The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
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August 7, 2025

By Electronic Transmission

The Honorable Paul S. Atkins
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Recommendations and Additional Support for Amending Rule 17a-7 to Permit Cross Trading of Fixed-Income Securities

Dear Chairman Atkins:

The Investment Company Institute (ICI)[1] writes to reiterate and supplement our prior comments expressing strong support for modernizing Rule 17a-7 (the "rule") under the Investment Company Act (the "1940 Act").[2] The rule should permit registered investment companies ("funds") to cross trade fixed-income securities once again, subject to appropriate guardrails that address the SEC's legitimate policy concerns. This change would significantly benefit funds and investors through lower transaction costs and more efficient portfolio management. ICI previously submitted to the SEC a conservative estimate that in 2020 fixed-income cross trading saved funds and their shareholders nearly $329 million and advisers' clients generally (i.e., funds, other pooled investment vehicles, and separately managed accounts) over $390 million. Since then, total net assets in fixed-income funds have grown from $6.3 trillion at year-end 2020 to $7.2 trillion as of June 30, 2025, indicating the universe of potential beneficiaries has grown

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $40.5 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.5 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] *See* Rule 17a-7 at the Crossroads: The Right Path Forward, ICI (Apr. 2021) (the "2021 Paper").

and the savings produced by cross-trading could be even greater today.[3] For these reasons, reform of this rule remains a top ICI policy priority.[4]

For the last several years, funds have incurred hundreds of millions of dollars in unnecessary transaction costs, following the SEC's adoption of an unrelated 2020 rule and guidance on fair valuation (the "fair value rule"), which significantly limited their ability to cross trade fixed-income securities.[5] At the time, the SEC appeared poised to fix the collateral damage to funds' cross trading practices,[6] and, to its credit, the SEC staff proactively opened a comment file on this topic in 2021.[7] ICI's 2021 submission included extensive cross trading data (including its estimated cost savings) and detailed recommendations.[8] In addition to ICI, over a dozen other commenters responded, all of whom also urged the SEC to preserve funds' ability to cross trade fixed-income securities. But the SEC under Chair Gary Gensler took no action and dropped the item from its rulemaking agenda later in 2021 without explanation, despite objections from Commissioner Hester Peirce and then-Commissioner Elad Roisman.[9]

Four years later, we are optimistic that the SEC will finish this work under your leadership. Regulatory and market developments further strengthen the case for reform, and thanks to the staff's prior efforts the SEC is well positioned to propose and adopt sensible rule amendments.

In this letter, we first provide background on Rule 17a-7 and summarize our prior analytical work and recommendations. We then provide additional support for those recommendations, before concluding with other rulemaking considerations (e.g., how a rule proposal should address custodial fees and subadvised funds).

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[3] Over this same period, the number of fixed-income funds grew by more than 250. These data include mutual funds and ETFs and exclude closed-end funds and UITs.

[4] *See* Recommendation 11 in Reimagining the 1940 Act, ICI (Mar. 2025); and Letter from ICI to The Honorable Paul S. Atkins (Apr. 11, 2025).

[5] Good Faith Determinations of Fair Value, SEC Release No. IC-34128 (Dec. 3, 2020) (the "Fair Value Adopting Release").

[6] *See id* at n.364 and surrounding text.

[7] Staff Statement on Investment Company Cross Trading, SEC Division of Investment Management Staff (Mar. 11, 2021).

[8] *See supra*, note 2. *See also* Rule 17a-7 at the Crossroads: Supplemental Information on Equity Cross Trading, ICI (Oct. 2021).

[9] *See,* Commissioners Hester M. Peirce and Elad L. Roisman, Falling Further Back - Statement on Chair Gensler's Regulatory Agenda (Dec. 13, 2021) (expressing concern that the SEC "will not fix a problem of which we are aware—the impending inability of funds to cross-trade fixed-income securities—and we will miss a chance to modernize an outdated rule.").

Section 1: Background on Rule 17a-7 and Summary of ICI's Prior Advocacy

Section 17(a) of the 1940 Act prohibits any affiliated person of a registered fund, or any affiliated person of such a person, from knowingly selling securities to, or purchasing securities from, the fund. This broad statutory prohibition reflects the policy concern for potential abuses that may accompany affiliated transactions. For instance, one fund could "dump" unwanted securities into another fund, or a trade could be priced in a way that clearly favors the buying or selling fund.

The SEC has adopted several rules under Section 17(a) to exempt certain transactions from this prohibition, including Rule 17a-7. This rule allows affiliated funds to trade with one another to avoid paying costs that each would otherwise incur if transacting on the open market, subject to numerous conditions.[10]

The SEC has amended the rule several times since adopting it in 1966, generally to expand the universe of eligible securities and streamline its conditions. Staff no-action letters also have facilitated cross trading, with the most prominent letters allowing funds to cross trade municipal securities using evaluated prices (i.e., prices provided by an independent third-party pricing service).[11]

But the SEC sharply reversed course with its adoption of the fair value rule and its related guidance. To be eligible for cross trading, a security must have a "readily available market quotation." In the fair value rule, however, the SEC narrowly redefined that term (for purposes of both that rule and Rule 17a-7) in a way that significantly limited funds' ability to cross trade fixed-income securities.[12]

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[10] To illustrate, suppose that a fund holds an investment grade corporate bond that it wishes to sell, and an affiliated fund wishes to buy that same bond. If the bond is trading on the open market with a "bid" of $99.50 (i.e., the highest dealer offer to buy the security) and an "ask" of $100.00 (i.e., the lowest dealer offer to sell the security), then the selling fund would receive $99.50 for a sale of the bond on the open market, while the buying fund would pay $100.00 for its open-market purchase. But if the two funds instead cross trade with each other for the bond at its mid-point price ($99.75), each fund saves $0.25.

[11] *See* United Municipal Bond Fund; United Municipal High Income Fund, Inc., SEC Staff No-Action Letter (pub. avail. July 30, 1992), as further modified in United Municipal Bond Fund, SEC Staff No-Action Letter (pub. avail. Jan. 27, 1995) ("UMB Letter"); and Federated Municipal Funds, SEC Staff No-Action Letter (pub. avail. Nov. 20, 2006). *See also* Benham California Tax- Free Trust, SEC Staff No-Action Letter (pub. avail. Aug. 6, 1986) ("Benham Letter") (permitting cross trading of variable rate demand notes at par plus accrued interest) (collectively, the "Municipal Securities Letters").

[12] *See* note 5. The fair value rule states 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…." This definition is consistent with the definition of a Level 1 input in the fair value hierarchy outlined in US Generally Accepted Accounting Principles (GAAP). Any portfolio investment *without* a readily available market quotation—e.g., virtually any fixed-income security—is therefore *within* the fair value rule's scope but *outside* the cross trading rule's scope.

At that time, the SEC indicated that cross trading rule revisions were on its rulemaking agenda. In fact, the staff opened a comment file on this topic in 2021 before Chair Gensler chose to drop it.

ICI submitted our 2021 Paper in response to the staff's request for comment. In the paper we quantified cross trading activity and its benefits in 2020 and provided recommendations to modernize the rule. Just with respect to transaction costs, ICI conservatively estimated that in 2020 alone, cross trading fixed-income securities saved funds and their shareholders nearly $329 million and advisers' clients generally (i.e., funds and other clients) more than $390 million.

Other notable findings from the 2021 Paper included:

- In 2020, respondents[13] engaged in 44,976 cross trades of fixed-income securities, totaling over $204 billion.
- The activity was concentrated heavily in relatively liquid, investment grade securities, with a combined 86% in investment grade corporate securities (35%), US Treasury and agency securities (26%), and variable rate demand notes (25%).
- Almost all (over 99%) of these securities were classified as Level 2 under the GAAP ASC Topic 820-10 fair value measurement hierarchy, meaning that virtually all the cross trading activity covered by the 2020 survey would be disallowed under the SEC's new guidance.[14]

Based on recent conversations with our members, we understand that some continue to cross trade municipal securities (including variable rate demand notes), in reliance on the Municipal Securities Letters (which neither the SEC nor the staff has rescinded), and in theory some could cross trade whatever small portion of fixed-income securities could be deemed to have "readily available market quotations." Otherwise, the activity appears to have been discontinued.

Section 2: ICI's Policy Recommendations and Additional Supporting Information

2.1 Summary of ICI's 2021 Recommendations

The ICI continues to support modernizing Rule 17a-7 by adding the following elements:

- ***A new scoping mechanism***. The SEC should amend paragraph (a) to eliminate the "readily available market quotation" requirement and instead permit funds to cross trade securities that meet the definition of having Level 1 or 2 inputs under the GAAP ASC

[13] Fifty-two ICI member firms responded to the survey that largely underpinned our analytical work, representing over $23 trillion, or approximately 71% of US-registered fund assets, as of December 31, 2020.

[14] Under the GAAP ASC Topic 820-10 fair value hierarchy, Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Topic 820-10 fair value measurement hierarchy. This is a well-understood framework upon which the fair value rule also relies.

- ***An updated pricing provision***. The SEC should amend paragraph (b) to permit funds to price qualifying transactions consistent with (i) applicable valuation and cross trading policies and procedures, to permit the use of pricing vendor-provided evaluated prices **and/or** dealer quotes and (ii) the investment adviser's best execution and loyalty duties owed to each client.

- ***Risk-based policies and procedures***. The SEC could require funds and advisers to adopt policies and procedures that take a risk-based approach to evaluating, pricing, and approving potential cross trades, varying the level of scrutiny depending on the associated risks. Such an approach would permit cross trading with additional rigor as appropriate. The SEC could require that these policies and procedures explicitly address risk assessment and risk management.

- ***Provisions facilitating board oversight***. In addition to the quarterly compliance-related reporting that fund boards currently receive, the SEC could require funds to provide their boards with annual reports that include summary information about cross trading activity for the year. This, together with the codification of the Independent Directors Council no-action letter,[15] would re-orient the board's role to one of oversight over the fund's process, rather than review and approval of specific transactions.

- ***Reporting cross trading activity to the SEC and public transparency***. Amendments to Form N-PORT could require funds to report aggregated cross trading information by asset type.[16] We would support making this aggregated information public on a delayed basis, in accordance with Form N-PORT's current provisions.[17]

Below we further elaborate on our recommendations concerning pricing, compliance, and board

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[15] *See infra*, note 33 and accompanying text.

[16] We would not support requiring funds to report granular transaction-by-transaction cross trading information on Form N-PORT. Higher-level, aggregate information would suffice for the SEC's purposes. Also, while funds may report the dollar values of their cross trades in their financial statements, such reporting is required only if the activity is material, and the information is not reported in a format that permits the SEC to easily search, aggregate, and analyze it. *See* FASB ASC Topic 850-10-50-1 and Regulation S-X Rule 4.08.

[17] This recommendation is premised on the continuation of the current Form N-PORT requirements. ICI has strongly objected to certain aspects of the 2024 Form N-PORT amendments. *See* ICI's Letter to SEC Acting Chairman Uyeda (Feb. 26, 2025) (urging the SEC to reverse those amendments that would: (i) drastically increase the publication frequency of full fund portfolio holdings disclosures and other detailed information (from quarterly to monthly); and (ii) substantially shorten the timeframe for such filings (from 60 days after the end of a fiscal quarter to 30 days after the end of each month)).

oversight.[18]

2.2 Additional Support for ICI's Pricing Recommendation

Historically, funds have used either bids and offers from third-party dealers ("dealer quotes") or evaluated prices to reliably price cross trades.[19] In both cases, funds have used prices obtained from independent third parties that fund advisers review.

Rule 17a-7(b)(4) expressly contemplates the use of dealer quotes. Dealer quotes, which may be obtained through electronic dealer runs[20] or more direct communications with dealers, can serve as a reliable pricing source given the dealer's independence, experience, and expertise. They also can provide contemporaneous pricing of a cross trade, especially if the trade is executed intraday. Funds and their advisers may consider several factors and adopt related practices to ensure that dealer quotes are reliable, including but not limited to whether the dealer has sufficient experience and transactional activity with the given security (e.g., including by providing bids and offers), the size and depth of dealer runs, relative consistency across quotes obtained, potential anomalies (e.g., "inverted" bid and ask quotes), and whether other pricing data is consistent with the quotes.[21]

While dealer quotes may be a reliable and appropriate way to price cross trades, they can be challenging to obtain.[22] Therefore, we do not believe that they should be the exclusive means of pricing fixed-income cross trades. Funds and advisers also should be permitted to use other reliable, independent pricing sources like evaluated prices (including intraday evaluated prices) provided by pricing services.[23]

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[18] Our 2021 Paper includes additional detail on all the recommendations.

[19] *See* the 2021 Paper at 23 (showing 42% of the total dollars of fixed-income cross trading were priced using dealer quotes, with the remaining 58% priced using evaluated prices or in reliance on the Benham Letter).

[20] A dealer run refers to high-volume electronic messages sent by dealers to their customers that list securities and derivatives and the prices at which they are willing to buy or sell them.

[21] The examples provided in this paragraph are for illustrative purposes only. The factors that funds and their advisers consider and the practices they adopt will vary (e.g., based on the nature and risks of the transaction), and an amended rule and its related guidance should not prescribe factors or practices of this kind.

[22] *See, e.g.,* Recommendation Regarding Modernizing Rule 17a-7 under the 1940 Act, SEC Fixed Income Market Structure Advisory Committee ("FIMSAC") (June 1, 2020) at note 3 and accompanying text. FIMSAC advised the SEC on the structure and operations of the U.S. fixed income markets. It is currently inactive.

[23] And just as a fund should have the flexibility to use dealer quotes and/or evaluated prices (both intraday and end-of-day) in accordance with its policies and procedures, the rule should not stipulate *when* a fund may or must cross trade (e.g., end-of-day only).

A pricing service is an entity that provides price and trade-related data for funds' portfolio investments.[24] Pricing services provide end-of-day prices for investments, corresponding to the time(s) at which funds calculate their net asset values (NAVs) (usually 4:00 p.m. ET). They also increasingly provide more frequent intraday pricing, which could be beneficial for pricing intraday cross trades. Pricing services provide evaluated prices for investments that may not trade regularly (e.g., many fixed-income investments) by collecting and analyzing actual trade data for the specific investment, when they are available (through sources such as FINRA's TRACE and the MSRB's Real-Time Transaction Reporting System (RTRS)). Their evaluated prices also are commonly informed by actual trade data for similar investments and data and information from broker-dealers (e.g., prices they quote for investments), trading desks, and many other sources.

As with dealer quotes, funds follow processes to help ensure the reliability of evaluated prices, including price checks.[25] They also perform extensive due diligence of pricing services, as the fair value rule requires.[26]

As with fund valuation practices generally, funds should be permitted to price cross trades using multiple inputs and sources of data, including evaluated prices from independent third parties and/or independent dealer quotes, provided they have a reasonable belief that the prices derived from those sources are reliable. The staff has supported the use of evaluated prices in several no-action letters involving municipal bonds.[27] Amendments to Rule 17a-7 should reflect this long-standing staff position. The policy positions in these letters were sound, and there is no compelling reason to limit the relief to municipal bonds. The reliability of cross trade pricing is a valid regulatory concern, but so too is reliably pricing portfolio investments when calculating a fund's NAV, a critical daily fund responsibility where mitigating potential risks and conflicts also is paramount. The well-developed practices and regulatory structure that guide the latter can be put to good use for the former as well.[28]

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[24] *See* Fair Value Adopting Release at 34 (describing pricing services generally as "third parties that regularly provide funds with information on evaluated prices, matrix prices, price opinions, or similar pricing estimates or information to assist in determining the fair value of fund investments."). *See also* Fund Valuation Under the SEC's New Fair Value Rule, ICI (Dec. 2021) ("ICI Valuation Paper") at 12-13.

[25] These processes could be leveraged by funds wishing to use intraday evaluated prices.

[26] *See* Rule 2a-5(a)(4) (requiring funds to oversee pricing services, if used, including establishing a process for approving, monitoring, and evaluating each pricing service provider and initiating price challenges as appropriate). For a detailed discussion of fund due diligence and oversight practices, *see* ICI Valuation Paper at 21-23 (discussing forms of daily and periodic testing) and 24-28 (discussing pricing service evaluation generally).

[27] *See* the Municipal Securities Letters.

[28] In the UMB letter, the staff noted the use of evaluated prices for purposes of calculating the fund's daily NAV as a basis for supporting its position that such prices were similarly appropriate for cross trading ("The staff ... would not recommend that the Commission take any enforcement action under Section 17(a) if the Funds buy and sell portfolio securities between themselves *using a price provided by the pricing service that values the Funds' municipal bonds*

Further, the volume and quality of fixed-income trading data and related information have advanced significantly in recent decades, due to increased transparency in fixed-income trading (e.g., through improved public TRACE data[29] and similar municipal bond trading data[30]); advances in market structure like the continued development of electronic trading platforms that include request-for-quote protocols and similar functionality; vendors that provide higher quality and more expansive coverage across fixed-income asset classes; and, more recently, expanded availability of intraday pricing information. In addition, as fixed income ETFs continue to grow, their creation and redemption activity and secondary market trading enhance price discovery in the fixed-income markets. This has translated into higher pricing accuracy.

Our recommended approach also is supported by improved valuation practices over the past few decades, which further mitigate any cross trading pricing concerns. The case is particularly strong after the SEC's adoption of the fair value rule, which established a robust framework for valuing investments that includes: assessing and managing material valuation risks; establishing and applying fair value methodologies; testing fair value methodologies; and evaluating pricing services. While these rule requirements borrowed heavily from sound (pre-rule) practices, at a minimum this formal codification has "raised the floor" of valuation practices industrywide. An expanded cross trading rule would build upon the fair value rule's applicable requirements to help address pricing concerns.

2.3 Additional Support for ICI's Compliance Recommendation

We continue to support a principles-based approach to cross trading, rather than a highly prescriptive rule with specific requirements applied to various asset types. We recognize that the risks associated with cross trading may vary by asset type, fund,[31] market conditions, and organizational structure. For instance, determining the appropriateness (including price) of a

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for Rule 2a-4 purposes, provided that the Funds comply with the conditions in your October 18, 1994 letter and above") (emphasis added).

[29] FINRA launched TRACE in 2002. It captures real-time consolidated transaction data for all eligible public and private (144A) corporate bonds (including investment grade, high yield and convertible debt), agency debt, U.S. Treasury securities, and some securitized products such as mortgage-backed securities. Over the years, TRACE has evolved to expand the universe of securities subject to public reporting and accelerate the timeliness of that reporting. For example, the time to report a transaction was reduced gradually from 75 minutes to 15 minutes on July 1, 2005. Since January 9, 2006, all transactions in public TRACE-eligible securities have been disseminated immediately upon receipt. *See generally* TRACE at 20 – Reflecting Advances in Transparency and Fixed Income, FINRA (June 28, 2022).

[30] Dealers report transaction data to the MSRB's RTRS. This data is made public through the Electronic Municipal Market Access (EMMA) website. EMMA data includes real-time prices and yields at which municipal bonds and notes are bought and sold, for most trades occurring on or after January 31, 2005. The SEC designated EMMA as the official repository for municipal securities disclosures in 2009.

[31] For instance, the liquidity of a security could be a relevant consideration for a purchasing open-end fund, but may not be for a purchasing closed-end fund.

cross trade of a security with a readily available market quotation will generally require less scrutiny than a potential cross trade of a Level 2 security. Accordingly, the SEC could require funds and advisers to adopt policies and procedures that take a risk-based approach to evaluating, pricing, and approving potential cross trades, varying the level of scrutiny depending on the associated risks. The fair value rule and its related guidance provide a useful model of how this could work.[32]

Funds and their advisers are well positioned to develop such policies and procedures, monitor their effectiveness, and modify them as necessary. Fund compliance frameworks are far more sophisticated and well-resourced than they were in the early 1980s when the SEC expanded the rule's scope and even the 1990s when the staff issued a key Municipal Securities Letter.

Importantly, in 2003 the SEC adopted Rule 38a-1 to enhance the effectiveness of funds' compliance programs by, among other things, assigning the responsibility for the administration of the fund's compliance policies and procedures to a Chief Compliance Officer ("CCO"). At least once a year, the CCO must provide a written report to the board that, at a minimum, addresses the operation of the fund's policies and procedures and each material compliance matter that occurred since the date of the last report, including for any cross trades. CCO and compliance review of cross trading, combined with enhanced reporting to the board (discussed below), add critical safeguards to help ensure cross trading is in the best interest of each fund and its investors.

The staff acknowledged the important role that a CCO can play to monitor cross trading in its 2018 no-action letter to the Independent Directors Council ("IDC Letter").[33] The letter illustrates how the staff efficiently leveraged a capability that did not exist in 1940 (or even the 1990s). Amending Rule 17a-7 would allow the SEC to codify this commonsense position and more properly allocate responsibilities between investment adviser personnel (including compliance) and/or fund officers and boards. Consistent with the IDC Letter, we do not believe that boards should be required to review transaction-specific cross trading information to effectively oversee cross trading activity (of course, boards could still request and receive such information on an as-needed basis if they determined it would assist them in their oversight role).

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[32] The rule's requirements cover many investment types that vary in their valuation risks, while recognizing that the practical application of those requirements may differ. *See* Fair Value Adopting Release at 14 ("different frequencies for the re-assessment of valuation risks may be appropriate for different funds or risks."); at 29 ("We expect the frequency and nature of testing would vary depending on the type and amount of investments held by the fund."); and at 87 ("We expect that the records kept may vary based on a variety of factors, including the subjectivity of the inputs used in determining fair value (e.g., Level 2 or Level 3).").

[33] Independent Directors Council, SEC Staff No-Action Letter (pub. avail. Oct. 12, 2018). In this letter, the staff stated that it would not recommend enforcement action to the SEC if a fund board receives from the fund's CCO written quarterly representations that transactions entered into in reliance on Rule 17a-7 were effected in compliance with board-adopted procedures, instead of the board itself determining compliance.

A principles-based framework also is consistent with recent SEC action on affiliated transactions, such as its expansion of co-investment exemptive relief.[34] This latest relief endorsed a more flexible process for co-investments that loosened strict investment allocation requirements, relied more heavily on policies and procedures for monitoring co-investment transactions (rather than burdensome board approvals),[35] and streamlined board reporting.

2.4 Additional Support for ICI's Board Recommendations

Fund boards provide another critical source of oversight in areas like cross trading that involve potential conflicts and other risks. The SEC has recognized this with several of its most significant fund rulemakings over the last decade, including Rule 22e-4 (the liquidity rule), Rule 18f-4 (the derivatives rule), and the fair value rule.

Fund boards have gained experience overseeing various aspects of fund and risk management as these broad programmatic rules addressing highly complex subject matter have been put in place. This experience has helped them become increasingly capable of overseeing—as opposed to managing or ensuring compliance of—fund activities like cross trading.

While the rule currently contemplates an important role for the board, as noted above, the board is not the appropriate entity to make compliance determinations.[36] Board reporting requirements have evolved in important ways, as the fair value, liquidity, and derivatives rules demonstrate. Using these rules and the IDC Letter as models,[37] we believe that Rule 17a-7's board reporting requirements could be improved to help facilitate rigorous oversight to better allow the board to "see the forest for the trees."[38]

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[34] *See, e.g.,* FS Credit Opportunities Fund et. al., Application for Exemptive Relief, File No. 812-15706 (Apr. 3, 2025); Investment Company Act Rel. No. 35520 (Apr. 3, 2025) (notice); Investment Company Act Rel. No. 35561 (Apr. 29, 2025) (order). Section 17(d) of the 1940 Act generally prohibits a registered fund from investing alongside its affiliates where terms in addition to the price of a security are negotiated. The SEC has issued exemptive relief to permit such "co-investments," subject to various conditions.

[35] A condition in the order relating to co-investment policies requires each adviser (and each affiliated entity that is not advised by an adviser) to adopt and implement policies and procedures reasonably designed to ensure that: (i) opportunities to participate in co-investment transactions are allocated in a manner that is fair and equitable to every regulated fund; and (ii) the adviser negotiating the co-investment transaction considers the interest in the transaction of any participating regulated fund. *Id* at 11.

[36] We recommend explicitly removing provision (e)(3) as a board requirement. *Cf*. the relevant terms of the fair value rule, which permits a fund board to designate to the fund adviser performance of the fair value determinations relating to any or all fund investments, subject to continued board oversight.

[37] We suggest these as useful starting points only, given the differing subject matter and purposes of these rules.

[38] *See* 2021 Report at 35 for more detailed recommendations.

Section 3: Additional Considerations for a Rule Proposal

3.1 Treatment of Custodial and Other Fees

Rule 17a-7(d) states that no brokerage commission, fee, or other remuneration can be paid for a cross trade except for "customary transfer fees," which the rule does not define. It is unclear whether a custodial fee related to the transfer of a security between a fund and a related party, or a fee charged by another entity to affect a cross trade, would be considered a "customary transfer fee."

We support rule revisions that would permit funds to pay reasonable custodial and other fees to third parties for any services provided in connection with the clearing, settlement, reporting, or facilitation of a cross trade. For example, using and paying a third party may be unavoidable when cross trades are between parties that use different custodians or where market practice or regulation in a non-U.S. jurisdiction requires the use of a dealer. Concerns with transaction-related fees paid to third parties would be alleviated with a more general reasonableness standard and continued emphasis on whether the transaction overall (including any fees) represents best execution for each party.

3.2 Considerations for Subadvised Funds

A proposal should make clear that our recommended principles-based approach applies to cross trades where one or more of the transacting parties is managed by a subadviser. Given the structural complexity and need for greater coordination, subadvised funds create unique compliance challenges that are not always fully appreciated when the SEC proposes and adopts rules and rule amendments. A fund should be permitted to tailor its policies and procedures to reflect the fund complex's organizational or personnel-related arrangements, including whether the transactions involve a subadviser and whether that subadviser has independent decision-making authority over a fund (or a sleeve of a fund) and personnel distinct from the adviser representing the other client in the trade. Where one or more of the parties are managed by otherwise unaffiliated subadvisers, it could present *reduced* policy concerns.[39] Each party should conclude that the trade is in its best interest (including at the specified price), but the SEC should not otherwise prescribe other process-oriented requirements (e.g., insisting that both parties use the same valuation policies, pricing vendor, etc.).

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[39] The SEC has recognized that there are instances where transactions between a fund's subadviser and an affiliated fund are unlikely to raise a concern that the subadviser could take advantage of the affiliated fund. *See, e.g.,* Rule 17a-10, which, among other things, permits a subadviser of a fund to enter into transactions with funds that subadviser does not advise but which are affiliated persons of a fund it does advise.

We appreciate the SEC's consideration of these comments. If you have any questions, or if we can be of assistance in any way, please contact us at eric.pan@ici.org, paul.cellupica@ici.org or matt.thornton@ici.org.

Sincerely,

/s/ Eric J. Pan
President & CEO

/s/ Paul G. Cellupica
General Counsel

/s/ Matthew Thornton
Deputy General Counsel

cc: The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda

Brian T. Daly, Director, Division of Investment Management
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