

IDC UPDATE

February 16, 2023

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IDC Files Comment Letter on SEC's Swing Pricing, Hard Close and Liquidity Proposal

IDC submitted a [comment letter](#) to the Securities and Exchange Commission (SEC) strongly opposing its proposed hard close because it would disadvantage shareholders in intermediated accounts, including those who invest through 401(k) and other retirement plans. IDC also opposed swing pricing as a mandatory tool for mutual funds because it would create confusion among shareholders, detract from the clarity and transparency of a fund's NAV, and ignore the facts and circumstances of particular funds and their investors. IDC Managing Director Tom Kim issued a [statement](#) explaining IDC's opposition. IDC thanks the many boards who also weighed in with comments on the SEC's proposal. Comment letters can be accessed on the SEC's website [here](#).

ICI's comprehensive and thoughtful letter is available [here](#), and ICI's press release is available [here](#).

Registration Now Open for IDC Webinar on 2023 Legislative Agenda and the Impact on Fund Governance

Join ICI Chief Government Relations Officer John Emling and Peg McLaughlin, Independent Director of the SSGA Funds, on February 28 at 11:00 a.m. ET for an informative discussion on the 118th Congress' legislative agenda. The speakers will discuss the impact of the mid-term elections, Congress' policy priorities, and the potential implications for fund governance. You may register [here](#).

SEC Staff Issues Guidance on Differential Fee Waivers

The staff of the SEC's Division of Investment Management recently issued a [reminder](#) to mutual funds and their boards regarding fee waiver and expense reimbursement arrangements that are long-term or permanent, and that result in different advisory fees being charged to different share classes of the same fund (differential advisory fee waivers). The staff cautioned that such arrangements may result in cross-subsidization between share classes that could lead to prohibited inequitable or discriminatory provisions among classes.

In the staff's view, whether a differential advisory fee waiver presents a prohibited cross-subsidization is a facts-and-circumstances determination for a mutual fund board. The staff suggests that a board consider whether existing differential advisory fee waivers present a means for cross-subsidization, whether the steps the fund is taking to monitor such waivers are effective, and/or whether alternative fee arrangements may be appropriate. ICI's memorandum analyzing the guidance is available [here](#) (login required).

SEC Proposes Changes to Investment Adviser Custody Rule

On February 15, 2023, the SEC [issued](#) a [rule proposal](#) that would amend and redesignate the custody rule as the safeguarding rule. The proposal would [expand](#) the scope of the current custody rule beyond client funds and securities to cover any client assets of which an adviser has custody, including crypto assets. The proposed rule would also explicitly include an adviser's discretionary authority to trade client assets within the definition of custody. Importantly, as under the current regime, accounts of a registered investment company would be exempt from the safekeeping requirements. Comments on the proposal are due 60 days after the proposed release is published in the Federal Register.

SEC's Division of Examinations Publishes 2023 Examination Priorities

The SEC's Division of Examinations recently published its [2023 Examination Priorities](#), including its priorities (Priorities) for examinations of investment companies. According to the Priorities, in reviewing investment companies' compliance programs and governance practices, the Division will "continue to evaluate boards' processes for assessing and approving advisory and other fund fees, particularly for funds with weaker performance relative to their peers." In addition, the Division will assess the effectiveness of funds' derivatives risk management programs and liquidity risk management programs. Governance and disclosures related to mutual funds that converted to ETFs will also be evaluated.

As in prior years, the Division of Examinations will prioritize examinations of registered investment companies that have never been examined. These examinations may focus on corporate governance, the advisory contract approval process, fund code of ethics, disclosures, and the implementation and effectiveness of the fund's compliance program, including oversight of third-party service providers. ICI's Memo summarizing the Priorities may be accessed [here](#) (login required).

Register Now: IDC Chapter Meeting in Denver, CO

IDC will hold its next meeting of the Denver Directors Chapter on March 7, at Morrison Foerster in Denver. IDC's chapter meetings are informal and interactive gatherings for both independent and interested fund directors. We will be joined by guest speaker Kelley Howes, Partner at Morrison Foerster, who will discuss BDCs, non-traded REITs, and interval funds. We will also discuss current topics relating to your roles as fund directors, including governance practices and SEC regulatory initiatives. You may register [here](#). In addition, IDC will host an informal dinner with independent directors on the evening of March 6 in downtown Denver. Please contact Paul Mussoni at paul.mussoni@ici.org if you might be interested.

Register Today for IDC Industry Segment Calls

IDC will host its next call for [Audit Committee Chairs](#) on February 23, at 2:30 p.m. ET. This call will be an informal and interactive discussion among participants. The call will be facilitated by Sue Coté, Independent Director and Audit Committee Chair of the SEI Funds.

IDC also has scheduled calls for [Directors at Small Funds Complexes](#) on February 27, and [Directors of ETFs](#) on March 28. Please see below for more details.

Mark Your Calendar for Upcoming Events

All times are shown in eastern time (ET), unless otherwise noted.

Webinar

- [2023 Legislative Agenda: An Overview for Fund Directors, February 28, 11:00 a.m.](#)

Chapter Meeting

- [Denver, March 7, 10:00 a.m. \(Mountain Time\)](#)

Industry Segment Calls

- [Audit Committee Chairs, February 23, 2:30 p.m.](#)
- [Small Fund Complexes, February 27, 2:00 p.m.](#)
- [Directors of ETFs, March 28, 2:00 p.m.](#)

Foundations for Fund Directors®

- June 13-14 (Washington, DC)

Please contact [Paul Mussoni](#) for additional information. A list of IDC events can be found on [IDC's website](#).

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