than 200 independent directors participated in these peer-to-peer exchanges. Topics covered in the director-led discussions included virtual board meetings, business continuity implementation, insurance for funds and directors, and more. We appreciate your participation in these calls, as your contributions to the discussions help inform and enlighten the broader director community—we all learn from each other in these sessions.

The Virtual Roundtables are now in full swing, with the Illinois/Wisconsin and Massachusetts/Maine roundtables having met this month and six additional roundtables scheduled for July. More regional roundtables are in the pipeline for August and thereafter.

Like IDC's signature chapter meetings, the Virtual Roundtables are based on geographic location, and are designed to include all directors who want to participate. See the calendar for the schedule and be on the lookout for an email invitation to participate in the roundtable for your region.

ICYMI: Webinar on Proposed Fair Valuation Rule

IDC hosted a webinar on the SEC's proposed fair valuation rule on June 10. The [archive](#) is available for your viewing, if you missed the opportunity to participate in the live webinar. Learn what the proposed framework would require for boards and advisers. Topics include the provision permitting boards to assign fair value determinations to the adviser and board reporting requirements.

Regulatory and Legislative News

SEC Extends Exemptive Relief from In-Person Fund Board Meeting Requirement

The SEC has issued an [exemptive order](#) extending the temporary relief from the in-person fund board meeting requirement to at least December 31, 2020. The [new order](#) supersedes a [previous order](#) that had set the relief to expire on August 15, 2020.

Specifically, the relief is extended until a date to be specified in a public notice from SEC staff, and this date will be at least two weeks from the date of the notice and no earlier than December 31, 2020. IDC and ICI had requested an extension and commend the SEC for taking this action.

SEC Staff Permits Funds to Opt In to State Control Share Acquisition Statutes

On May 27, 2020, [the Securities and Exchange Commission's Division of Investment Management issued a statement](#) providing funds with additional anti-takeover defenses by enabling them to opt in to state control share acquisition statutes. The statement reverses the SEC staff's previous position that funds opting in to control share statutes are acting inconsistently with the Investment Company Act of 1940. The statement also requests feedback on whether the Commission should take further action in this area. The staff's actions follow [recent ICI advocacy](#) urging the Commission or its staff to permit funds to opt in to state control share statutes and to issue guidance on the defenses that closed-end funds and their independent directors may use to defend against activist campaigns.

In 2010, the SEC staff issued a letter, Boulder Total Return Fund, Inc., interpreting the Investment Company Act as prohibiting closed-end funds from opting in to state control share statutes. The letter states, among other things, that restricting a shareholder's right to vote is inconsistent with the Investment Company Act's requirement that all fund shares be voting stock with equal voting rights with every other outstanding voting stock. The May 27 staff statement withdraws the Boulder letter effective immediately. In the letter's place, the staff provides funds with no-action relief stating that it would not recommend enforcement action against a closed-end fund for opting in to and triggering a control share statute. To rely on the relief, [a fund board's decision to opt in must be taken with reasonable care](#) consistent with other applicable duties and laws and the duty to the fund and its shareholders generally.

ICI applauded the staff decision to withdraw the Boulder no-action response. "This action helps repair a regulatory imbalance that has prevented closed-end funds from using

common takeover defenses that other entities can deploy when besieged by corporate raiders,” [ICI President and CEO Paul Schott Stevens said](#).

DOL Issues Proposal on ESG Investments in Retirement Plans

The Department of Labor (DOL) has [issued a proposed rule](#) intended to clarify its stance on selecting environmental, social and governance (ESG) investments for retirement plans. The proposed rule is intended to “codify” DOL’s position on ESG investing and clarify previous guidance on the subject that DOL says “may have created confusion.”

The [proposal](#) does not fundamentally change DOL’s position on the application of ERISA’s fiduciary requirements to the selection of plan investments. Rather, it appears that DOL seeks to remove any doubt about the impermissibility of ERISA plan fiduciaries investing in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of non-financial objectives.

Executive Order on Regulatory Relief to Support Economic Recovery

On May 19, 2020, President Trump signed an executive order, “Regulatory Relief to Support Economic Recovery.” The order, which applies to executive branch departments, executive agencies, and independent agencies, states that it is US policy “to combat the economic consequences of COVID-19 with the same vigor and resourcefulness with which the fight against COVID-19 itself has been waged.” It indicates that agencies should rescind, modify, waive, or provide exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and certain other considerations. The order lays out [specific directives for agency heads](#).

Financial Regulators Modify Volcker Rule

Five federal regulatory agencies, including the SEC, [finalized a rule modifying the Volcker rule’s prohibition on banking entities investing in or sponsoring hedge funds or private equity funds](#)—known as covered funds.

The Volcker rule generally prohibits banking entities from engaging in proprietary trading and from acquiring or retaining ownership interests in, sponsoring, or having certain relationships with a hedge fund or private equity fund.

The rule modifies three areas of the Volcker rule by:

- Streamlining the covered funds portion of rule;
- Addressing the extraterritorial treatment of certain foreign funds; and
- Permitting banking entities to offer financial services and engage in other activities that do not raise concerns that the Volcker rule was intended to address.

ICI News

ICI Applauds Approval of Labor Department E-Delivery Rule

[ICI supports Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA](#), the Department of Labor (DOL) final rule on electronic delivery of communications for 401(k) participants. The rule modernizes outdated 401(k) plan notice delivery rules and will promote greater use of electronic forms of participant communication, while still allowing the receipt of paper copies of materials by participants with that preference. The new rule

will improve the effectiveness of ERISA disclosures, produce cost savings, and benefit the environment.

ICI Education Foundation Awards Grant to the Maryland Council on Economic Education

[The Investment Company Institute Education Foundation \(ICIEF\) has awarded a \\$25,000 grant](#) to the Maryland Council on Economic Education (MCEE) to help further the financial education of secondary school teachers in Prince George's County, Maryland. The grant will fund MCEE's creation of a weeklong, intensive program for 12 to 15 teachers, including in-depth lessons on investor education, personal finance, and teaching strategies. Through the training, which will take place during the summer of 2020—either in-person or virtually, depending on the COVID-19 crisis—teachers will build a strong foundation in personal finance and will learn skills and strategies to apply the lessons to their own lives and to their students' coursework on saving and investing.

ICI's COVID-19 Resource Center

ICI encourages the regulated fund industry and its independent directors to engage with the Institute on pandemic-related concerns and development. ICI invites members to draw upon the Institute's [COVID-19 Resource Center](#), which has a wealth of information to help firms stay informed. The resource page includes the special reports that ICI President and CEO Paul Schott Stevens has communicated directly via email to members, including fund directors, to provide updates and additional information on regulatory and other developments related to COVID-19.

The Latest ICI Research

[A new analysis of tax data by ICI economists](#) shows that previous studies substantially overestimate leakage from retirement accounts. The term "leakage" refers to early withdrawals from retirement accounts used for nonretirement purposes. The new analysis, "[Decoding Retirement: A Detailed Look at Retirement Distributions Reported on Tax Returns](#)," finds that a reasonable estimate of leakage is the amount of distributions subject to penalty for early distributions under the tax code and that such penalized distributions account for only around half of taxable distributions received by taxpayers younger than age 55.

Distributions from a pension, annuity, or individual retirement account (IRA) to individuals younger than age 59½ are generally subject to a 10 percent penalty on early distributions under the federal income tax. There are numerous exceptions to the penalty, however, including pension benefits paid to retired military, public safety officers, or other government employees, and distributions made after a worker dies or becomes disabled.

Upcoming Events

Foundations for Fund Directors®

Foundations for Fund Directors®
Virtual September 16-17

Conference

2020 Fund Directors Conference

Virtual October 21-22

Virtual Roundtables

New England Region July 8 Northern California, Oregon, Washington July 15 Southern California, Hawaii, Nevada July 16 Arizona, Colorado, Idaho, Montana, New Mexico, Utah, Wyoming July 21 Ohio, Indiana, Kentucky, Michigan, West Virginia July 29 New York July 30

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