# Investment Company Act of 1940 - Sections 12(b), 15(c) and 32(a) and Rules 12b-1 and 15a-4(b)(2)
# Independent Directors Council

**February 28, 2019**
RESPONSE OF THE CHIEF COUNSEL'S OFFICE
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated February 28, 2019 requests our assurance that we would not recommend enforcement action to the Securities and Exchange Commission (the "Commission"), for violations of Sections 12(b), 15(c) or 32(a) of the Investment Company Act of 1940 (the "Act") or Rules 12b-1 or 15a-4(b)(2) under the Act, if fund[1] boards do not adhere to certain in-person voting requirements in certain cases, as described in your letter. You state that the purpose of your letter is to request from the staff a no-action position for certain situations where in-person voting requirements may create a significant or unnecessary burden for funds and their boards that outweigh any benefits to fund shareholders.

To protect shareholders, the Act requires that each fund be governed by a board that has a general oversight role over fund operations,[2] as well as other specific duties.[3] In light of market, regulatory and technological developments, the staff has continued to review existing director responsibilities and to consider whether they are appropriate and are carried out in a manner that serves the shareholders' best interests.[4] We appreciate that, as you state in your letter, the position you are requesting from us would remove significant or unnecessary burdens for funds and their boards. We also do not believe the position would diminish the board's ability to carry out its oversight role or other specific duties.

Based on the facts and representations in your letter, we would not recommend enforcement action to the Commission for violations of Sections 12(b), 15(c) or 32(a) of the Act or Rules 12b-1 or 15a-4(b)(2) under the Act as described above.[5] The statements in this letter represent the views of the Division of Investment Management. This letter is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved its content.

Erin Loomis Moore
Senior Counsel

cc: Susan Wyderko
President
Mutual Fund Directors Forum

[1] In your letter, a "fund" includes a registered management investment company or a separate series thereof, as the context requires. The staff's position expressed in this letter also extends to a business development company, as defined under Section 2(a)(48) of the Act.
[2] *See, e.g.*, Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices, SEC Release No. IC-28345, 73 F.R. 45646 (July 30, 2008) at 45649, *citing* Report of the Senate Committee on Banking and Currency S. 2224, Investment Company Amendments Act of 1970, S. Rep. No. 91-184, 91st Cong., 2d. Sess. 32 (1969), at 6 (fund directors "have … overall fiduciary duties as directors for the supervision of all of the affairs of the fund").
[3] *See* Sections 2(a)(41), 15, and 32 of the Act.
[4] *See* Dalia Blass, Director, Division of Investment Management, SEC, Keynote Address: ICI Securities Law Developments Conference (Dec. 7, 2017). *See also* Independent Directors Council, SEC No-Action Letter (Oct. 12, 2018).
[5] In formulating its response, the staff has taken into consideration views expressed by the Mutual Fund Directors Forum ("MFDF"). *See also* Letter from Susan Wyderko, President, MFDF, to Jay Clayton, Chairman, SEC (June 20, 2017).