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October 6, 2011

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Retrospective Review of Existing Regulations; File No. S7-36-11

Dear Ms. Murphy:

The Independent Directors Council[1] appreciates the opportunity to provide its views in response to the SEC's request for comments on the development of a plan for retrospective review of its regulations. IDC has long advocated a retrospective review of the responsibilities imposed on fund independent directors—an effort called the "Director Outreach Initiative"—and, thus, can offer its perspective on approaches for periodically assessing the continued effectiveness of existing regulations.

As background, the Director Outreach Initiative was launched five years ago by former Director of Investment Management, Andrew J. Donohue. The project recognizes that the responsibilities of fund directors have increased substantially over time as the industry has grown and evolved. These increasing responsibilities had not, until this initiative, been subject to a top-to-bottom review to determine their continued relevance and effectiveness. IDC's view, which we have expressed in letters to SEC staff, is that a number of the regulatory requirements imposed on fund directors are no

[1] IDC serves the fund independent director community by advancing the education, communication, and policy positions of fund independent directors and promoting public understanding of their role. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of $12.5 trillion and serve over 90 million shareholders, and there are almost 1,900 independent directors of ICI-member funds. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

longer necessary or appropriate and could be delegated, modified or eliminated, with the goal of enhancing a board's effectiveness.[2]

We understand that the staff has already completed a considerable amount of work on this project, and one output of that work is a staff letter allowing fund directors to rely on summary quarterly reports of certain affiliated transactions effected under specified exemptive rules.[3] Fund directors were appreciative of the attention SEC staff gave to this issue and understood when other, more pressing matters took precedence over this initiative.

Nevertheless, the unnecessary burdens and costs of complying with antiquated regulatory requirements remain a concern for fund directors. Accordingly, IDC strongly supports the goal of Executive Order 13579, which the SEC is implementing in its request for comments.[4] The Executive Order calls upon the SEC and other independent agencies to develop a plan under which the agency will periodically review its "existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

The SEC's plan for retrospective review of its regulations should demonstrate its strong commitment to the goal of the Executive Order. In this regard, we recommend that the SEC develop a robust, centralized and comprehensive process for a regular review of its regulations. For example, an SEC committee of division heads or the chief operating officer would be able to bring a broader perspective to a review of the agency's regulations than would the rule-making offices within individual divisions. The SEC's website also should provide the public with easy-to-find information about the

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[2] *See, e.g.,* Letter from Robert W. Uek, Chair, IDC Governing Council, to Andrew J. Donohue, Director, Division of Investment Management, Securities and Exchange Commission regarding Director Outreach Initiative (February 26, 2008). IDC also strongly recommended that the Commission eliminate the board-related requirements of Rule 12b-1 under the Investment Company Act of 1940 as well as the factors included in the Rule 12b-1 adopting release, to achieve a more appropriate role for fund directors in their oversight of certain fund distribution charges and fees. *See* Letter from Dorothy A. Berry, Chair, IDC Governing Council, to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission regarding Mutual Fund Distribution Fees; Confirmations (File No. S7-15-10) (November 5, 2010).

[3] *See* Letter from Michael S. Didiuk, Attorney-Adviser, Division of Investment Management, U.S. Securities and Exchange Commission, to Dorothy A. Berry, Chair-Governing Council, Independent Directors Council, and Jameson A. Baxter, Chair, Mutual Fund Directors Forum (November 2, 2010).

[4] *See Retrospective Review of Existing Regulations*, 76 Fed. Reg. 56128 (Sept. 12, 2011); Executive Order 13579, *Regulation and Independent Regulatory Agencies* (July 11, 2011), available at http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf.

SEC's plan and ways for the public to provide its input regarding regulations that should be reviewed.[5] Indeed, the plan should provide for periodic input from the public, such as a request for recommendations from the public regarding the regulations the SEC should review. Those who are regulated understand the costs and burdens of regulations and can provide useful insights to the agency in this regard. The Environmental Protection Agency's plan, which was developed in response to a previous Executive Order that imposed the same policy objective on the executive branch agencies, offers a useful example of a review process, conducted every five years, that begins with a request to the public, other federal agencies, and agency experts to nominate regulations that are in need of review.[6]

The SEC's commitment to implementing the goals of the Executive Order also can be demonstrated by devoting sufficient resources to modernizing its regulations where warranted. We are cognizant of the competing demands for the SEC's resources, particularly to address unexpected developments. Accordingly, the SEC's plan should include a sufficient degree of flexibility to allow it to respond adequately to such developments.

We believe that a serious commitment by the SEC to develop a robust plan to assess the continuing effectiveness of its rules is in the interests of not just those who are regulated, but also the SEC and, most importantly, the millions of American fund shareholders. As we previously stated in connection with the Director Outreach Initiative, certain regulations require fund directors to be responsible for routine, nondiscretionary matters that would be more appropriately handled by the adviser or possibly the fund chief compliance officer. Relieving fund directors of those types of responsibilities would enable them to provide sharper and more focused oversight through reviews of tailored reports, such as exception reports, by the adviser or fund CCO. In addition, relieving fund directors of responsibilities that fall within the rubric of fund operations would allow them to focus to a greater extent on overseeing such important matters as the fund's performance, risk management, and the quality and effective delivery of services provided to the fund. Changes such as these would significantly enhance fund board effectiveness and thereby benefit fund shareholders. Indeed, the SEC can demonstrate its commitment to the policy goals of the Executive Order by moving forward with the Director Outreach Initiative.

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[5] We note that the SEC has established a page on its website for the public to provide suggestions for modifying, streamlining, expanding or repealing existing rules, but its utility is limited. *See* SEC, *Improving Regulations: Reviewing Regulatory Requirements to Ensure They Continue to Promote Economic Growth, Innovation, Competitiveness & Job Creation*, at http://www.sec.gov/spotlight/regulatoryreviewcomments.shtml. There is no hyperlink to this webpage from the SEC's homepage, and, thus, it is not easily accessible. Moreover, the webpage invites public comment in just three broad areas (the offer and sale of securities, disclosure and reporting requirements, and rules to promote economic growth), leaving the public to discern for itself what rules might fall into each area.

[6] *See* EPA, *Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations* (Aug. 2011), available at http://www.epa.gov/improvingregulations/documents/eparetroreviewplan-aug2011.pdf.

Accordingly, we urge the SEC to commit itself to the retrospective review effort by developing a robust and transparent process for reviewing existing regulations and devoting sufficient resources to modernizing them.

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We applaud the SEC for beginning its work on this important initiative, and appreciate your consideration of our comments. If you have questions or would like additional information, please contact Amy Lancellotta, Managing Director, Independent Directors Council, at 202/326-5824.

Sincerely,

Dorothy A. Berry
Chair, IDC Governing Council

cc: The Honorable Mary L. Schapiro, Chairman, SEC
The Honorable Elisse B. Walter, Commissioner, SEC
The Honorable Luis A. Aguilar, Commissioner, SEC
The Honorable Troy A. Paredes, Commissioner, SEC

Eileen Rominger, Director, Division of Investment Management