

## IDC UPDATE

April 3, 2023

# IDC Update: March 30, 2023

## ICI Hosts Investment Management Conference in Palm Desert

### Director Programming and Participation

More than 50 independent fund directors gathered with fund attorneys and other industry professionals to participate in ICI's recent [Investment Management Conference](#) in Palm Desert, CA. The first day featured a governance-focused panel moderated by IDC Managing Director Tom Kim with Independent Directors Kathryn Quirk (Harbor Funds), Patty Louie (Oakmark Funds), and Stephen Tate, General Counsel of Putnam Investments. Among other things, the panel discussed how boards are keeping up with the current deluge of regulatory activity and particular proposals that are of interest from a board perspective. The second day of the conference featured an invitation-only breakfast for independent directors to speak candidly among themselves and hear from ICI President and CEO Eric Pan in an informal Q&A. As discussed further below, other conference highlights included keynote remarks from [Commissioner Mark T. Uyeda](#) and [William Birdthistle, SEC Director of the Division of Investment Management](#).

### Remarks from SEC Commissioner Uyeda

In his [keynote address](#), Commissioner Uyeda observed "the sense of frustration in navigating the current regulatory challenges and what potentially may come" and expressed concern over the SEC's "rush to rulemaking." According to Uyeda, the SEC "has been focused on rulemakings based on unrealistic expectations of how the world functions and how it ought to be," citing the proposal regarding mandatory swing pricing, hard close, and liquidity amendments. Uyeda also expressed concern over the SEC's Fund Names Rule proposal and three rule proposals on Environmental, Social, and Governance issues. Notably, Uyeda discussed practical areas for regulatory improvement, such as evaluating the current [rulebook](#) and seeking to improve fund disclosure for investors.

### Remarks from Investment Management Division Director Birdthistle

During his [keynote remarks](#), Director Birdthistle identified "three trends worthy of far-reaching vigilance and prompt concentration" and some related SEC rule proposals. First, Birdthistle discussed the "pattern and pace of technological advancement." Next, Birdthistle noted the "nation's and the world's changing demographics." Finally, Director Birdthistle discussed the rapid growth in "both the market overall and the number and type of underlying products." His remarks did not address the proposal regarding mandatory swing pricing, hard close, and liquidity amendments.

## **Registration Open: IDC Foundations for Fund Directors® Orientation Program for Newer Directors**

IDC will host its next [orientation program](#) for newer fund directors *in-person* **Tuesday, June 13** through **Wednesday, June 14** in Washington, DC. Please register [HERE](#).

The *Foundations for Fund Directors®* program is designed for independent directors with up to five years of experience but can also serve as a useful refresher course for any director, no matter the level of experience. Topics include the structure of registered funds, directors' role as fiduciaries, and director responsibilities. Participation is limited to independent directors of ICI member funds.

## **IDC Managing Director Comments on Engagement with the SEC on Swing Pricing/Hard Close Rule Proposal**

In a recent media [interview](#), Tom Kim, IDC Managing Director, discussed IDC's ongoing dialogue with the SEC about its proposed mandatory swing pricing, hard close, and liquidity amendments. Kim noted that, in addition to IDC's comment letter, approximately 30 mutual fund boards submitted letters in response to the proposal. Kim emphasized that the SEC should continue to engage in dialogue and indicate where they are leaning. Kim also said IDC is weighing in more than ever before on rulemaking efforts, both because of the quantity of the SEC's output and the substance of its work. In addition to the hard close, swing pricing, and liquidity management rule proposal, IDC has submitted comment letters in recent months, for example, on proposals regarding outsourcing by investment advisers, fund names, cybersecurity risk management, and money market fund reform.

## **SEC Proposes Cybersecurity Rules for Broker-Dealers and Other Market Participants**

The SEC recently re-opened the comment period for its February 2022 [rule proposal](#) on cybersecurity risk management for investment advisers and registered funds. IDC's comment letter on the 2022 proposal is available [HERE](#).

The SEC separately proposed three rules related to cybersecurity and the protection of consumer information. The [first proposal](#) would amend Regulation S-P ("Privacy of Consumer Financial Information") by requiring certain institutions to 1) adopt a written incident response program for data breaches, 2) notify affected individuals of data breaches, and 3) maintain written records documenting compliance. The SEC also proposed a [new rule](#) that would require certain entities, including broker-dealers, clearing agencies, and transfer agents, to maintain and regularly update written policies and procedures that address cybersecurity risks, provide immediate written notice to the SEC of significant cybersecurity incidents, and publicly disclose summary descriptions of cybersecurity risks and incidents. In addition, the SEC [proposed amendments](#) that would expand the scope of Regulation Systems Compliance and Integrity (Regulation SCI), which seeks to address technological vulnerabilities in the U.S. securities markets.

The proposal comment periods will remain open for 60 days after publication in the Federal Register.

## **IDC Publishes White Paper on Board Oversight of Derivatives**

IDC released an updated white paper on "Board Oversight of Derivatives," available [HERE](#). IDC originally established a 2008 Task Force to prepare a report on board oversight of derivatives to support fund boards in fulfilling their responsibilities for overseeing derivatives investments. The new report updates the earlier paper and takes into account significant changes to the regulatory landscape, including the recent implementation of the

SEC's Derivatives Rule.

## **IDC Holds Webinar on Implementing the SEC's Derivatives Rule**

IDC held a webinar on March 27 providing an update on the implementation of the SEC rule on registered funds' use of derivatives. The panel, consisting of Susan Kerley (Independent Chair, Mainstay Funds; Independent Director, Western Asset Funds), Philip Hinkle (Partner, Dechert), Amy Lee (Senior Managing Director, Guggenheim Investments), and Timothy Bekkers (Senior Vice President and Counsel, PIMCO) discussed Rule 18f-4 under the Investment Company Act, focusing on board responsibilities and fund reporting requirements. A [recording of the webinar and slides](#) is on IDC's website (login required).

## **Mark Your Calendar for Upcoming Events**

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

### **Conferences**

- [IDC Fund Directors Workshop](#), May 23-25 (Washington, DC)

### **Industry Segment Calls**

- Audit Committee Chairs, May 5, 1:00 p.m.
- Directors of BDCs, June 8, 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.

## **In Case You Missed Recent Webinars or IDC Update Editions**

Be sure to check out our recent webinars available on-demand:

- [Close Proposals](#)
- [2023 Legislative Agenda: An Overview for Fund Directors](#)
- [Implementing the SEC's Derivatives Rule: Practical Implications for Board Oversight](#)

As a member of IDC, you have access to a library of archived webinars and content. To access all of IDC's archived content, [please click here](#) and sign in to the website for full access.

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