IDC
INDEPENDENT DIRECTORS COUNCIL
Committed to Strong Fund Governance

1401 H Street, NW, Suite 1200
Washington, DC 20005-2148
Phone 202-326-5800
Fax 202-326-5828
www.idc.org

July 16, 2020

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Good Faith Determinations of Fair Value; File No. S7-07-20

Dear Ms. Countryman:

The Independent Directors Council[1] commends the Commission for proposing a new rule that would establish a modernized framework for fund valuation practices.[2] We also applaud Commission staff for the outreach conducted prior to the proposal to help inform this important initiative.

IDC strongly supports the proposed framework, which, importantly, would permit a fund board to assign fair value determinations to the adviser, subject to the board's oversight. This confirmation of the board's oversight role with respect to fair value determinations provides welcome clarity to fund directors.

While we support the proposed new framework, we recommend rule modifications to better reflect a modern approach to fair valuation and to improve the final rule, to the benefit of funds and their shareholders. In particular, we recommend changes to address certain prescriptive provisions of the proposed rule, such as the board reporting requirements, and to better reflect the role of pricing services in the fair valuation process. We address these and other recommended changes below. With these changes, we believe the rule will provide a useful structure for the valuation process while enabling fund boards and advisers to continue to innovate and evolve their practices, consistent with their obligations to fund shareholders.

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[1] The Independent Directors Council ("IDC") serves the US-registered 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 ("ICI") member funds. ICI is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI's members manage total assets of US$24.8 trillion in the United States, serving more than 100 million US shareholders, and US$6.5 trillion in assets in other jurisdictions. There are approximately 1,600 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.

[2] *See Good Faith Determinations of Fair Value*, SEC Release No. IC-33845 (Apr. 21, 2020), available at https://www.sec.gov/rules/proposed/2020/ic-33845.pdf ("Release").

I. Executive Summary

IDC strongly supports the proposal's framework, which would permit the board to assign the fair value determinations to the adviser, subject to the board's oversight. This regulatory approach is sensible and would reflect an appropriate allocation of responsibilities between a fund's board and its adviser in a manner that is consistent with the Investment Company Act of 1940 ("1940 Act").

While the proposal's general framework reflects a modernized approach to fair valuation, certain components of the proposal—particularly the prescriptive nature of some of the proposed rule's provisions—would diminish the benefits of this modern approach. The rule should be structured so that it can provide a durable framework that stands the test of time. To achieve that, we recommend the following modifications:

- Frame the rule as a safe harbor;
- Modify the board reporting requirements to promote more efficient and effective board oversight;
- Clarify the appropriate oversight role of fund boards;
- Modify the rule to better reflect the role of pricing services;
- Allow fund boards to assign fair value determinations to the fund administrator, in addition to an investment adviser of the fund; and
- Extend the compliance period to 18 months.

With these changes, we expect the rule to provide an effective structure, along with reasonable flexibility, with respect to the fair valuation process, to the benefit of funds and their shareholders, boards, and advisers.

II. Background on the Proposed Rule

The 1940 Act requires funds to value their portfolio investments using the market value of their portfolio securities when market quotations for those securities are "readily available," and, when a market quotation for a portfolio security is not readily available, by using the fair value of that security, as determined in good faith by the fund's board.[3] The proposed rule would provide a framework for fulfilling the requirement for determining fair value in good faith.

Under the proposed rule, fair value as determined in good faith would require: assessing and managing material risks associated with fair value determinations; selecting, applying, and testing fair value methodologies; overseeing and evaluating any pricing services used; adopting and implementing policies and procedures; and maintaining certain records.

[3] *See* Section 2(a)(41) of the 1940 Act and rule 2a-4 under the 1940 Act.

A board could determine fair value itself or it could assign fair value determinations to an investment adviser of the fund, subject to the board's continued oversight. If the board assigns the responsibility to the adviser, the proposed rule would require, in addition to board oversight, certain reporting, recordkeeping, and other requirements. The Commission states that "the fund's board would satisfy its statutory obligation to determine fair value in good faith through the framework of the proposed rule, including this board oversight."[4]

The proposed rule would also specify that a market quotation is "readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable." The Commission also proposes to rescind prior Commission and staff valuation guidance, which would mean that the standards of the Financial Accounting Standards Board and the Public Company Accounting Oversight Board would be the source for accounting and audit guidance.

III. IDC Supports the Proposed Framework of the Rule

IDC strongly supports the proposal's framework, which would permit the board to assign the fair value determinations to the adviser, subject to the board's oversight. This regulatory approach is sensible and would reflect an appropriate allocation of responsibilities between the board and the adviser in a manner that is consistent with the 1940 Act.[5]

Valuation is a critically important function of funds. As the Commission notes, proper valuation, among other things, promotes the purchase and sale of fund shares at fair prices, and helps to avoid dilution of shareholder interests. The 1940 Act contemplates a significant role for fund boards with respect to valuation, and fund boards have been fulfilling their statutory responsibilities, consistent with Commission and staff guidance, for decades.

Indeed, fund boards already have been relying on fund advisers to perform certain valuation functions, subject to board oversight. Fund boards and fund advisers have developed protocols and practices for the adviser to perform day-to-day valuation functions and provide periodic reports to the board, while the board oversees valuation. Consistent with rule 38a-1, the board approves written valuation policies and procedures that govern the fund adviser's valuation activities and typically receives and reviews regular reports from the fund adviser on the operation of the valuation process. The board also receives information from the chief compliance officer ("CCO"), including an annual report that addresses, among other things, any material issues under, and changes to, the valuation policies and procedures. In overseeing the valuation activities of the fund adviser with appropriate scrutiny, the board, for example, asks

[4] Release, *supra* n. 2, at 15.

[5] As the Commission states, "allocating day-to-day responsibilities to an investment adviser, subject to robust board oversight, is appropriate and consistent with the requirements of [the] Act." See Release, *supra* n. 2, at 33.

questions (particularly regarding possible conflicts), seeks relevant follow-up information, and takes reasonable steps to see that matters identified are addressed.

In addition to relying on the adviser (including any valuation committee of the adviser), the board also typically relies on various other parties with considerable knowledge and expertise about the fund's valuation process, such as the fund administrator, fund CCO, fund counsel, independent director counsel, and the fund's independent public accountant. Many funds also use pricing services, in which case, the fund's board may rely in large part on the adviser's oversight and due diligence of the pricing service. These current practices work well and have enabled a fund board to rely on the adviser and others for their valuation expertise while robustly overseeing the process, consistent with the board's role.

The current guidance regarding a board's responsibilities has its limitations, however, and the proposed rule provides useful clarity. For example, current guidance suggests that the board should choose the methods used to arrive at fair value and continuously review the appropriateness of such methods.[6] Current guidance also is based on a mix of Commission releases and staff letters, while the proposed rule would provide a unified regulatory framework. In addition, the current guidance does not reflect the important market, technological, and regulatory developments that have occurred in recent years.

We, therefore, strongly support a rule that confirms the ability of the board to assign fair value responsibilities to the adviser and that reflects a modernized approach to fair valuation.[7] The rule's general framework makes progress in this regard.[8]

IV. IDC Recommends Changes to Better Achieve a Modernized Valuation Regulatory Framework

While the proposal's general framework reflects a modernized approach to fair valuation, certain components of the proposal—particularly the prescriptive nature of some of the proposed rule's

[6] *See Statement Regarding "Restricted Securities,*" Accounting Series Release No. 113 (Oct. 21, 1969) ("ASR 113") and *Accounting for Investment Securities by Registered Investment Companies*, Accounting Series Release No. 118 (Dec. 23, 1970) ("ASR 118").

[7] We agree with the Commission's view that most boards will likely assign fair value determinations. We recommend in section IV.D that fund boards be permitted to assign fair value determinations to fund administrators as well. For clarity within this letter, though, our comments assume that an adviser will perform the fair value determinations.

[8] We also support the rescission of prior guidance. We note that ASR 118 requires a fund's independent auditor to verify all (i.e., 100%) security values as of the balance sheet date. Its rescission would mean that fund auditors would apply PCAOB audit standards, which permit sampling and other techniques to verify the values of securities owned. The PCAOB standards would provide greater flexibility for the verification of the values of a fund's portfolio investments, and a fund (and its board) could still require the auditor to verify 100% of the values if it is determined that that approach is preferable.

provisions—would diminish the benefits of this modern approach. We recommend modifications to address these and other concerns, as discussed below.

A. The Rule Should Be Modified to Address Its Prescriptive Elements

As noted above, fund boards and fund advisers have already developed robust practices for fair valuation in the absence of any specific regulatory requirements as to how to perform their respective functions. Practices across fund complexes vary and are tailored to the funds within those complexes.[9]

The proposed rule, however, would impose one-size-fits-all requirements for the determination of fair value and for board reporting. The proposed rule sets forth specific functions that must be performed to determine fair value in good faith by the board (or the adviser, if the board assigns this responsibility to the adviser). In addition, if the board assigns fair value determinations to the adviser, then another set of requirements must be met, including that the adviser provide periodic and prompt written reports to the board with information specified in the rule.

While we appreciate that a goal of this rulemaking is to establish a baseline set of requirements that all funds must follow, we urge the Commission to allow for greater flexibility in this area. A rigid set of requirements could hinder innovation and the continued development of practices that have worked so well over the past several decades. Practices should continue to evolve as the markets and technology continue to develop. The current guidance, even with its limitations, has allowed practices to evolve, and the proposed rule should be structured so that it, too, can provide a durable framework that stands the test of time.[10]

A prescriptive set of functions that must be performed to satisfy a "good faith" determination also seems to be at odds with the exercise of business judgment that is implicit in the term "good faith."[11] With respect to the board reporting requirements, in particular, we agree with the observation of Commissioner Peirce—who questioned why the rule needs to be so prescriptive—that boards "are perfectly able to ensure that they have a full picture of their advisers' valuation

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[9] The Commission observed in ASR 118 that "[n]o single standard for determining 'fair value … in good faith' can be laid down, since fair value depends upon the circumstances of each individual case."

[10] A statement in the Release regarding consistent application of methodologies illustrates the concern with rigid requirements. The Commission states that any methodologies selected must "be applied consistently to the asset classes for which they are relevant," but valuation is not always carried out by applying a single pre-determined methodology for all assets within a class. *See* Release, *supra* n. 2, at 20. In fact, other statements of the Commission recognize that "there is no single methodology for determining the fair value of an investment because fair value depends on the facts and circumstance of each investment, including the relevant market and market participants." *Id*. We request that the Commission clearly re-affirm this latter point in any adopting release.

[11] As the Commission staff has previously stated, "'good faith' is a flexible concept that can accommodate many different considerations." Investment Company Institute, SEC Staff No-Action Letter (Dec. 8, 1999).

activities without the Commission imposing a series of one-size-fits-all requirements in a new regulation."[12]

Moreover, a prescriptive list of requirements sets boards (and advisers) up to being second-guessed if they were to perform a particular step in a manner that a regulator, with the benefit of hindsight, later determines is not adequate. The proposal raises questions regarding the potential liability for boards or advisers over any minor missteps in performing their respective functions.

To address these concerns, we recommend that the rule be framed as a safe harbor and that the board reporting requirements be revised to promote more effective and efficient board oversight.

1. The Rule Should be Framed as a Safe Harbor

A safe harbor approach would address the flexibility and liability concerns associated with the prescriptive requirements. Under this approach, the board or adviser would be deemed to have complied with the statute's fair value requirement (and that of rule 2a-4) if it performed the functions specified in the rule. But those functions would not constitute the only way for the board or adviser to satisfy its obligations, and a failure to comply with a particular requirement would not create a presumption of a statutory violation. The board or adviser also could perform other, different functions that are more appropriate to the facts and circumstances of the funds it oversees and still comply with the statute. Even if the rule is framed as a safe harbor, we would expect the majority of funds to adhere to the enumerated requirements because of the legal certainty that a safe harbor provides.

We suggest that the text of the rule include language that explicitly states that it is a non-exclusive safe harbor that provides one approach for satisfying the definition of "value" for purposes of section 2(a)(41) of the 1940 Act and rule 2a-4 under the 1940 Act and that it does not create any presumption about any activity (or omission) related to determining fair value in good faith that is not carried out in the manner contemplated by the rule. In addition, the first sentence of paragraph (a) of the rule could be rephrased as follows:

> "For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)) and § 270.2a-4, determining fair value in good faith with respect to a fund will be deemed to have occurred when the board or an assignee:"

The second sentence of paragraph (b) of the rule could be replaced with the following two sentences:

> "The board may choose to assign the fair value determination relating to any or all fund investments to an investment adviser or administrator of the fund, which would carry out all

[12] *See* Commissioner Hester M. Peirce, Statement on Good Faith Determinations of Fair Value under the Investment Company Act of 1940 Proposal (April 21, 2020), available at https://www.sec.gov/news/public-statement/statement-peirce-fair-value-2020-04-21.

of the functions required in paragraphs (a)(1) through (5) of this section. In that case, the board shall be deemed to have satisfied its obligation to determine fair value in good faith, when the steps specified in this paragraph (b) are taken."

2. The Board Reporting Requirements Should Be Modified to Promote More Effective and Efficient Board Oversight

We recognize that board oversight of valuation is a critically important function and agree that the board should receive periodic reports that facilitate that oversight. The proposed board reporting requirements are overly prescriptive, however, and we recommend modifications to better facilitate effective and efficient board oversight.

The proposed rule would require the adviser to report in writing on a quarterly basis the following information:

- assessment and management of material valuation risks;
- any material changes to or material deviations from the established fair value methodologies;
- results of any testing of fair valuation methodologies' appropriateness and accuracy;
- adequacy of resources allocated to fair value process;
- material changes to the process for selecting and overseeing pricing service and related material events; and
- any other materials requested by the board.

The proposed board reporting requirements also would require the adviser to promptly (and in any case no later than three business days after the adviser becomes aware of the matter) report to the board in writing on matters associated with the adviser's process that materially affect, or could have materially affected, the fair value of portfolio investments, including a significant deficiency or material weakness in the design or implementation of the adviser's fair value determination process or material changes in the fund's valuation risks.

Some of the quarterly reporting requirements, such as the assessment and management of valuation risks and the adequacy of resources, are not expected to change from quarter to quarter. As a result, the quarterly reports on these items would not likely be particularly useful to the board and could become routine reporting items that do not contribute positively to the board's oversight of valuation.

Moreover, the criteria that would trigger prompt reporting are vague and, as a result, could cause advisers to overreport on matters that do not rise to a level warranting the board's immediate attention. For example, the phrase "could have materially affected" could capture a broad range of scenarios, many of which do not require the board's immediate attention. Indeed, the phrase reflects a hindsight perspective that makes predicting the circumstances that would trigger a

prompt report that much more difficult. Additionally, the rigid three-day reporting requirement provides an insufficient timeframe for an adviser to investigate, confirm materiality, and prepare a written report for the board.

Requiring these types of reports seems to be contrary to efforts to modernize directors' regulatory responsibilities so that boards can provide focused and efficient oversight on matters most important to shareholders.[13] Fund boards are accustomed to exercising their business judgment to determine the frequency and content of reports they need to provide appropriate oversight. Exercising their business judgment, based on a variety of considerations and drawing from the varied expertise and experiences of fund board members, is the essence of what directors do.

Funds are better served when boards and advisers can devise their own escalation and reporting protocols that enable boards to focus on matters appropriate to protecting shareholder interests, including during times of stressed market conditions. If the proposed prompt reporting requirement had been in place in March 2020, many advisers likely would have delivered to boards frequent reports on matters that "could have" impacted valuation but that were not critically relevant.[14] A deluge of unnecessary reports in times of stressed market conditions would not promote efficient and effective board oversight and could, in fact, distract boards from matters that are of greater importance to shareholder protection.

Rather than require quarterly and prompt reports, we recommend that the adviser provide annual and quarterly reports to the board. We urge the Commission to not require a specific "prompt" report, but rather require the adviser to provide any reports as requested by the board. The board can determine for itself the frequency of any other reports, including the criteria, content, and timing for any interim reporting.

More specifically, we recommend that the rule require an annual report, rather than a quarterly report, on the adequacy and effectiveness of the adviser's process for determining fair value, which would make the rule more consistent with the approaches taken in the fund compliance rule and the liquidity risk management rule.[15] With respect to quarterly reporting, we recommend

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[13] *See, e.g.*, *Independent Directors Council*, SEC Staff No-Action Letter (Oct. 12, 2018) (permitting a fund board to receive quarterly representations from the fund's CCO that transactions effected in reliance on certain exemptive rules complied with the board-adopted procedures, instead of requiring the board to determine compliance).

[14] *See, e.g.*, Letter from Arthur E. Johnson, Chairman of the Independent Trustees, Fidelity Fixed Income and Asset Allocation Funds and David M. Thomas, Co-Lead Independent Trustee, Fidelity Equity and High Income Funds, to Vanessa Countryman, Secretary, SEC (Jun. 26, 2020).

[15] The fund compliance rule (rule 38a-1) requires the CCO to provide a written report to the board, at least annually, on the operation of the policies and procedures of the fund and each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, and any material changes to the policies and procedures recommended as a result of the CCO's annual review; and each material compliance matter that occurred since the date of the last report. The liquidity risk management rule (rule 22e-4) requires the fund's liquidity risk management program administrator to

that the rule require descriptions of any material changes to valuation risks or adviser-applied fair value methodologies (or material deviations therefrom) and significant deficiencies or material weaknesses in the design or implementation of the adviser's fair value determination process.

We note that the Release includes suggestions for other items that a board could review and consider.[16] When suggestions like these are made in a Commission release, they often are viewed as practices that *should* be followed, even if they are not expressly required by rule.[17] We recommend that the adopting release not include such a list as it can detract from a board's and an adviser's attempts to tailor a reporting protocol that works best for their funds. If the Commission determines to retain such guidance, we recommend that it make clear that advisers are not required to include such items in their board reports and boards are under no obligation to request them.

B. The Proposal Should Clarify the Board's Oversight Responsibilities Following Assignment

If a board assigns fair value determinations to an adviser, the proposed rule would require the board to oversee the adviser, and the adviser to report to the board, in writing, including such information as may be reasonably necessary for the board to evaluate the matters covered in the report. The proposed rule does not specify what is expected by the board in providing oversight and we strongly agree with the rule's straightforward approach. Fund boards certainly understand how to provide robust oversight, consistent with their fiduciary duties and in the exercise of their business judgment. Moreover, fund boards are very experienced in overseeing potential conflicts of interests in all aspects of fund management and operations, including in connection with the valuation function.

The Release, however, includes descriptions of a board's oversight responsibilities that may suggest that boards undertake a more management-like inquiry than is appropriate for an oversight role. For example, it states that the board "should view oversight as an iterative process and seek to identify potential issues and opportunities to improve the fund's fair value processes."[18] The Commission also states that it believes that, "consistent with their obligations

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provide an annual report to the board that addresses the operation of the program and assesses its adequacy and effectiveness of implementation.

[16] *See* Release, *supra* n. 2, at 46-47.

[17] Experience with the adopting release for rule 12b-1, in which the Commission suggested that boards consider nine factors when reviewing a Rule 12b-1 plan for approval, has shown that setting forth specific factors in the nature of guidance can impede, rather than assist, effective and efficient board oversight. *See Bearing of Distribution Expenses by Mutual Funds*, Release No. IC-11414 (November 7, 1980).

[18] *See* Release, *supra* n. 2, at 35.

under the Act and as fiduciaries, boards should seek to identify potential conflicts of interest, monitor such conflicts, and take reasonable steps to manage such conflicts."[19]

As noted above, board oversight includes relying on others, such as the adviser, fund administrator, counsel, independent public accountant, and the fund CCO, to provide information and insights based on their expertise and more extensive involvement with valuation matters. An adopting release should confirm that the board may reasonably rely on them in fulfilling their oversight responsibilities.

Any adopting release also should make clear that if a board has approved and overseen policies and procedures that are reasonably designed to comply with the rule, fund directors should not be subject to liability with regard to determinations of fair value, including instances where a party that is engaged in the fair value determination process commits an error.

C. The Rule Should Be Modified to Better Reflect the Role of Pricing Services

The proposed requirements for fair value determinations do not distinguish between those fair value determinations that are based on evaluated prices provided by pricing services and those that are based on methodologies applied by the adviser. We recommend rule modifications that would enable better tailored treatment of these fair value determinations.

Pricing services serve an essential role in the valuation process for many funds, especially those that invest in a large number of fixed income securities. Indeed, some fund complexes receive prices for thousands of fixed income securities each business day from pricing services. Pricing services are subject to due diligence and continued oversight by the adviser, and to oversight by the board.[20]

The proposal does not, however, capture the nature of the relationship, and respective responsibilities, of a fund's adviser and the pricing services. For example, under the proposal, the adviser would be required to "[e]stablish and apply fair value methodologies." This could be read as looking only to the adviser to perform these functions when, in practice, advisers frequently rely on pricing services to perform these functions, subject to due diligence and continued oversight. In addition, the recordkeeping provision would require funds to maintain "[a]ppropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when

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[19] *Id*. at 35-37.

[20] We note that the Commission's 2014 adopting release for amendments to the money market fund rule included statements regarding the board's oversight of pricing services that are inconsistent with the concept of the proposed rule. *See Money Market Fund Reform; Amendments to Form PF*, Release Nos. 33-9616, IA-3879; IC-31166 (Jul. 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf, at 286-88. Because that adopting release will not be rescinded, we recommend that the Commission confirm in any adopting release for rule 2a-5 that a fund board is not obligated to directly oversee a pricing service but can oversee the adviser's use of the pricing service.

making fair value determinations."[21] Advisers may not receive that level of information from a pricing service, however, and requiring them to obtain and maintain this information would be a new and significant burden.

We recommend rule text changes that would better reflect the role of pricing services in today's markets. First, instead of requiring a fund to "establish and apply fair value methodologies," the fund should be required to "establish how fair value determinations could be made for portfolio investments." This formulation would make clear that funds could rely on pricing services' methodologies and their application of those methodologies, while also permitting advisers to establish and apply their own methodologies for specified investments as necessary and appropriate. Where a fund relies on the methodologies, assumptions, and inputs of a pricing service, the adviser would be obligated to have a reasonable understanding of those items as part of its evaluation responsibilities.[22]

Second, we recommend modifying the recordkeeping requirement to require detailed recordkeeping to support fair value determinations only for those investments for which the fund (including the fund board or adviser) establishes and applies its own methodologies.

This approach also would be consistent with accounting standards, which reflect a hierarchy of three levels of input data for determining the fair value of an asset or liability (Levels 1, 2 and 3).[23] Many of the prices provided by pricing services fall within the Level 2 category and are based on observable inputs, in contrast to Level 3 investments, whose fair values are based on unobservable inputs.

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[21] The Release describes the necessary documentation as that which "would be sufficient for a third party to verify the fair value determination." *See* Release, *supra* n. 2, at 30.

[22] We agree with ICI's comments on this point as well as regarding the proposed requirement for fair value determinations relating to price challenges. *See* Letter from Susan Olson, General Counsel, ICI, to Vanessa A. Countryman, Secretary, SEC (July 16, 2020). In particular, we agree that the proposed requirement to establish "[c]riteria for initiating price challenges," does not accurately capture the price challenge process, and should be modified to instead require the establishment of a "process for initiating price challenges." Moreover, we suggest that any final adopting release make clear that any board reporting obligation is limited to summary information of price overrides only, which would provide boards with relevant information on such activity and trends without burdening them with extraneous data.

[23] Level 1 investments are valued based on quoted prices (unadjusted) in active markets for identical financial instruments that the fund can access at the measurement date; Level 2 investments are valued based on inputs other than Level 1 quoted prices that are observable, either directly or indirectly (including, but not limited to, quoted prices for similar financial instruments in active markets, quoted prices for identical or similar financial instruments in inactive markets, interest rates and yield curves, implied volatilities and credit spreads); and Level 3 investments are valued based on unobservable inputs. Observable inputs are developed using market data, such as publicly available information about actual events or transactions and reflect the assumptions that market participants would use to price the financial instrument. Unobservable inputs are those for which market data are not available and are developed using the best information available about the assumptions that market participants would use to price the financial instrument.

D. The Board Should Be Permitted to Assign Fair Value Determinations to a Fund Administrator

The proposed rule would permit boards to assign the determination of fair value only to an adviser to the fund. The Commission asks whether there are other parties to which it should permit boards to assign such determinations. We strongly recommend that the rule permit boards to assign fair value responsibilities to a fund's administrator as well. In many cases, the fund administrator performs the day-to-day valuation function, rather than the adviser, especially for series trusts and smaller fund complexes. The fund administrator may serve as the gatherer, disseminator and manager of all communications among the individual advisers, the pricing services and anyone else involved in the determination.

Requiring these fund complexes to only assign fair value determinations to the adviser would significantly disrupt current practices, increase costs, and result in less efficient processes. In light of the Commission staff's smaller fund outreach effort, we urge the Commission to be especially mindful of the potential costs and burdens of this proposal on smaller funds. We thus recommend that the rule be modified to permit the board to assign the determination of fair value to a fund's administrator, as well as to an adviser of the fund.

E. The Compliance Period Should be Extended to 18 Months

In light of other expected new rules (e.g., the derivatives rule) that are likely to require significant resources to implement, as well as the important work that would be required to implement this new valuation rule, we recommend providing for an 18-month compliance period, rather than the proposed one-year period. Several functions within a fund complex will need to coordinate the rule's implementation, and the complex will also need to implement any changes in their relationships with pricing services and other service providers. Moreover, funds will need sufficient time to test the changes that are implemented.

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IDC commends the Commission for putting forth this important and long-awaited proposal. We recognize the thoughtful work and dedication of the Commission staff and appreciate the outreach conducted prior to the proposal to help inform this important rulemaking. We strongly support the proposed framework, which would permit a fund board to assign fair value determinations to the adviser. We believe that, with additional changes as discussed above, the rule will provide a durable framework for the valuation process that will benefit funds and their shareholders for decades to come.

If you have any questions about our comments, please contact Annette Capretta, Deputy Managing Director, at (202) 371-5436 or me at (202) 326-5463.

Sincerely,

Thomas T. Kim
Managing Director
Independent Directors Council

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee

Dalia Blass, Director
Division of Investment Management