2025 ICI Investment Management Conference

ROPES & GRAY

The 2025 ICI Investment Management Conference was noteworthy for the change in tone from the SEC officials in attendance, including Acting Chairman Mark Uyeda, as well as IM Director Natasha Greiner, who suggested that there has been a shift in the dynamic within the industry following the November election and that engagement with the industry is increasing. Sarah ten Siethoff, Associate Director of IM's Rulemaking Office, noted that the SEC staff was particularly interested in innovative proposals aimed at increasing investor access to financial markets. Among conference participants, the sense of optimism was palpable, with many looking forward to working with the SEC staff to reinvigorate the exemptive-relief process.

If you would like to discuss a specific session, or any other aspect of the conference, please reach out to your regular Ropes & Gray attorney contacts.

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Welcoming Remarks

Speaker: Stefanie Chang Yu, Managing Director, Morgan Stanley Investment Management Inc.

Ms. Yu welcomed the crowd and provided details about the goals of the conference, noting that the panels would explore a variety of topics, including opportunities for the fund industry to innovate. She noted that conference attendees would hear from Acting SEC Chair Mark Uyeda and other SEC officials, as well as from ICI President Eric Pan. She thanked the ICI staff, SEC Commissioners and staff and the conference attendees for participating in the conference. She then introduced ICI General Counsel Paul Cellupica.

ICI General Counsel's Address

Speaker: Paul Cellupica, General Counsel, Investment Company Institute

Mr. Cellupica began by noting the important role the fund industry plays in serving over 100 million investors. He suggested that rapid change is on the way as a result of the change in administration and in SEC leadership. He gave an overview of the state of the fund industry, adding that there is great opportunity to adopt common sense regulations that will benefit millions of investors. He noted that the ICI and the Trump administration share certain common goals: moving the US economy forward, empowering investors, and expanding access to affordable investment products. He noted that the ICI wants to work with the administration to help policymakers advance the interests of investors. To date, he continued, innovations in financial services have had tremendous benefits for investors. As an example, he noted that the fund industry has consistently reduced fees and now more than 50% of US households own funds.

Mr. Cellupica described a number of policy recommendations for modernizing the 1940 Act. He thanked Ropes & Gray, Dechert, and Stradley Ronon, the three law firms that have assisted the ICI in preparing the framework for modernization. He provided a brief overview of some of the policy recommendations. First, he discussed fostering ETF innovation with a focus on share classes, efficiency, economies of scale, and investor choice. He acknowledged that the SEC staff has concerns about cross-subsidization among share classes but added that he is confident that the ETF share class structure can address these concerns.

Mr. Cellupica noted that providing retail access to private markets is the next key recommendation, with a focus on giving closed-end funds flexibility to invest more than 15% of their assets in private funds. He noted that he expects the SEC will address the need to modernize co-investment exemptive relief.

Mr. Cellupica discussed recommendations relating to eliminating unnecessary costs and burdens by making e-delivery the default option for investor communications. He also discussed opportunities to streamline and modernize shareholder voting requirements, including lowering the requirements for obtaining quorum and for approving proposals. With respect to cross-trades, he explained that the ICI is looking to revise Rule 17a-7 to enhance its usability, particularly for fixed income securities, which he expects will lower transaction costs and reduce settlement issues.

Mr. Cellupica discussed the recommendation to leverage the expertise and experience of fund directors, as well as to modernize the in-person meeting requirements under the 1940 Act by allowing virtual meetings and permitting boards to approve sub-advisory agreements with unaffiliated sub-advisers annually at virtual meetings.

Mr. Cellupica recommended that the SEC use its broad authority to issue exemptive relief that had been ignored by prior SEC leadership, adding that the ICI is encouraged by the current SEC's expressed willingness to innovate. He also noted the ICI's efforts to monitor the work of the SEC's Crypto Task Force, adding that the ICI will be forming its own crypto working group.

Mr. Cellupica next described the ICI's efforts to work with Congress, particularly with respect to protecting retirement investors and reviewing tax policy. He noted that tax proposals that raise taxes on retirement savings must be opposed. With respect to ESG regulations, he stated that the ICI will work with policymakers to oppose efforts to either impose or to defeat thoughtful ESG proposals. He noted that asset managers have fiduciary duties to manage assets in the best interests of investors so there is no need to mandate ESG investing or to regulate ESG out of existence. Instead, he noted, asset managers should disclose how they propose to manage assets and operate without the states or the federal government micromanaging advisers. It is better to expand choice, which empowers investors and enables them to better meet their long-term financial goals.

Mr. Cellupica indicated that the ICI has already been engaging with policymakers on many of these topics, noting that, over the past few months, there has been a sea change in the level of optimism regarding engagement on the ICI's policy recommendations. Mr. Cellupica then recognized long-time ICI staffer Dorothy Donohue and congratulated her on her retirement.

Keynote Remarks

Hon. Mark Uyeda, Acting Chairman, Securities and Exchange Commission

Acting Chairman Uyeda began by echoing Mr. Cellupica's remarks about Dorothy Donohue and congratulated Ms. Donohue on her retirement.

Looking forward to the new administration, he recalled learning to respect the SEC staff from Dick Phillips. He noted that his experience as an SEC staffer and as a Commissioner has prepared him for the role of Acting Chairman. He explained that while the structure of the SEC delegates much of the work on rule making to the SEC staff, the Commissioners still have to vote.

Blueprint for SEC Rulemaking Processes: Referring to his background on the staff, Acting Chairman Uyeda believes he has a unique perspective into the rulemaking process. As an example of effective rule making, he pointed to the summary prospectus rule. In contrast, he noted that the last four years have seen too many "rulemaking shortcuts, often taken in the name of expediency" that have "returned to haunt the Commission in subsequent litigation." He explained his goal is to develop a rulemaking blueprint to restore normal rulemaking practices and to ensure compliance with the Administrative Procedures Act. This means providing adequate time for notice and comment, adding that the recent practice of having only 30-45 days for comment rather than the traditional 60 days or more is a significant deviation from past SEC practices, especially when there are dense, lengthy and contain numerous rule proposals - such as the swing pricing rule - that represent fundamental changes to how the industry operates. Moreover, he stated, providing thoughtful comments on rule proposals is "nearly impossible when the Commission asks for public comment on multiple proposals affecting the same stakeholders at the same time." He explained that he is looking to "set forth a blueprint for restoring the SEC's rulemaking processes to the 'gold standard' among regulatory agencies."

The Acting Chairman recommended that, when "confronted with a comment file revealing the need for additional input" the SEC should re-propose rules where appropriate or, in some circumstances, reopen comment file for a rule proposal, especially where there are changed conditions in the markets. He then elaborated on the necessary elements of the rulemaking blueprint, which he titled "A Framework for Getting 'Back to Basics' on Rulemaking Processes." Specifically:

- The SEC's rulemaking blueprint should return to basic steps to help ensure that "each rulemaking proposal is as well-reasoned as possible." Thus, all SEC rulemaking actions should "begin with an identification of the rule's purpose" to explain what problem the SEC is trying to solve, and whether it is "squarely within its statutory authority to engage in rulemaking to solve that problem."
- Public engagement, Acting Chairman Uyeda stated, is important in determining "if there is a problem to solve in the first place, and if so, the range of potential solutions." He highlighted, as the simplest form of engagement, a meeting between stakeholders and the SEC staff or Commissioners. In addition, some topics especially benefit from public roundtables, in which "stakeholders having the opportunity to engage not just with us, but with each other." He added that SEC "requests for information, concept releases, and advance notices of proposed rulemaking are additional means for obtaining feedback." As an aside, Acting Chairman Uyeda noted that he "would like to explore is how funds can trim their summary prospectuses to the 3-4 pages the Commission originally envisioned, from the bloated 12-15 pages often seen today."
- Acting Chairman Uyeda highlighted two additional steps in the SEC's decision-making following the identification of a problem. First, he said, "is the proposed regulation likely to be effective or ineffective?" Second, "is the proposed regulation likely to be costly or not costly?" He underscored that the SEC "should strive for regulations that are both effective and not costly" and that "engagement with our stakeholders, as well as a robust comment period" are helpful to the SEC and its staff in weighing "the question of whether a proposal will likely be effective." Here, he noted, a "proper economic analysis will help . . . distinguish between approaches that are effective and efficient, versus those that are effective but costly."
- Acting Chairman Uyeda highlighted that the SEC rulemaking blueprint needs to prioritize effective and cost-efficient regulations that respect the limits of the SEC's statutory authority. He noted that there is also a need to update procedures and the analyses of legal and compliance cost estimates. As an example, he noted that the "small entity" regulations have not been updated for 25 years, adding that $50 million is too low for defining such entities. He stated that using this "framework for analysis, the Commission could consider options that include withdrawing or re-proposing existing rule proposals," citing as examples existing rule proposals, including "those addressing the safeguarding of advisory client assets, outsourcing by investment advisers, ESG disclosures for funds and advisers, and digital engagement practices."
- With respect to recently adopted rules, Acting Chairman Uyeda stated that, "consideration should be given as to whether changed circumstances weigh in favor of taking a pause." He noted that the SEC is "reviewing and considering further action on whether certain rules that the Commission has adopted, but which are not yet effective, is appropriate." He observed that some rules have been challenged in court, including the recently adopted Form N-PORT reporting requirements. Additionally, the SEC "could consider extending or delaying the compliance dates for recently. . . adopted rules" and added that the SEC staff is considering recommending that the SEC "extend the effective date for the recent amendments to Form N-PORT."

- Finally, concerning future rulemaking, Acting Chairman Uyeda emphasized that the SEC "should act like a super-sized freighter, not a speed boat – and that means returning to a smoother regulatory course than the rapid changes that have been promulgated over the last four years."

Capital Raising and Investor Protection: While noting that the SEC's Division of Enforcement (Enforcement) "has a crucial mission to root out fraudulent actors from our markets and to take remedial action," Acting Chairman Uyeda stated that "enforcement is not the sole tool of the Commission in order to achieve regulatory compliance." He said that when "there are areas where we observe compliance inconsistencies, we should remind firms of their obligations in order to flag common issues and, in the case of new requirements, ensure a smooth transition." As examples, the Acting Chairman cited the recent Accounting and Disclosure Information publications titled *Website Posting Requirements and Tailored Shareholder Report Common Issues* as examples of such publications issued by staff in the Division of Investment Management.

- The Acting Chairman added that the SEC should also "periodically consider whether our Enforcement resources are being appropriately deployed in keeping with our investor protection mandate." He noted that he was particularly concerned about fraud targeting seniors and, more generally, that "[p]rotecting seniors is a priority of the Commission, and this work ranges from enforcement, public education and outreach, and the development of regulatory policy."

Facilitating Innovation and Retirement Savings: In the final portion of his remarks, Chairman Uyeda focused on the question "how can we be more flexible in our regulatory approach to facilitate appropriate innovation?" He noted that the SEC should be asking how innovation can best serve the interests of American investors given the particular challenges they face today. However, Acting Chairman Uyeda stated, the "last four years have been marked by an inflexible approach to innovation" and observed that while the ETF market has "grown enormously in the last 20 years . . . for every three ETFs launched in the last ten years, one has shut down." This "shows the natural process of experimentation, and market forces of supply and demand at play." Acting Chairman Uyeda said that he keeps this in mind as an example of "the truly exciting things we can accomplish for investors if we embrace product innovation."

He added that, while innovation can come through rulemaking, he would be remiss not to mention the importance of the exemptive application process to innovation. We view this process "as a laboratory where we can review new ideas from market participants" that provides the opportunity "to consider the benefits of new products, as well as potential risks to investors and the market."

- Acting Chairman Uyeda highlighted that ETFs started through the SEC's exemptive application process, and eventually the SEC codified conditions applicable to ETFs that enabled them to operate without an exemptive order.
- However, he noted, the innovation of "funds offering both mutual fund and ETF share classes" has not as yet resulted in additional successful applications for this "ETF share class relief." Accordingly, he stated, he has directed the SEC staff "to prioritize their careful review of the many applications filed for this relief."

Acting Chairman Uyeda additionally noted the "challenge for the fund industry to explore is how products can be developed that help Americans who have saved in IRAs and 401(k)s successfully manage their finances in retirement." He added that this "complex problem" requires not only the "best innovative minds in the industry to develop financial products that meet this need, but also collaboration between the SEC, Department of Labor, and state insurance regulators." The SEC, he observed, should be committed "to coordinating closely with these parties as we consider the needs of investors and their retirement investments" and that he already has reached out to the new leadership at Department of Labor.

Q&A With Eric Pan: At the conclusion of his prepared remarks, Acting Chairman Uyeda sat with Eric Pan, President and Chief Executive Officer of the ICI, who agreed that a good process generally leads to good substance. Mr. Pan noted that there is significant optimism in the fund industry about the new version of the SEC, and inquired about where registered funds and their advisers stand in terms of priorities.

Acting Chairman Uyeda indicated that the SEC is trying to get many things right, including many things that were glossed over in the review process under the previous SEC. He noted that the staff would be undertaking a retrospective review of a variety of rules. He added that even with a robust rule making process, it is difficult to operationalize rule compliance. He indicated that the SEC has been talking to operational professionals who have indicated that numerous rules may need to be delayed in order to give adequate time for the industry to develop systems and processes to comply. In this regard, he pointed to the Treasury Clearing and Names Rules as examples. He added that he has been working to set things up for Chairman Atkins' anticipated Senate confirmation.

In response to a question from Mr. Pan, Acting Chairman Uyeda indicated that he expects ETF share class relief to be granted via exemptive order. He added that he hoped for progress in bringing retail investors access to private assets, especially in connection with long-term investment vehicles.

Mr. Pan asked Acting Chairman Uyeda how future generations will look back on the Uyeda/Atkins SEC. Acting Chairman Uyeda explained that the last four years were an outlier, and he expects a return to normalcy under Chairman Atkins. He added that there will be significant developments and improvements due to technological advances, and he looks forward to seeing improved outcomes for investors as a result. Mr. Pan thanked Acting Chairman Uyeda for his remarks.

General Session: Challenges and Opportunities: Assessing the Fund Industry's Regulatory Future

Moderator: Matthew Thornton, Deputy General Counsel, Financial Regulation, Investment Company Institute

Panelists: Christopher Bohane, Senior Vice President and Deputy General Counsel, MFS Investment Management

Fran Pollack-Matz, Deputy General Counsel, T. Rowe Price Associates, Inc.

Eric Purple, Partner, Stradley Ronon Stevens & Young, LLP

Kristin Solheim, Senior Government Affairs Officer, Investment Company Institute

Sarah ten Siethoff, Associate Director, Rulemaking Office, Division of Investment Management, Securities and Exchange Commission

Mr. Thornton expressed his optimism for a more constructive rulemaking agenda under the new administration. Turning his attention to the prior administration's rulemaking agenda, Mr. Thornton noted that the panel would focus on recent rulemaking from the Division of Investment Management (IM).

Mr. Thornton asked Ms. ten Siethoff to discuss the best way to engage with the SEC staff on rulemaking, particularly in light of recent Executive Orders (EOs) directing federal agencies, including the SEC, to stop all pending rulemaking activity and to seek approval from the White House prior to any rulemaking moving forward. Ms. ten Siethoff noted that, following the issuance of those EOs, the SEC staff has prepared a list of each rulemaking that has yet to reach its compliance date and is reviewing each rulemaking (i) to further consider fact, law, and policy, and (ii) to determine whether additional time is necessary for the industry to comply with the rulemaking. She cited the extension of the compliance dates for the amendments to the Names Rule and the Form PF amendments as examples of the recent work by the SEC staff. She also noted that the SEC staff is currently considering extending the compliance date for the amendments to Form N-PORT.

Mr. Thornton asked Ms. Pollack-Matz to discuss the adopted rules on which T. Rowe Price is currently focused. Ms. Pollack-Matz first discussed the Names Rule, noting that changes to 80% policies have been approved by the board and that those revised policies were being rolled into disclosure as part of their January and March cycles. She noted that her firm had yet to work through the interpretation of the derivatives component of the Names Rule and commented on operational challenges related to monitoring 80% tests with growth and value components. Mr. Bohane echoed Ms. Pollack-Matz's comments, noting that the recently published FAQs on the Names Rule were helpful, particularly the guidance for funds with the term "income" in their names. With regard to the amendments to Form N-PORT, he noted that it would be helpful to revert to the current filing requirements of sixty days following the end of the third month of every fiscal quarter.

Mr. Thornton asked Ms. Solheim to provide an overview of the ICI's current advocacy efforts. Ms. Solheim discussed bipartisan legislation, including a bill that would allow 403(b) plans, often used by people working in education, charitable organizations, and public service, to invest in CITs. She noted that the bill had recently passed the House and that she is optimistic that it will cross the finish line. She discussed the possibility of making closed-end funds more accessible to retail investors and less susceptible to activist shareholders. She noted that optimizing electronic delivery solutions is also a priority. In response to a question, Ms. Solheim commented on the working relationship between the ICI and leaders of congressional committees, including the House Financial Services Committee and the Subcommittee on Capital Markets, again expressing optimism about the leadership changes under the new administration.

Mr. Thornton turned the panel's attention to the next iteration of the Regulatory Flexibility Agenda. Ms. ten Siethoff indicated that the agenda will look different, with some staples, including congressional mandates such as financial data rulemaking, staying on course. She commented on the SEC staff's focus on preparations ahead of Paul Atkins' SEC confirmation hearing, emphasizing that now is the time to connect with the SEC staff on initiatives that the industry believes merit attention. She noted that the SEC staff was particularly interested in innovative proposals aimed at increasing investor access to financial markets. In response to a question, Mr. Purple suggested that the SEC staff has a broader toolbox than the last four years might suggest, noting that, in addition to rulemaking, the SEC staff could make wider use of interpretive relief. He also noted that Congress could step in to address initiatives that the SEC has been unable to get across the finish line, such as cybersecurity, predictive data and outsourcing by investment advisers. Ms. Solheim suggested that the new Congress may be more willing to become a more active policymaker.

Mr. Thornton requested that each panelist cite one item on their "wish list" for IM action. The panelists identified various items, including (i) relief from the in-person meeting requirements under the 1940 Act, (ii) modernization of Section 17 interpretive issues, (iii) electronic delivery of shareholder documents, (iv) relief from heightened thresholds for shareholder approval of certain actions, such as changes to fundamental policies, (v) enabling new or existing funds to offer both mutual fund and ETF share classes, (vi) a recalibration of the SEC's view of activist investors, and (vii) restoration of the ability to cross-trade fixed income securities under Rule 17a-7.

Mr. Thornton asked Ms. ten Siethoff to discuss the difference between pursuing new rulemaking and exemptive relief. Ms. ten Siethoff explained that exemptive relief is the experimentation lab for trying novel features or novel products, explaining that this is how ETFs got their start. She noted that exemptive relief may not be as helpful when the entire industry is looking for the same relief, suggesting that it is not always an efficient use of resources for law firms to file multiple applications requesting similar relief. In response to a comment, Ms. ten Siethoff agreed that, ideally, the SEC staff should move faster through applications for exemptive relief. She added that, at the rulemaking stage, the SEC staff tries to learn from the exemptive relief experience, and the unique or bespoke conditions under those orders, to produce more principles-based rules. In response to a question, Ms. ten Siethoff acknowledged that there is a level of permanence with exemptive relief that is absent in no-action letter (NAL) positions. Mr. Purple added that exemptive relief provides statutory protection but NALs do not.

Mr. Thornton asked about the evolving role of the board in light of the shifting rulemaking environment. Mr. Purple shared his view that the role of the board will not change, but the focus of the board could change depending on the rulemaking agenda. He also discussed challenges to agency rulemaking and the impact on the rulemaking environment, particularly following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which overturned the Chevron doctrine. He emphasized that by removing Chevron deference, the burden is placed on the SEC to explain the statutory basis for rulemaking.

The panel discussed some additional topics. Mr. Purple commented on the practical impact of the EOs, stating that, while the SEC's goals are more likely to be aligned with White House priorities, the EOs are likely to result in some procedural delays for new rulemaking. Ms. ten Siethoff commented on the process for rulemaking, noting that the SEC staff will continue its layers of review, adding that she expects potential changes to the Office of Management and Budget process. Mr. Bohane discussed the Growth Act, a bipartisan piece of legislation aimed at simplifying the tax code. Regarding the 15% limit on investments in privately offered funds, Ms. ten Siethoff noted that the SEC staff is considering how best to provide such access, including looking beyond current fund offerings to the "bigger picture."

The panel concluded with a discussion of top challenges and opportunities over the next few years. Mr. Bohane and Ms. Solheim highlighted the opportunity to create a more durable, principles-based regime that, with appropriate guardrails, fosters innovation and transcends administration changes. Ms. Pollack-Matz commented on the evolution of product offerings, including the rise of ETFs, CITs, and customized managed accounts. Mr. Purple said he hoped for refreshed engagement between the industry and the SEC staff. Ms. ten Siethoff echoed the innovation theme, emphasizing that the industry would benefit from more durable rulemaking.

Session A: New Regulations, New Products, New Technologies – Oh My! CCO Perspectives in a Changing World

Moderator: Kenneth Fang, Associate General Counsel, Investment Company Institute

Panelists: Brian Harris, Adviser and Funds Chief Compliance Officer, State Street Global Advisors (SSGA)

Todd Kuehl, Head of Compliance, Americas & Chief Compliance Officer, Invesco Advisers, Inc.

Christy Sears, Chief Compliance Officer, American Beacon Funds (American Beacon)

Matt Wolfe, Chief Compliance Officer & Chief Legal Officer, GuideStone Funds (GuideStone)

Mr. Fang explained that the goal of the panel was to solicit different perspectives from chief compliance officers (CCOs) regarding new regulations, new products, and new technologies. Citing comments by Commissioner Hester Peirce, Mr. Fang noted that it would not be wise to let compliance monitoring fall by the wayside notwithstanding industry expectations that the new administration will be light on compliance. He noted that the asset management industry wants to get compliance right, particularly in a changing world.

Mr. Fang asked the panelists to discuss the main challenges for their firms. Mr. Harris discussed new product launches, including SSGA's expansion into actively managed fixed income ETFs, and new asset classes such as private credit. He indicated that these launches had prompted a review of valuation policies and procedures, MNPI monitoring processes, and best execution practices. He also noted that SSGA had onboarded two new sub-advisers and was collaborating with the CCOs of those firms to build out fund- and adviser-level policies. Mr. Kuehl commented on recent technological advances, including AI, and the prior administration's accelerated timeline for new rulemaking and guidance. Ms. Sears discussed opportunities for cross-selling products and non-advisory services, noting that this initiative had prompted a review of marketing policies and procedures. She noted that the compliance department at American Beacon wanted to ensure it has a seat at the table for business discussions on the integration of new technologies into day-to-day operations. She added that hiring had been a challenge in a saturated Texas market. Mr. Wolfe explained that GuideStone has historically relied on exemptions under the 1940 Act to launch and operate its investment products, including funds that invest in church plans. He discussed opportunities to convert certain products into CITs and related compliance considerations, including revisiting wrap contracts and valuation matters, as well as replacing sub-advisers as part of cost reduction measures. He also noted that GuideStone was considering private market fund investments and institutional separately managed accounts.

Mr. Fang asked the panelists to discuss challenges presented by new regulations. Ms. Sears cited the Names Rule, noting that, as a manager-of-managers complex, American Beacon was focused on coordinating with sub-advisers on compliance monitoring of 80% policies and recordkeeping requirements. In particular, Ms. Sears discussed the compliance challenges attendant to funds with "growth" and "value" in their names and considerations related to derivatives exposure calculations under the Names Rule. Mr. Wolfe noted that, for multi-managed funds, GuideStone assumes responsibility for compliance at the fund level.

Mr. Fang asked the panelists to discuss challenges presented by new products. Mr. Harris discussed SSGA's new investment grade credit ETF, noting that he had worked closely with CCOs that have experience in private credit to consider potential valuation, liquidity, MNPI, and best execution risks. Mr. Kuehl discussed spot cryptocurrency ETFs. Ms. Sears discussed ETFs, retail separately managed accounts, and model strategies. Mr. Wolfe discussed ETF share class relief and modernized co-investment relief.

The panelists discussed the process for introducing new products to boards. Mr. Harris noted that he has monthly one-on-one meetings with board members and also meets with the legal and compliance committee, providing a high-level summary listing new product launches, potential risks, and risk mitigants. Depending on the new product, Mr. Harris stated, management will schedule off-cycle board meetings to provide updates on open issues prior to seeking board approval. Mr. Kuehl added that compliance needs to build time into new product launches to first educate the board about the new products. Ms. Sears noted that it was important for the board to understand how its oversight role may be different with respect to CITs and other non-1940 Act registered products.

Mr. Fang asked the panelists to discuss challenges presented by new technologies. Mr. Kuehl shared that compliance was playing a bit of "offense" with respect to firmwide AI use, noting that he was working to add personnel with new technologies experience on the compliance team. The panelists commented on instances of new technology rollouts without sufficient coordination with compliance. Mr. Harris noted that SSGA was in the early stages of rolling out Microsoft Copilot and setting up appropriate controls and procedures. Ms. Sears noted that American Beacon was working to build compliance policies and procedures around the potential use of a transcription service. Mr. Wolfe noted that his team was focused on introducing new technologies, such as Microsoft Copilot, to increase efficiency and automation. He also noted that GuideStone had established an AI oversight team.

The panel concluded with a discussion of how CCOs can ensure that compliance has a seat at the table. Panelists discussed goal setting meetings with executive management and collaboration with product launch teams.

Session B: Legal and Operational Issues Around Advisers' Use of AI

Moderator: Mitra Surrell, Associate General Counsel, Investment Company Institute

Panelists: Sarah Bessin, Senior Associate General Counsel, Franklin Templeton

Michael McGrath, Partner, Dechert LLP

Danielle Nicholson Smith, Managing Legal Counsel, T. Rowe Price Associates, Inc.

Justin Williams, Director, Legal and Compliance, BlackRock

This panel focused on the current and potential uses of AI in the asset management industry, the risks associated with these AI uses, and how firms manage those risks within their governance structures and the current regulatory framework for advisers and funds.

Ms. Surrell noted that AI has the potential to improve efficiency, access, and customer service within the asset management industry. She noted that deployment of AI in the industry is rapidly evolving.

Mr. McGrath stated that the best definition of AI is "a system that can perform tasks that typically require human intelligence." He discussed how Congress described AI in the National Artificial Intelligence Initiative Act of 2020 and how the EU has described AI in the EU Artificial Intelligence Act. He stated that the EU's Act differentiates between AI systems and AI models. He noted that an AI system operates with some degree of autonomy, while AI models are characterized by their "significant generality," their ability to perform a wide range of distinct tasks, and the possibility to integrate them into a variety of downstream systems and applications. He noted that the best approach is to not attempt to assess AI based on a single definition but, instead, to approach AI based on what it does.

Ms. Surrell asked the panelists to comment on how asset management firms can use AI. Mr. Williams stated that the use of AI tools is not as new a development as some might think. He discussed ways in which AI-style tools were used during the 2008 financial crisis. Mr. Williams noted that the current approach is to use AI to modernize and improve transparency (such as the algorithmic pricing of certain fixed income securities), reduce costs (such as the use of trading algorithms), and reduce costs for end investors (thereby democratizing access to certain investments). He added that AI is used at his firm in the following ways:

- on the investment side for risk/return models for active managers and for narrowing tracking difference by index managers;
- on the trading side to identify nuanced trading patterns;
- in cyber risk management to analyze network traffic and detect threats.

Ms. Bessin stated that AI offers tremendous benefits for her firm and its investors. She noted that her firm's cultural view of AI is "responsible innovation," meaning that employees are encouraged to use and experiment with AI tools that have been vetted and approved for use by the firm.

Ms. Smith stated that her firm has been using AI for years, noting that generative AI is a new tool. She stated that her firm's goal is "intelligent augmentation" of their use of AI which, she continued, means that AI will be the tool that certain employees will use to give the employees who are subject matter experts more time to do what they do best.

Ms. Surrell asked the panelists to comment on their views of the key risks of AI. Mr. McGrath stated that the key risks include:

- model errors and hallucinations
- model bias risk
- lack of transparency
- data privacy and cybersecurity threats
- overreliance on AI (the risk of skills gaps developing among employees)
- regulatory risk

The panel discussed governance considerations associated with the use of AI. Mr. McGrath noted that the guiding principles come from the anti-fraud rule under the Advisers Act, which informs an adviser's duties of care and loyalty. He explained that an adviser must have a reasonable belief that the advice it provides is in the best interest of the client, meaning that any use of AI must be assessed against this backdrop. Ms. Bessin noted that an AI policy needs to fit into a firm's overall risk management structure. She noted, for example, that her firm has an AI steering committee and a Chief AI Officer. In addition to understanding the AI tools and their use within the firm, the personnel in these roles engage with the compliance team on applicable regulatory requirements in various jurisdictions.

Mr. Williams noted that his firm approaches AI risk management from a fiduciary perspective and has an AI policy as part of its risk management framework. Specifically, he noted that his firm has a two-fold process: (i) AI committees within its business lines that assess AI use cases and (ii) a centralized AI risk review committee that oversees AI matters across the organization. Mr. Williams stated that his firm has established a firm-wide inventory for all AI use cases that includes three criteria for assessing risk: (i) intellectual oversight in the pre-production phase, (ii) model deployment in the production phase (to minimize bias and hallucinations), and (iii) post-production diagnostic testing and performance reporting.

Ms. Smith stated that her firm has a cross-functional team that assesses the proposed uses of AI tools and provides ongoing oversight of those uses. She also noted that employees cannot use generative AI in performing their job responsibilities unless they have received prior consent from the AI steering committee. She also described two different types of AI usage – one in which a human is involved or "in the loop" (which is where the firm is presently) and the second in which the human is "over the loop" (meaning that AI prepares the output and a human can override it). She noted that this latter technology is not currently used by her firm, but she expects to see it in the future.

The panelists commented on the current regulatory framework for AI use, noting that the prior administration was more cautious with respect to AI than the current administration. The panelists agreed that effective AI governance comes back to the fiduciary principles under the Advisers Act.

Session C: Whac-a-Mole: Keeping up with the States

Moderator: Amy McDonald, Assistant General Counsel, Investment Company Institute

Speakers: Jennifer Borden, Principal, Borden Consulting Group, LLC

Robert Kennedy, Associate General Counsel, Regulatory, Edward Jones

Amy Roy, Partner, Ropes & Gray LLP

Phillip Wiese, Associate, Morgan, Lewis & Bockius LLP

Ms. McDonald explained that "whac-a-mole" is the name of a classic arcade game. She noted that it is also a term used to describe a situation where one problem is fixed but another appears, much like the challenge of keeping up with the statutes and initiatives across all 50 states. She observed that, prior to 1996, funds were subject to substantive state regulation and registration requirements in addition to states' anti-fraud statutes. Ms. McDonald explained that, in 1996, the National Securities Markets Improvement Act (NSMIA) was enacted, which preempts state-level registration or qualification requirements for "covered securities," which are typically nationally traded and subject to federal registration. She noted that the states are still permitted to collect a fee and require a simple two-page notice filing (i.e., blue sky notice filings) for mutual funds. She also noted that NSMIA established that the SEC would serve as the primary federal authority for regulating covered securities, with the goal of simplifying the regulatory landscape. Ms. McDonald explained that NSMIA did not render state oversight obsolete, however, adding that states still retain important anti-fraud powers and may suspend the offering or sale of securities for noncompliance with notice filings. Certain state actions, she continued, can pose a risk to investors if states, where permitted, apply different standards that result in disparate impacts on funds and investors. She noted that this panel addresses state issues as they relate to four key topics (i) abandoned property, (ii) ESG, (iii) tax issues, and (iv) privacy and artificial intelligence.

Abandoned Property. Ms. Borden discussed state abandoned property (or unclaimed property) laws and the attendant risks to investors in funds. She explained that states have escheated dormant assets since the 1950s and, while the statutes originally applied to fixed value assets, such as bank accounts and proceeds of insurance policies, states quickly realized that there was a goldmine waiting to be escheated with securities. She noted that states soon moved from auditing banks and insurers to demanding records from issuers and transfer agents. As mutual funds became popular in the 1980s and 1990s, she continued, the focus shifted again. Ms. Borden explained how, originally, securities were only escheated after extended periods of time *and* only when a shareholder could not be located. Alternatively, she noted, some states required that the owner be lost *and* that he or she had a history of failing to cash their dividend checks. In fact, she noted, the Supreme Court at one point noted that 20 years was a sufficient time to demonstrate abandonment. Ms. Borden noted that, at the behest of auditors (who are paid a percentage of what gets escheated), there are now shorter periods of time and lax standards for escheatment. She explained that, in many states, securities are escheatable merely because the owner has been "inactive" for just three years. She added that states' refusal to recognize many common types of activity, such as automatic deposit of dividends and electronic contact, further complicates this landscape. Ms. Borden noted that because it is expensive and complicated to custody securities, most states are liquidating escheated accounts promptly or even upon receipt. She expressed her view that liquidation destroys investment decisions, planning, ownership interests, and that shareholders will not be made whole if the securities have increased in value since the liquidation. Ms. Borden further explained how today's modern technology and related conveniences negatively impact investors because states refuse to recognize online activity. As a result, she noted, once investors realize their assets have been escheated to the state, they tend to sue the funds, even though the funds are merely complying with state law. She noted that, although the SEC has enacted Securities Exchange Act Rule 17Ad-17, which is designed to prevent escheatment, auditors have largely been successful in getting states to circumvent federal rules and demand escheatment even in cases where investors have not abandoned their accounts.

ESG. Ms. Roy provided a summary of state ESG legislation. She outlined that ESG-related bills have been introduced in all 50 states, with actual legislation enacted in at least 25 states. She explained that most of this enacted legislation and state regulatory initiatives have been anti-ESG in nature, largely focused on limiting public retirement plan fiduciaries from considering ESG factors in their decision-making process and mandating that all considerations in the investment process, including proxy voting, must be financial in nature. On the other hand, Ms. Roy noted, pro-ESG statutes or regulatory initiatives, which have been far less in volume, have largely focused on divesting from fossil fuel companies by a future target year. Ms. Roy explained how, over the past year, several legal challenges to anti-ESG statutes have been successful in court. For example, in Oklahoma, a court found an anti-energy boycott statute to be unconstitutional and enjoined its enforcement. Similarly, she noted that SIFMA successfully litigated against Missouri's rule mandating that advisers and broker dealers obtain consent from clients if investments incorporated a "social objective or other nonfinancial objectives." There, she explained, the court struck down the statute on both federal preemption under NSMIA and constitutional grounds.

Mr. Kennedy discussed how Edward Jones is seeing clients and advisers navigate the various states' legislative activity and certification requirements, noting that firms are evaluating state developments by ticking and tying proposed "anti-ESG" legislation and regulations against the framework of Reg BI and fiduciary duties under the Advisers Act. Similarly, Mr. Kennedy noted that when they discuss so-called "blue state" ESG approaches, the industry compares those proposals against, for example, current SEC or reporting requirements in other jurisdictions.

Prospectively, Ms. Roy suggested that state ESG activity is likely to continue, at least as it relates to challenges from so-called "red states." For example, she discussed the recent information request sent by the attorneys general of 17 states to six large asset managers raising concerns that the asset managers may be misrepresenting or not adequately disclosing risks of China investments to investors. Ms. Roy noted that she believes that existing disclosures appear to be generally sufficient under the securities disclosure regime but, given the hot-button nature of the topic, she would not be surprised if the states pursued this inquiry more broadly in the months ahead. As a general matter, however, Ms. Roy noted that, while a number of asset managers have been the target of various information requests and even subpoenas, very few have actually found themselves a litigation target. Ms. Roy noted that, in one of the few examples where a lawsuit was filed – by the Tennessee Attorney General in late 2023 against several large assets managers' alleged violations of Tennessee's consumer protection statute – the case settled earlier this year without any monetary fines or payments, no admissions of wrongdoing, and with only some agreement by the asset manager to enhance its disclosures regarding ESG considerations.

Asked how asset managers should think about navigating the domestic tension while also being mindful of non-US clients, Ms. Roy discussed the industry shift over the past year as asset managers have taken care to revisit their ESG investment practices, ensuring consistency across disclosures and generally being more measured about the manner in which they highlight their ESG commitments. Ms. Roy stated that she believes that, by and large, asset managers are continuing to incorporate ESG factors into their investment processes, as they always have, when financially material to an investment decision and in pursuit of maximizing financial returns. Thus, to the extent that those factors are still being considered, Ms. Roy continued, she urged managers to take care to include appropriate disclosure about those practices, including by continuing to monitor not only what fund disclosures say, but also monitoring what a manager's website, marketing materials, stewardship reports, proxy guidelines, and other materials say about ESG and ensuring that its employees are trained on those disclosures.

Tax Issues. Ms. Roy noted that, at least one state, Maine, has been challenging asset managers' application of the state's tax apportionment statutes, claiming that advisers with shareholders in Maine are not adequately reporting income in connection with the fund fees they are earning from having investors in Maine. The state's position, she noted, is that individual shareholders in *Maine* are receiving and experiencing mutual fund services in Maine, and so advisers should be accounting for revenue from those Maine shareholders in reporting state fee income. In response, she stated, advisers claim that mutual fund services are provided to and received *by the fund itself*, not the ultimate shareholder, and so advisers appropriately account for mutual fund fees (for the most part) in the state where the respective funds are organized or incorporated, usually Massachusetts, Delaware, or Maryland. While shareholders are the ultimate beneficiary of the services provided to the funds, the vast majority of services provided – including the research and selection of securities, ensuring that the fund is in compliance with applicable rules and regulations, and ensuring the funds' prospectuses and other related filings are timely and accurately filed – are provided to and for the fund. Ms. Roy explained that the interpretation of Maine's tax statute and whether mutual fund services are received by the fund or the underlying shareholder is currently being litigated in a Maine state court, the outcome of which could have implications for all asset managers with investors in Maine and other states with similar statutes.

Turning back to concerns about escheatment of abandoned property, Ms. Borden discussed how liquidation in that context can harm investors by causing unplanned tax consequences. The IRS, she noted, has said that escheatment is considered a distribution because the state is not a qualified custodian and, therefore, withholding is required. If there is not enough cash in the IRA, the fund liquidates to pay for the withholding, which creates an unexpected tax consequence, in addition to losing a portion of the investor's investment.

Privacy and Artificial Intelligence. Mr. Wiese addressed privacy issues at the state level, noting that 19 states now have comprehensive privacy laws that mostly address the sale of private consumer data. He discussed enforcement of these laws, noting there has been some activity at the state attorney general level but, in addition, by way of class action litigation. He noted that consumers are suing under a variety of state consumer protection laws, alleging that companies were negligent in maintaining the consumers' data. These suits, he added, often raise breach of contract claims if there was a privacy policy in place. Finally, Mr. Wiese discussed a separate wave of litigation involving wiretapping. Here, he noted, plaintiffs allege that companies use third-party data analytic tools that capture a consumer's communications with a website without adequately disclosing such practices. Mr. Wiese highlighted the importance of having good disclosure policies in place about what third parties with whom managers share information are permitted to do with that information and noted that obtaining consumer consent is also a mitigating exercise.

Mr. Wiese noted that two states, Colorado and Utah, have passed AI legislation. He noted that Colorado's law is focused on automated decision-making and bias issues and applies to "high risk artificial intelligence systems" that make or is a substantial factor in making a "consequential decision." He noted that this statute has required users of AI systems to implement risk management systems and conduct regular reviews and monitoring. Utah's law, on the other hand, is focused on generative artificial intelligence, requiring, for example, financial institutions to prominently disclose when a consumer is interacting with AI or viewing materials created by generative AI.

Keynote Conversation

Speaker: Natasha Vij Greiner, Director, Division of Investment Management, Securities and Exchange Commission

Moderator: Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute

Ms. Donohue welcomed Ms. Greiner. Ms. Greiner noted that the views she would express are her views and not the views of the SEC.

Ms. Donohue asked Ms. Greiner to comment on her experience over the past year in her role as Director of IM. Specifically, Ms. Donohue mentioned that the industry felt less inclined to speak to the SEC staff under its prior leadership because it seemed the SEC staff's priorities regarding policies and rules did not reflect the industry's concerns or input. Ms. Greiner commented on the recent shift in the dynamic within the industry following the 2024 election, noting that engagement with the industry is increasing. She also commented on how she and other SEC staff have contributed ideas to Acting Chairman Mark Uyeda.

Ms. Greiner stated that the SEC has "a lot of tools in our toolbox – a rulemaking is not the only one." She commented on the role of the Office of Chief Counsel and the exemptive relief process, noting that exemptive relief is often preferable to no-action relief because it provides confidence in the ability to rely on the relief for many years, which may not always be the case with no-action letters.

With respect to ETF share class relief, Ms. Greiner stated that the SEC is "in a good place," and credited the positive dialogue IM has had with the Acting Chairman's office. Ms. Greiner noted that there are more than 50 applications on file for ETF share class relief. She believes that exemptive relief is the best way to proceed, noting her belief that the process will move fast but clarified that fast means "government style" fast. She explained that due to changes in delegated authority in 2019, the first handful of applications will be presented to the commissioners for approval. Thereafter, she expects the SEC staff will conduct an expedited review of any applications that follow the approach taken in one of the applications approved by the SEC. Ms. Greiner also noted that she hopes to engage with the ICI's ETF share class working group.

With respect to relief for actively managed semi-transparent ETFs, Ms. Greiner noted the importance of making sure that arbitrage mechanisms are in place, as well as board oversight. With respect to recent applications for expanded and modernized co-investment relief, Ms. Greiner stated that the SEC staff is interested in moving forward and creating a "streamlined process" for such applications to proceed.

Regarding the disclosure review process, Ms. Greiner commented on the importance of early and meaningful engagement with the SEC staff. She noted that especially in the case of novel products, the Chief Counsel's office might need to be consulted if relief is needed. Thus, she noted that early and meaningful engagement with the SEC staff is helpful.

Before concluding the discussion, Ms. Greiner congratulated Ms. Donohue on her illustrious career and wished her well in retirement.

Session D: Fund Governance in a New Era

Moderator: Thomas Kim, Managing Director, Independent Directors Council

Panelists: Anne Choe, Partner, Simpson Thacher & Bartlett LLP

Keith Hartstein, Independent Director, PGIM Funds

Kate Ives, Independent Director, Transamerica Mutual Funds

Paul Williams, Independent Director, American Funds

The panel discussed opportunities and challenges for independent directors at a time of dramatic policy changes, rapid product innovation, and complexity in oversight responsibilities.

The discussion began with a lightning round during which panelists stated the ways in which they believe the industry is in a new era. Mr. Hartstein stated that the role of the board has not changed, and oversight remains the role of the board. He stated, however, the matters over which a board has oversight has changed, noting that there are many new rules and product developments. Ms. Ives stated that the details of what is changing are new, but the themes are the same: industry consolidation and product proliferation. She noted that AI will be a very interesting change. Mr. Williams stated that economic uncertainty is the key characteristic of this new era. He noted that, a few years ago, it was the pandemic, but now it is tariffs and regulatory changes. Ms. Choe remarked that regardless of the characteristics of this new era, she is of the view that the industry is ready to handle the changes and to work with the new administration.

The panel discussed the regulatory environment and the board's role in compliance oversight. Mr. Williams noted that it will be important for boards to stay abreast of developments, especially developments that are deregulatory in nature. He noted that a board's relationships with the CCO and the internal audit team will be more important now than ever before. He also stated that education and training for directors are critically important. The panel noted the importance of effective oversight of service providers, especially with respect to the use of AI.

Ms. Ives noted that boards are spending more time on education due to the proliferation of new regulations. She noted that effective board reporting – such as the use of dashboards – is particularly useful. Ms. Ives echoed Mr. Williams's remarks that a board's relationship with the CCO is very important. She also noted the importance of board executive sessions.

Mr. Hartstein stated that his board has a compliance committee that meets one month before the board meeting. He stated that the committee receives reports from the adviser regarding various compliance matters and provides a summary to the board so all directors are kept abreast of matters covered at the committee meeting. He noted that this has been an effective and efficient way for the board to oversee various compliance matters.

Ms. Choe commented on the status of the implementation of various rules, including the amendments to Rule 35d-1 under the 1940 Act, amendments to Forms N-PORT and N-CEN as well as liquidity rule guidance, short sale reporting guidance on Form SHO, the central clearing of US Treasury transactions and the reporting of securities loans.

The panel discussed product innovations in this new regulatory era. The panelists commented on the more than 50 pending applications for ETF share class relief, noting that it was expected that such relief, if granted, would contain provisions involving the board as conditions of the relief. The panelists also commented on evolving product initiatives designed to provide retail investors with access to private investments, including, among other products, listed closed-end funds, interval funds, non-traded BDCs, REITs, and tender offer funds. The panel discussed effective fund governance practices for a board's engagement with an adviser to encourage open dialogue with respect to new products, such as the ever-increasing need for ongoing education on regulatory, industry, and product trends. The panel commented on generational wealth transfer and remarked that the proliferation of digital platforms is changing the way investment products are marketed and delivered to investors.

The panel noted that it is very important that there be a level of trust and open communication between boards and advisers, noting that such communication is a two-way street. The panelists shared their views of effective ways to foster communication, such as the use of pre-meeting calls and executive sessions. As one panelist noted, "I would not expect to read about something in the newspaper if I have not heard about it previously at a meeting."

Session E: Full Disclosure: Implementing the Names Rule and Addressing Other Fund Disclosure Issues

Speakers: Erica Evans, Assistant General Counsel, Investment Company Institute

Laura Bautista, Associate General Counsel, The Vanguard Group

Timothy Moon, Senior Counsel, Capital Group

Corey Rose, Partner, Dechert

Michael Spratt, Assistant Director, Disclosure Review and Accounting Office, Division of Investment Management, Securities and Exchange Commission

This session focused on various issues and hot topics related to fund disclosure. Noting that the SEC's disclosure staff will be the frontline in regulating funds' implementation of the 2023 amendments to the Names Rule, the panelists discussed the implications of the SEC's recent extension of the compliance date for those amendments. The panelists agreed that the extension would provide much-needed time as fund managers continue to work through the operational challenges created by the amendments. Some of the specific challenges that the panelists cited as potentially benefiting from additional time to consider and resolve included (i) for a multi-manager fund with "growth" in its name, aligning on a definition of "growth" that could reflect the various sub-advisers' interpretations of that term, (ii) connecting compliance systems to reporting systems for purposes of meeting the Names Rule-related Form N-PORT requirements, and (iii) working with vendors to address the significant operational challenges in building systems that measure the notional, rather than market, value of derivative instruments.

Mr. Spratt underscored that IM staff's primary objective in enforcing the Names Rule amendments through disclosure comments would be to ensure consistency across the comments provided to various registrants. He summarized the various processes IM has in place to seek to ensure this objective, including training for reviewers and the need for at least two levels of review on any filing. He also indicated that, if fund managers have additional questions that they think could be clarified by FAQs beyond the ones IM published in January, they should make that known to IM senior staff. Mr. Spratt noted that IM is beginning to see disclosure changes in anticipation of compliance with the Names Rule amendments. For example, he noted that registrants are beginning to state in registration statements that, for purposes of compliance with an 80% test, they will measure derivatives exposure using notional, rather than, market value. He stated that IM has not objected to early compliance with this component of the Names Rule amendments. More generally, he stated that, while IM will seek to ensure a reasonable nexus between a fund's name and its 80% test, it will not second-guess reasonable decisions.

The panelists discussed the implementation of tailored shareholder reporting. In response to a question as to whether ETFs would be able to show average annual total returns based on market price, rather than net asset value, Mr. Spratt explained that the IM staff's position that the returns must be shown based on net asset value results from a strict interpretation of form requirements, but that the staff also recognizes that ETF shareholders are earning returns based on market price and indicated that the staff would be willing to engage further on the question.

Mr. Spratt discussed themes and areas of focus for the IM staff. Two areas that he underscored were (i) derivatives-focused funds and (ii) private credit-focused funds. For derivatives-focused funds, he noted that recent popular flavors of these include (i) covered call funds, (ii) leveraged funds, particularly for single stocks, and (iii) defined outcome funds. For any of these, he stated, the key is to describe the investment strategy and risks in understandable language. Specifically, with respect to single-stock funds, he said that the IM staff looks to ensure that the registration statement includes sufficient information about the risks attendant to not only the fund but also the underlying stock. He noted that IM has become comfortable allowing a single-stock fund's VaR for purposes of Rule 18f-4 to be based on the underlying stock rather than on an index. For defined outcome funds, he said that the disclosure needs to make clear that an investor's return could differ if they do not buy in or exit at the set dates. Regarding private credit-focused funds, he said that the IM staff focuses on ensuring that the disclosure explains how the fund originates, evaluates, and values private credit, as well as, for an open-end fund, how it evaluates the liquidity of private credit assets.

The discussion of private credit-focused funds led to a discussion of the SEC's review of novel products. Mr. Spratt explained that novel products require coordination across various offices of the SEC (citing, for example, the Chief Counsel's Office within IM and the SEC's Division of Economic and Risk Analysis) and, for truly groundbreaking products, consultation with the offices of the commissioners. Given the pressure of completing this coordination within the 75 days between a Rule 485(a) filing and automatic effectiveness, he encouraged that, for novel products, fund managers (i) engage with the SEC staff prior to a Rule 485(a) filing, and (ii) respond thoughtfully to SEC comments and do so well in advance of automatic effectiveness. He asked that fund managers recognize that there may be occasions when the level of required coordination across the SEC necessitates requesting that a registrant delay effectiveness. He also noted that, where a registrant proceeds with automatic effectiveness despite such a request, the SEC staff has tools available to it.

Session F: Trillion-Piece Puzzles: 2025 Tax Legislation & Tax-Driven Product Trends

Moderator: Mike Horn, Deputy General Counsel, Tax Law, Investment Company Institute

Speakers: Pamela Glazier, Partner, Ropes & Gray LLP

Jeff Kummer, Managing Director, Deloitte Tax LLP

Joy Lopez, Head of Investment Tax and Vice President, Dimensional Fund Advisors & ICI Tax Committee Chair

Introduction. Mr. Horn provided context for the "trillion" reference in the session's title, noting that the topics of tax legislation and tax-driven products involve dollar amounts into the trillions.

Tax Legislation in 2025. Mr. Kummer discussed why trillion-dollar tax legislation is likely in 2025. Tax relief provisions for individuals that were passed as part of the Tax Cuts and Jobs Act (TCJA) in 2017 are scheduled to sunset at the end of 2025, which would result in 60% to 70% of individuals paying more tax beginning next year. This has Republicans in Congress and the White House focused on extending those provisions. A number of meaningful business tax provisions are scheduled to expire as well, but the individual provisions are really driving the focus.

Mr. Kummer explained that we are not yet at the stage where there are actual legislative proposals, rather we are in the "process" phase. An important aspect of the process is the political landscape. With Republicans having control of both the House and the Senate, Congress can use the budget reconciliation process to pass major tax and spending changes along party lines. However, the narrow majority in the House will affect which provisions ultimately are included in a tax package. While House Republicans are aligned on extending TCJA provisions, there are very different ideas within the caucus. Some are more focused on spending cuts, while others are focused on protecting Medicaid, and some want to increase the state and local tax (SALT) cap, and others want to extend the existing SALT cap, for example.

In terms of next steps in the process, the Senate and House have each approved a budget resolution, but the resolutions are quite far apart. Once a single resolution is agreed upon, it can go through the budget reconciliation process. This process provides that legislation can be passed with a simple majority in both the House and the Senate. However, budget reconciliation involves a number of rules, with a focus on a top line number of the impact on tax receipts over the first 10 years. That is why TCJA provisions are expiring this year, as the $1.5 trillion of TCJA tax cuts must go to zero by 2028.

Mr. Kummer turned to what provisions might be included in tax legislation this year. This includes things like individual tax rates, the double standard deduction, and estate tax provisions, among a number of other individual and business provisions. Last May, the Congressional Budget Office estimated that extending these provisions would cost about $4.6 trillion over a 10-year period. In addition, the President has a number of other proposed tax cuts, including no taxes on tips, overtime, and social security. Such provisions could cost another $1.5 to $2 trillion over a 10-year period.

Mr. Kummer added that ideas for tax increases on high-income individuals (such as increasing capital gain tax rates for certain individuals and implementing wealth tax ideas) can likely be set aside for now given the political landscape.

Mr. Horn turned the focus to tax legislation in the asset management space, noting that ICI is engaged in the tax reform process. In addition to defending certain provisions, such as those relating to retirement savings, ICI looks for strategic opportunities to pursue tax reforms for regulated investment companies (RICs). Ms. Lopez provided background on the rules, noting that the framework for the RIC rules goes back to 1936, with the most recent meaningful update occurring in 2010. Much has changed in the industry even since then, and the rules have not kept up. As an example, she described looking at a new product and trying to see if it meets the definition of a "security." The rules as adopted were not meant to govern things like commodities or cryptocurrency, or even sector funds.

Ms. Lopez explained that the ICI has reached out to Treasury on a number of items. One is to address issues with certificates of residency (CORs), which is an IRS form needed in certain jurisdictions to obtain preferential treaty rates. When IRS is delayed in the process of providing CORs, taxpayers miss out on treaty benefits that can be very difficult to recoup later. ICI also has been working with Treasury and IRS to obtain a regulatory change that would permit RICs to do tax-free spin-offs. However, all regulatory matters are currently subject to the regulatory freeze put into place by the current administration.

Ms. Glazier turned back to some of the legislative proposals the industry would like to pursue. One important area of potential reform involves the RIC qualification tests. For example, the RIC diversification tests could be modified substantially by eliminating one of the tests, increasing limits, providing exceptions for funds that are diversified under the 1940 Act, or even outright repeal. The RIC qualifying income rules could be updated by expanding the types of assets that give rise to qualifying income (e.g., commodities, cryptocurrency, fees received in lending transactions, investments in private funds, among others). The industry is also focused on improving tax efficiency. Ms. Glazier noted that the proposed GROWTH Act would defer tax on capital gain dividends that are reinvested until shares are sold. In response to a question from the audience, Mr. Kummer noted that it is too early to forecast the likelihood of the GROWTH Act's enactment. Legislative proposals also include matters relating to distributions, such as eliminating Section 19(b) of the 1940 Act and Rule 19b-1 thereunder and passing through the character of short-term capital gains, and easing tax compliance burdens.

Tax Driven Product Trends. Ms. Glazier noted that investors, especially high net worth individuals, are increasingly focused on tax efficiency in making investment decisions. Ms. Lopez added that on the asset manager side, once fees are taken out of the picture, investors are largely focused on after-tax returns. Asset managers need to stay competitive, and improving tax efficiency is a way for managers to differentiate themselves.

Ms. Lopez noted that one way to achieve tax efficiency is to consider what wrappers might be tax efficient, one clear example being ETFs. Ms. Glazier noted the huge increase in the number of ETFs in the past five to 10 years. It is not just an increase in the number of ETFs, but also an expansion in the types of assets and strategies being put in an ETF wrapper. The number of actively managed ETFs has increased, for example. ETFs have also expanded in cryptocurrency and, most recently, private credit. One important consideration as part of this expansion is that ETFs do not always provide the same level of tax efficiency for all asset classes and strategies, and, therefore, ETFs do have their limits.

Ms. Glazier further described that assets can also be moved into ETFs in a tax-efficient manner, including by converting mutual funds and separately managed accounts (SMAs) to ETFs, and the industry has seen a large number of such conversions in the past few years. The next step is the ETF share class relief. Over 50 applications for an ETF share class have been filed with the SEC. If and when exemptive relief is implemented, asset managers will need to contend with a number of operational considerations to combine into one fund the different ways mutual funds and ETFs operate.

Ms. Glazier turned to a different wrapper, SMAs, largely used by high net worth individuals. SMAs provide a customized portfolio, with the principal tax benefit being the ability to harvest losses. The SMA manager is able to identify securities to sell at a loss to offset the investor's gains from other activities. However, the tax wash sale rules prevent the SMA from reinvesting in the same or substantially identical security in a short a period of time surrounding the sale of the loss security. In certain circumstances, tax-exempt investors also may use an SMA, but the benefits may be reduced. For example, it can be harder for a tax-exempt investor to obtain favorable treaty rates for foreign investments compared to investing through a fund.

Ms. Lopez described a third wrapper, undertakings for collective investment in transferable securities (UCITs), which are non-US investment companies. Unlike US mutual funds, UCITs offer accumulating share classes in addition to distributing share classes. An accumulating share class allows investors to automatically reinvest without tax – the growth accumulates and is not taxed until the investor sells shares.

Ms. Lopez noted that some asset classes and strategies tend to be more tax efficient than others. These include municipal bond funds, equity growth strategies that have low turnover and lower recurring income, dividend strategies that have recurring dividend income taxed at lower capital gain rates, and international equities due in part to foreign tax credits.

There are also some asset classes that tend to be less tax efficient, and it is important to manage risk and income levels here, as well. Ms. Glazier provided examples of such asset classes, including those that generate large amounts of ordinary income such as high-yield bonds. Under current law, commodities and cryptocurrencies are held by RICs through offshore subsidiaries, which results in ordinary income. Private investments that might result in non-qualifying RIC income may be held through a corporate blocker, which pays corporate taxes on any income or gain.

Ms. Lopez and Ms. Glazier discussed tax-exempt investors. While these investors do not pay tax, they need to stay mindful of what they are investing in, as they are subject to different rules that can affect their tax-exempt status. In addition, they are still subject to some taxes, such as foreign taxes and taxes on income earned from an unrelated trade or business (UBTI). With respect to UBTI, RICs can be a helpful wrapper in that they "block" UBTI from flowing through to tax-exempt investors, master limited partnerships (MLP) funds being an example demonstrating this benefit.

Collective investment trusts (CITs) are pools of tax-exempts that can be an attractive option as well. They have a lower administrative burden to obtain treaty benefits compared to operating independently, and they are able to achieve better treaty rates compared to investing through a mutual fund or ETF. As with other products, this is not always a perfect solution. The administrative process of proving the CIT's exempt status can be quite arduous and, even then, tax withholding may occur upon payment, requiring the CIT to reclaim such tax. This can make it difficult for tax-exempt investors to get the zero tax rate they might otherwise be expecting. But there is hope. Mr. Horn noted that they have started to see zero percent withholding for CITs investing in Switzerland.

Mr. Horn concluded by discussing the concept of "tax locations." Investors who have multiple accounts with different tax treatment (such as a traditional IRA, a Roth IRA, taxable accounts, etc.) need to be thoughtful about which assets go in which account. For example, municipal bonds investments should go into a taxable account whereas taxable bond investments would generally be placed in a tax-deferred account.

Session G: The Impact of Recent Judicial Decisions and Executive Orders on Regulatory Authority and Process

Moderator: Julia Ulstrup, Executive Vice President and General Counsel, ICI Mutual Insurance Company

Panelists: Melissa Gainor, Partner, Kirkland & Ellis LLP

Sarah Levine, Partner, Jones Day

Judson Littleton, Partner, Sullivan & Cromwell LLP

Ms. Ulstrup introduced the panelists and explained that the focus of the panel would be recent judicial decisions of note, the 2025 Trump EOs, and the potential impacts on agency authority and process.

Mr. Littleton noted that there have been numerous judicial developments, adding that over the past few years, it has been a good time for people who sue the government. He noted that the Supreme Court has emphasized the "major questions doctrine," pointing to examples such as the COVID vaccine mandate, student loan forgiveness, power plant regulations, and the use of renewable sources of power. He explained that, if an agency wants to do something that is broad and consequential, it has to be clearly supported by the relevant statute. Pointing to the *Loper Bright Enterprises v. Raimondo* decision, he discussed the impact of the Supreme Court's decision to overturn the longstanding *Chevron* doctrine, rejecting the notion that an ambiguous statute acts as an implicit delegation of authority to the relevant agency. He noted that, notwithstanding the decision, the Supreme Court indicated that prior agency rules decided under the *Chevron* doctrine remain settled law until individually challenged.

Mr. Littleton discussed the *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* decision, which relates to the time limit for appealing agency decisions to invalidate rules. In *Corner Post*, he noted, the Supreme Court found that the general six-year statute of limitations applies for six years from the date the rule impacted the complainant rather than six years from the date of the rule. He also discussed the *Ohio v. EPA* decision, where the EPA's actions were deemed to be arbitrary and capricious because they failed to respond to a single comment letter on an agency rulemaking proposal.

Ms. Levine discussed the SEC's climate disclosure rule, indicating that it appears that the rule will be subject to a strict construction or necessary and proper standard. She noted that, after the *West Virginia v. EPA* decision, which found that the EPA cannot regulate power plants without specific statutory authority, it appears unlikely that the SEC can regulate climate disclosure. She noted that many states and agencies have filed briefs in support of or against the rule, adding that the advent of the Trump administration changed the trajectory of the case.

Ms. Gainor discussed the private fund adviser rules promulgated pursuant to Sections 211(h) and 206(4) of the Advisers Act and the Fifth Circuit's decision to vacate the rules, finding that the SEC had exceeded its authority. She also commented on the SEC's decision to not pursue a challenge in the case.

Mr. Littleton explained that there has been movement on the constitutional limits to the types of remedies available to an agency for violations of its rules. In the *SEC vs. Jarkesy* decision, he noted, the Supreme Court stripped the SEC of its ability to use in-house tribunals when seeking civil penalties against individuals accused of securities fraud. He noted that the Court had found that the Seventh Amendment entitles a defendant to a jury trial and that the SEC cannot force a defendant into internal administrative proceedings in front of SEC administrative law judges in such cases and must instead pursue such claims in federal court. He explained that, under the Court's reasoning, civil penalties are like suits at common law in that one must be afforded a jury trial prior to the imposition of such penalties. He added that similar logic would apply to Office of the Comptroller of the Currency and Department of Labor rules.

Ms. Levine discussed the 2025 Trump EOs, noting that there have been approximately 100 EOs so far. She explained that, normally, the Department of Justice reviews the legality of EOs, but that this has not happened under the Trump administration, so there may be litigation about the legality of various EOs. As an example, she described the February 18, 2025 EO regarding agency accountability, which requires that named agencies submit budgets and final rulemaking for review by the Office of Management and Budget (OMB). She noted that the SEC has not traditionally followed this process, but will have to do so going forward, which adds another layer of process. She added that the process does not skip the *Federal Register* publication requirement. She explained that the Trump administration believes that only the President and the Attorney General can interpret US law for the executive branch. She stated that it is unclear who will litigate such matters — the Department of Justice or the Attorney General – adding that many of these EOs will be potentially subject to litigation. Finally, she noted that the Crypto EO, coupled with the withdrawal of SEC staff guidance under SAB 121, would have an impact on the crypto industry.

Ms. Gainor explained that there is currently a lot of uncertainty around the impact of the EOs on agency rules, particularly with regard to the various process changes. She noted that SEC rules require three Commissioner votes for approval and that the SEC staff must perform an economic analysis on each proposed rule. With the newly required OMB review, she added that it is unclear what the impact on the timing of rulemaking will be, adding that it takes a long time for a rule to go from idea to adopted rule. In response to a question from Ms. Ulstrup regarding the impact of the federal hiring freeze and resignations, Ms. Gainor states that she expects rulemaking to slow down in the near term.

In response to an additional question from Ms. Ulstrup, Ms. Levine described recent SEC "off channel communications" settlements as compared to those under the prior administration, explaining that prior settlements tended to be more costly, whereas more recent settlements are more reasonable. She indicated that, as a matter of fairness, some firms may seek to renegotiate prior settlements, either by bringing suit in federal court or by appealing to the SEC. She noted that if the SEC consents to reduced penalties and settlements, the courts should agree to the reductions. In addition, she suggested that firms may seek to modify prior settlements to reduce or eliminate their use of costly independent compliance consultants.

Ms. Ulstrup asked the panelists to discuss what all of this means for SEC staff guidance under the new administration. Ms. Gainor responded that the no-action letter is back, pointing to the recent Rule 506(c) letter and indicating that she expects similar examples of helpful guidance will be forthcoming. Mr. Littleton noted that courts are more aggressive with judicial review under the Administrative Procedures Act (APA) and that the withdrawal of no-action guidance is akin to revoking a license.

Ms. Ulstrup asked the panel what they see as coming next. Ms. Gainor indicated that she expects a significant amount of SEC staff guidance in 2025. Ms. Levine explained that she expects significant structural changes at the SEC due to the EOs, including shifts in agency authority. Mr. Littleton questioned whether the SEC and the Trump administration can make changes that will have a lasting impact.

In response to an audience question about the deregulation EO's requirement that 10 rules be examined for withdrawal or reconsideration for every new rule proposed, Ms. Levine noted that she expects that the SEC's ability to propose new rules will be curtailed. Ms. Gainor agreed, adding that the timing of rulemaking will be impacted.

When Generations Connect: Navigating Generational Divides

Speaker: Phil Gwoke, CEO and Generational Expert, BridgeWorks

This session focused on generational dynamics and how to navigate generational divides. Mr. Gwoke noted that, in today's workforce, four distinct generations – Baby Boomers (1946 to 1964), Generation X (1965 to 1980), Millennials (1981 to 2000) and Generation Z (2001 to 2012) – work alongside each other, with each generation characterized by a unique set of experiences that influence its attitudes, values, and work styles.

Mr. Gwoke explored the historical and cultural events that shaped each generation, highlighting the "why" behind the differences in the identity and insights of each generation and its preferred communication style. He noted, for example, that Baby Boomers were shaped by events such as the Vietnam War and the Civil Rights movement, commenting on the widespread use of slow and stationary rotary dial telephones. He noted that this generation is competitive and values timeliness and a polished demeanor. He suggested that one way to motivate Baby Boomers is by tapping into something they believe is valuable, and also noted that this generation will rally behind ideas and causes that it perceives as important.

Mr. Gwoke turned his attention to his generation, Generation X, shaped in a period characterized by advances in communication and a significant increase in divorce rates. He suggested that, as a result, Generation X is skeptical, independent thinking, and efficient with time. He offered that the most effective way to resonate with Generation X is to be a resource and to provide its members with the ability to make decisions for themselves (e.g., come with a solution, not a problem).

Mr. Gwoke commented on the rate of change experienced by Millennials, noting that approximately every two years, their method of communication changed – from a pager to the first cellular phone, then the flip phone, then the iPhone, texting and FaceTime. He highlighted that Millennial technology is essentially rendered useless every few years, meaning that this generation is accustomed to looking for something new, always searching for a way to become a better version of itself. He suggested that a Millennial's driving motivation is teamwork, a fun, collaborative, and innovative environment where one leads with understanding and an explanation of the "why."

Finally, Mr. Gwoke noted that, for Generation Z, life has been characterized by access to technology from a very young age. He noted that this generation yearns for human connection, describing its members as risk averse, resolute, and coachable, with mental health being a top priority. He suggested that Generation Z members are motivated by expressions of confidence in their abilities, creating a roadmap for the steps that need to be taken in order achieve success. He also suggested that Generation Z prefers frequent touch points, but for shorter amounts of time.

Following a question, Mr. Gwoke offered tips on planning for, and executing on, multi-generational meetings, including creating opportunities for different generations to be the highlight. For example, he suggested hosting in-depth and timely meetings for Baby Boomers, then shifting gears to a fun and collaborative working session for Millennials and ending with a quick results-driven discussion for Generation X. Mr. Gwoke closed with observations about how the different generations can be motivated, allowing every team member to feel empowered and valuable.

Keynote Remarks and Conversation

Speakers: The Hon. Carolyn Crenshaw, Commissioner, Securities and Exchange Commission

Naseem Nixon, Chief Compliance Officer and Senior Counsel, Capital Research and Management Company

Commissioner Crenshaw opened her remarks by reflecting on how the 1940 Act and the Advisers Act have developed over the years. She observed that funds began to grow as a tool to pool assets prior to the 1929 market crash. She noted, however, that abuses proliferated, funds were run out of sponsor self-interest, not shareholder interest, and they were used as repositories for unworthy securities. She stated that the Report on Investment Trusts in the 1930s described these abuses in detail, ultimately resulting in the 1940 Act and the Advisers Act.

Commissioner Crenshaw noted that the 1940 Act had the support of many industry leaders who recognized that building a successful industry required rooting out bad practices. She explained that the 1940 Act has a number of specific requirements aimed at preventing bad practices, such as requirements relating to valuation and service-provider relations and limits on affiliated transactions. In contrast, she noted that the Advisers Act is more principles based, but it places a burden on investment advisers to act pursuant to the duties of loyalty and care. She added that these laws were the foundation upon which the successful registered investment company was built.

Commissioner Crenshaw discussed the role of the SEC and how it remains important. She noted that President Roosevelt recognized that the 1940 Act and the Advisers Act affirmatively granted powers to the SEC and the importance of the SEC to the industry. She noted that a strong SEC that is fair, transparent and holds people accountable for misdeeds supports the industry. She discussed several current issues that can impede the SEC, specifically, job insecurity, criticism of the SEC staff for following lawful directives, and registrants ignoring SEC staff comments.

Commissioner Crenshaw said that the SEC listens to the industry, offering the controversial mandatory swing pricing proposal from 2022 as an example. But she also said that SEC actions should be deliberative and questioned recent guidance from the SEC staff that was issued without the opportunity for a notice-and-comment period, such as the recent guidance relating to Section 13 filings, Rule 506(c), and crypto tokens. She also expressed concern about what she described as the "rush" to expose investors to risky and illiquid assets through ETFs, saying that "perhaps not everything is an ETF."

Following Commissioner Crenshaw's remarks, she and Ms. Nixon held a fireside chat. Some of the points made during the discussion included:

- Commissioner Crenshaw has private practice and SEC staff experience, both of which are useful in her current role. She has written rules and understands how it is easier to critique a rule than write a rule.
- The SEC's structure is impressive and designed to be balanced and not to swing too far from its mandates. She believes it has stayed that way. Although the commissioners do not always agree on specific policy proposals, they all agree on the fundamental precepts (e.g., protecting markets) and working together constructively. Dissents make the news, but most of the SEC's work is bipartisan and does not make the news.
- It is important for investors to understand the products in which they are investing.
- The 2023 enhanced safeguarding rule proposal for investment advisers (also known as the custody proposal) has flaws.
- The comment process is important. The industry should engage with the SEC staff, and it is more helpful when commenters provide data and specific suggestions.
- The SEC has historically been a "lean" agency, and she is concerned that if it does not have adequate staff, the SEC will not have sufficient resources to fulfill its mission, including the comment and review process for filings, the preparation of guidance, and responding to industry issues.

General Session: Reimagining the 1940 Act: Key Recommendations from ICI's Multi-Year Review

Moderator: Rachel Graham, Associate General Counsel and Corporate Secretary, Investment Company Institute

Panelists: Thomas Bogle, Partner, Dechert LLP

Bruce Leto, Partner, Stradley Ronon Stevens & Young LLP

Paulita Pike, Partner, Ropes & Gray LLP

Following initial remarks by Eric Pan, President and CEO of the ICI, Ms. Graham introduced the panel. She observed that it has been more than 30 years since the SEC last reviewed the regulatory framework of the 1940 Act and recommended reforms. She explained that, over the last three years, the ICI has developed a blueprint for reform working with its members and three outside law firms:, Ropes & Gray, Dechert, and Stradley Ronon. Ms. Graham noted that the ICI's recommendations are guided by two principles: first, that the core of the 1940 Act regulatory framework remains fundamentally sound, and second, that any proposed changes need to advance the interests of fund shareholders.

Ms. Graham explained that the ICI's recommendations are grouped into four important topics: (i) fostering ETF innovation, (ii) expanding retail investors' access to private markets, (iii) eliminating unnecessary regulatory costs and burdens, and (iv) better leveraging the expertise and independence of fund directors. Ms. Graham asked the panelists to take the audience through the ICI's recommendations, which are noted below.

1. Fostering ETF innovation

Enable new or existing funds to offer both mutual fund and ETF share classes. In the 2000s, the SEC granted one fund sponsor exemptive relief to offer mutual funds with an ETF share class. It has not done so since. Since 2023, more than 40 fund sponsors have filed applications seeking relief to offer funds with both mutual fund and ETF share classes. Permitting a fund to offer both mutual fund and ETF share classes would promote efficiency and economies of scale and provide more options for fund investors.

Expand permissible asset classes for semi-transparent ETFs. Semi-transparent ETFs currently can only hold US equity exchange-traded securities under a line of exemptive orders previously granted by the SEC. The ICI recommends that semi-transparent active ETFs be permitted to hold fixed-income securities, foreign securities, and other asset classes, which will give investors greater choice and promote competition.

2. Expanding retail investors' access to private markets

Allow closed-end funds additional flexibility to invest in private funds. The SEC staff currently prohibits a closed-end fund from investing more than 15 percent of its net assets in privately offered funds, unless the closed-end fund's shares are available only to accredited investors who make minimum initial investments of at least $25,000. The ICI advocates eliminating this requirement so that retail investors can gain exposure to the same opportunities for investment returns from alternative asset classes enjoyed by accredited investors.

Remove the annual shareholder meeting requirement for listed closed-end funds. Stock exchange listing requirements, rather than any statutes, require closed-end funds to hold annual shareholder meetings. This has created an end-run around the investor protections the 1940 Act is intended to provide. Activist investors, who have an outsized voice in these meetings, can force liquidity events or other actions – such as a change in investment strategy or even ouster of the fund adviser – that benefit the activist at the expense of the fund and its shareholders.

Let fund boards rely on state-recognized anti-takeover measures. Given the detrimental effect that activist investors can have on closed-end funds, a fund's board should have the discretion, consistent with its fiduciary responsibilities under the 1940 Act and state law, to employ one or more anti-takeover defenses long recognized under state law. These defenses include (i) opting into (or remaining subject to) a "control share statute," which limits a concentrated shareholder's ability to exercise its votes, (ii) shareholder rights plans, (iii) adopting bylaws with terms designed to protect the fund, (iv) requiring a majority of outstanding shares to elect directors, and (v) limiting the authority of non-continuing directors.

Update the framework for fund co-investments. The SEC has issued numerous exemptive orders permitting a closed-end fund and one or more other funds and their affiliates to enter into co-investment transactions, subject to certain conditions. However, the exemptive orders set forth a complex and rigid set of conditions that are based on unrealistic and outdated assumptions about, for example, the nature of follow-on investments and the appropriate role of independent directors with respect to individual investment decisions by funds. The ICI recommends revising co-investment exemptive orders to follow a more principles-based structure or, alternatively, to adopt a new rule that would enhance the co-investment framework.

More flexibility for closed-end funds in providing repurchase opportunities to their investors. The ICI recommends that Rule 23c-3, which governs interval funds, be amended to (i) permit greater flexibility in the size of each repurchase offer, and (ii) expand the current *de minimis* exception to the requirement that offerings be processed on a pro rata basis. Further, the ICI recommends that the SEC codify exemptive relief already broadly given to interval funds to permit them to repurchase shares on a more frequent basis than Rule 23c-3 permits.

Let interval funds and tender offer funds operate as series companies. The SEC should permit interval and tender offer funds to operate as series trusts, similar to open-end funds. Allowing these continuously offered closed-end funds to operate as series companies would enable fund sponsors to save the time and expense associated with launching separate registrants.

3. Eliminating unnecessary regulatory costs and burdens

Adopt electronic delivery of information as the default delivery option. Electronic delivery should be the default method for communication with fund investors, who would retain the option for a paper copy to be mailed.

Streamline the shareholder approval process. The 1940 Act imposes a heightened threshold for shareholder approval of certain actions, including changes to fundamental investment policies, approval or modification of investment advisory and principal underwriting contracts and certain distribution arrangements, and mergers of affiliated funds (1940 Act Majority). The SEC should create additional ways for funds to satisfy the 1940 Act Majority standard and should consider allowing certain events, such as changes in fundamental investment policies and switching from diversified to non-diversified status, to proceed without shareholder approval, subject to appropriate protections.

Restore the ability of funds to cross-trade. The SEC's December 2020 rulemaking on fair valuation changed the definition of a "readily available market quotation." The practical effect of this was to essentially eliminate the ability of funds to cross-trade fixed income securities under Rule 17a-7. The SEC should revisit Rule 17a-7 to restore the ability of funds to cross-trade securities that were previously eligible for cross-trades.

Allow closed-end funds to use more than one type of debt. Closed-end funds may be unable to engage in financing arrangements that would be favorable to their shareholders. For example, a closed-end fund that obtains leverage through an unsecured lending facility may be able to obtain leverage on better terms by refinancing a portion of its existing indebtedness with a secured facility. The SEC's current interpretation of Section 18(c) does not permit this arrangement. Further, some of its interpretations are unclear.

Permit continuously offered closed-end funds to offer multiple share classes. Rule 18f-3 allows open-end funds to offer multiple classes of shares. The SEC has allowed closed-end funds to do so, but only pursuant to exemptive applications. The SEC should codify the previously granted exemptive relief for closed-end funds, which relies largely by analogy on the protections imbedded in Rule 18f-3 for open-end funds.

Streamline notification requirements for distributions. Section 19(a) of the 1940 Act and Rule 19a-1 thereunder prohibit a fund from making a distribution from any source other than the fund's net income unless the distribution is accompanied by a notice to shareholders that adequately discloses the sources of the payment. These requirements are outdated in light of technological advances and the fact that the record owners of fund shares are now often broker-dealers and other intermediaries. The SEC should adopt a rule that allows a fund to provide this disclosure on its website, rather than in a specific notice mailed to shareholders.

4. Better leveraging the expertise and independence of fund directors

Update requirements for in-person voting by directors. Fund boards must approve certain matters at an in-person meeting (e.g., the advisory agreement). Since the adoption of these requirements, however, technology and videoconferencing capabilities have vastly improved. Further, the SEC has granted temporary exceptions, most recently in response to the COVID-19 pandemic. The SEC should grant permanent relief and boards could adopt policies and procedures that specify the intended frequency of in-person meetings, identify whether particular matters must be discussed in person, and establish parameters (technology and security protocols) for meetings with remote participation.

Permit streamlined board approval of new subadvisory contracts and annual renewals. The decision to enter into a new subadvisory agreement requires board (in-person) and shareholder approval. The SEC has granted relief to many fund complexes from the shareholder (but not board) approval requirement, subject to detailed conditions. The use of unaffiliated subadvisers by funds has grown dramatically, and the day-to-day oversight of those subadvisers, as well as the arm's-length negotiation of their contracts, falls to the adviser. The SEC should reconsider the role of fund boards, such that fund boards would not necessarily have to review every sub-advisory agreement every year. Alleviating the burden of routine approvals would not lessen directors' obligations to oversee the nature and quality of advisory services being provided to a fund, which the board would consider on an ongoing basis.

Revise the "interested person" standard. Under the 1940 Act, an individual is considered an "interested person" of the fund (i.e., not independent) if they have any direct or indirect interest in a principal underwriter or subadviser. This means that independent directors must manage their personal investments to ensure that they do not hold any securities issued by any principal underwriter or subadviser engaged by a fund within the complex or any parent company of such principal underwriter or subadviser. Under the modern financial industry, in which financial services firms are acquired or may have remote affiliates with whom an independent director may have a business relationship, the restrictions under the 1940 Act are difficult to monitor and may result in adverse tax consequences for independent directors who are forced to sell securities at inopportune times. These burdens can disincentivize high-quality candidates from serving on certain fund boards and potentially lead to delays in replacing underperforming subadvisers. The SEC should revise this overly rigid standard, including to address inadvertent interests and *de minimis* situations that do not impact independence. This could be achieved through rulemaking or the exemptive application process.

Permit fund boards to appoint a greater number of new independent directors. The 1940 Act generally requires that at least two-thirds of a fund's board of directors be elected by the fund's shareholders. This limits the ability of fund boards to add directors or fill vacancies without obtaining shareholder approval through expensive proxy campaigns. Directors may take extended periods of time to identify and elect new board members, which can deprive shareholders of the expertise and perspective of those potential board members for months, if not years. Boards should be permitted to appoint a greater number of new independent directors without having to seek shareholder approval.

Update fund board responsibilities with respect to auditor approval. While the 1940 Act requires a fund board to select an independent auditor at least annually at an in-person meeting, it is the audit committee that has oversight responsibilities with respect to a fund's financial reporting processes. Regulation S-X, adopted following the Sarbanes–Oxley Act of 2002, requires the audit committee to approve the engagement with the auditor to provide audit services. Further, the audit committee for any listed fund must be "directly responsible" for the appointment, compensation, retention, and oversight of the independent auditor. The SEC should provide an exemption that allows a board to ratify the audit committee's selection of the independent auditor other than at an in-person meeting.

Retailization of the Private Markets

Moderator: Kevin Ercoline, Assistant General Counsel—Securities Regulation, Investment Company Institute

Speakers: Eve Cout, Head of Portfolio Design & Solutions for US Wealth Advisory, BlackRock

Christopher Healey, Partner, Davis Polk & Wardwell LLP

Kristin Hester, Managing Director & General Counsel, Global Wealth, Apollo Global Management, Inc.

Nicole Runyan, Partner, Kirkland & Ellis LLP

Growth in the Private Markets. Mr. Ercoline introduced the panelists and noted the increased focus on retailization in the current market. Ms. Cout agreed that the growth of private markets could assist advisers in meeting the needs of clients that are seeking retail-friendly products that can provide customization, tax-efficiency, and uncorrelated exposures.

Ms. Hester discussed the drivers of growth in private markets. She described the impact that changes in the banking sector have had on private markets, noting that non-bank lenders have stepped in to provide funding after a period of bank consolidation and unwillingness to lend. She noted that private companies are remaining private longer and that the number of IPOs each year has been declining. She stated that equity markets in general are shrinking and becoming more concentrated, limiting the opportunities for alpha generation.

Demand for Private Market Exposure. Ms. Runyan discussed the desirability of private market assets. From an investor perspective, she noted that private assets offer reduced price volatility, better long-term performance, and stronger protections compared to many public assets. From an issuer perspective, she noted that private markets allow management to tailor investments to capital needs, to time investments more efficiently, and to retain control.

Mr. Ercoline commented that the supply of private market retail products, and the demand for such products from retail investors, is growing. Ms. Hester stated that, by expanding beyond institutional investors to the retail market, a firm can double its opportunity set. She noted the demand for retirement funding and the role that private assets can play as an alternative to publicly traded stocks and bonds as the sole means for funding retirement. Ms. Cout noted financial advisers' increasing desire to simplify and work with fewer advisers, adding that an adviser that can provide opportunities across the public and private sector could become a provider of choice for these clients.

Mr. Healey commented on the growth of defined contribution plans over the last 50 years. He stated that these plans do not provide individual investors with the same access to private asset classes as the defined benefit pension plans used by previous generations. He also commented that this generation of retail investors is more informed than prior generations and better able to consume financial information and quickly react to market factors.

Product Design Considerations. Ms. Runyan recommended that, prior to going to market with an alternative retail product, sponsors spend time considering liquidity risk management and educating investment teams, the board, and distribution partners with respect to the features of private market products. In considering the right retail wrapper for a particular product, Ms. Runyan recommended that sponsors consider what they want to sell (what asset class), who they want to sell to (investor suitability), and how they want to sell (distribution channel).

Mr. Ercoline inquired about the considerations for a private credit product. Mr. Healey discussed the leverage benefits of BDCs, and Ms. Runyan discussed the trading, settlement, and distribution benefits of interval funds. Ms. Hester added that distribution partners can help steer sponsors toward products that are likely to sell.

Turning to private equity products, Ms. Runyan commented on investor qualification and valuation considerations. She noted that, while credit funds can pay an incentive fee based on income, private equity funds cannot pay incentive fees on capital gains without limiting investors to qualified clients. She stated that managers must weigh their desired economics against a potentially expanded investor base.

Reducing Barriers to Entry. Mr. Healey stated that investors could benefit from reduced barriers to entry in this space. He discussed the potential expansion of multi-class exemptive relief and the recent market push for modernized co-investment relief. Ms. Runyan discussed the different distribution and trading platforms available to tender offer funds and interval funds, noting that tender offer funds could benefit from operational solutions that would level the playing field with interval funds regarding distribution, valuation, and investor subscription processes.

Mr. Ercoline noted the importance of distribution and liquidity solutions. Ms. Cout discussed considerations around building out distribution capabilities versus partnering to achieve greater access to private markets. She discussed the evolution of separately managed accounts and the use of model portfolios in the private market space. Ms. Hester noted that advisers with private market capabilities and infrastructure can create fixed income replacements, legitimize investment grade credit as a liquid asset class through origination, and partner with banks to innovate on creating liquidity for private assets.

The panelists noted how far the alternative retail space has come in the past 20 years and expressed excitement for further developments in the coming years.

Session H: You Stay Classy, San Diego: A Discussion on ETF Share Classes

Moderator: Joshua Weinberg, Associate General Counsel, ICI

Panelists: Shelly Antoniewicz, Chief Economist, ICI

Suzanne Cullinane, Director, Operations & Distribution, ICI

Stephanie Hui, Vice President & Lead Counsel, Public Policy, Dimensional Fund Advisors

Brian P. Murphy, Partner, Stradley Ronon Stevens & Young, LLP

Ron Burgundy (a.k.a. Josh Weinberg) welcomed the audience to San Diego and introduced the panelists. He then asked the audience an initial polling question about the level of engagement with the ETF share class relief. Nearly 90% of the audience indicated that they were closely following the topic, making the panel particularly timely.

Ms. Antoniewicz provided an overview of the ETF industry, noting that the industry has grown from 800 to over 3600 ETFs from 2009 to 2024. While mutual funds have assets of $22 trillion, ETFs have been catching up, and now have assets of over $10 trillion, consisting of $9.4 trillion in passive or index-based ETFs and $900 billion in active ETFs. She added that investors have withdrawn $3.8 trillion in assets from US equity mutual funds, while US equity ETFs have gathered assets of $3.2 trillion. ETFs have also raised over $1 trillion in non-US equity ETFs while mutual funds that invest in non-US equity have lost assets. Fixed income mutual funds have fared better, gathering assets of $1.9 trillion while fixed income ETFs have gathered assets of $1.8 trillion. In total, one half of all ETF assets are held by retail investors, and financial advisers are increasingly directing client assets towards ETFs. With respect to mutual fund to ETF conversions, the number of conversions has increased from 17 in 2021 to 58 in 2024, with over $78 billion in assets converted.

Mr. Murphy discussed the history of ETF share class relief, noting that Rule 18f-3, which permits funds to operate multiple share classes offered to different distribution channels and with different costs, has been available to mutual funds for decades. He added that Vanguard obtained SEC relief to offer an ETF share class of its index-based mutual funds over 20 years ago.

Ms. Hui explained that she believes it is good for investors to be able to choose which type of share class works best for them. The benefits of adding an ETF share class to an existing mutual fund include having a performance track record, scale and a low risk of closure as compared to a new standalone ETF. That, coupled with the ability to have a mutual fund shareholder exchange their mutual fund shares for ETF shares of the same fund on a tax-free basis provides greater investor flexibility. She added that having both mutual fund and ETF share classes provides greater access to a broader range of distribution channels, portfolio management stability, lower transaction costs and reduced tax consequences. A second poll question asked the audience whether they would take advantage of share class relief if the SEC permits it more broadly, and over 70% responded favorably.

In response to a question regarding why issuers other than Vanguard are not currently offering ETF share classes of mutual funds, Mr. Murphy explained that Vanguard obtained a patent on the structure that only expired in 2023. He added that, when the SEC adopted Rule 6c-11, share class ETFs were excluded from the scope of the Rule. The next polling question asked whether the audience members' firms have applied for ETF share class relief, and about 50% said "yes." He then noted that there are 51 active exemptive applications seeking permission to add an ETF share class to mutual funds, to add a mutual fund share class to an ETF, or both, adding that Acting Chair Uyeda has instructed the SEC staff to move forward with the relief.

In response to a question from Mr. Weinberg, Mr. Murphy detailed the SEC's concerns with granting the relief. The SEC has raised concerns about the different ways mutual funds and ETFs acquire and dispose of securities, which often results in different levels of transaction costs and different levels of capital gains realizations. While some institutional mutual funds are able to transact in kind with large investors, most mutual fund transactions take place in cash, which means the mutual funds incur transaction costs in putting new cash to work and when selling securities to raise cash to meet redemptions, which also may result in realized capital gains. In contrast, ETFs mostly transact in kind with certain institutional investors known as authorized participants (APs). When APs purchase and redeem ETF shares, the APs and not the ETFs typically bear the applicable transaction costs, and by distributing securities to APs in kind on redemptions, ETFs do not realize capital gains. Due to these differences, the SEC is concerned about whether funds have provided adequate disclosure about these differences, board oversight of the impacts of these differences, and other potential impacts of the multiple class structure on existing mutual funds.

Describing the current exemptive applications, Mr. Murphy indicated that the SEC will require funds that offer both mutual fund and ETF share classes to comply with the substantive provisions of both the ETF Rule and Rule 18f-3. He explained that the applications focus on the process for both the initial approval of ETF share classes, as well as for providing ongoing oversight of the structure. He noted that the applications take a variety of different approaches to the initial approval and ongoing oversight, but suggested that the SEC would likely seek to require a more uniform approach.

Ms. Hui indicated that the exemptive relief process is the way the fund industry has traditionally approached ETF innovation since it allows issuers and the SEC to experiment before adopting a rule. In response to an additional polling question, about 50% of the audience indicated that they are eagerly awaiting approval of these applications.

Ms. Cullinane discussed some of the practical steps issuers should take now to prepare for ETF share class relief, including engaging with distribution partners given that there will be systems considerations that will differ by platform and channel. She also encouraged issuers to talk to their key service providers, including their fund administrators, custodians, transfer agents, auditors and others, and reminded the audience to also engage with internal stakeholders to evaluate what systems and processes may need to be developed or enhanced. She noted that the ICI and other groups have been working with various fund sponsors and other constituencies, but there remains a lot of work to be done to ensure that the industry is ready to implement ETF share classes.

Ms. Cullinane focused on several key topics that adding ETF share classes to mutual funds will bring to the fore, including how mutual fund shareholders will be able to exchange their shares for shares of a new ETF class. She explained that there are no industry standards for facilitating exchanges, and that there will likely need to be an industry solution that is universal and scalable. Other topics of concern include how firms will build functionality to facilitate ETF share classes, such as how trade confirms and shareholder statements will work. For mutual fund families that have significant numbers of direct shareholder accounts, concerns include how shareholders will react to having to identify a brokerage account if they want to exchange their mutual fund shares for ETF shares, and how funds will obtain and analyze the types of data necessary to facilitate board and adviser oversight of ETF share classes.

Mr. Murphy explained that fund boards should be thinking about whether the fund adviser will recommend the ETF share class structure and how will the engagement with the board produce the best outcomes. He added that the board and the adviser will need to agree on a framework to monitor the relative costs and impacts of the structure, as well as on how the adviser will report data to the board and how the data will be used to determine the benefits of the structure.

Ms. Cullinane indicated that the ICI is conducting member calls and forming various working groups to attempt to address some of the issues adding an ETF share class to mutual fund raises. They are hoping to develop a framework or strategy for the industry to address complex issues such as the exchange privilege, reporting and other topics. She added that the ICI is trying to think about ways to tackle both Day 1 and Day 2 issues.

Mr. Murphy responded to a question about the different types of fees that mutual funds and ETFs often charge, explaining that while there is some SEC guidance on differential advisory fees, a lot will depend on how the different share classes are offered and how they are priced.

In response to a question about the potential downside of adding an ETF share class to a mutual fund, Ms. Hui explained that certain strategies may not work well in ETF form, especially ETFs that invest in constrained asset classes, adding that ETFs are generally not permitted to close to new investments.

The panelists discussed potential timing, with Mr. Murphy noting that Acting Chairman Uyeda has directed the staff to make this a priority. Ms. Hui added that Director Greiner indicated that the issue would take months rather than days or weeks.

Mr. Weinberg asked whether there is any benefit to a fund sponsor that has not yet submitted an application deciding to file now, and Mr. Murphy responded that filing an application allows you to be part of the conversation. He added that if a sponsor has no plans to launch an ETF share class in the near term, there is no rush.

Mr. Weinberg asked Mr. Murphy how intermediaries are looking at this issue, and he responded that intermediaries have concerns about the structure, including about how adding ETF share classes will implicate Reg BI. He also noted that the intermediaries feel like they have not been included in industry discussions on the topic.

In response to a question from Mr. Weinberg about what an ideal candidate for this relief would look like, Mr. Murphy indicated that the structure might work best for US equity funds that have regular flows and a low cost to acquire and dispose of securities.

Mr. Weinberg asked whether the structure would likely work better for an issuer with affiliated service providers, and Ms. Cullinane stated that, given the many ecosystem issues, having affiliated service providers would not necessarily be more likely to succeed. Responding to a follow up question, Ms. Cullinane indicated that she expects that the relief will be granted before all of the industry's operational issues are resolved. Mr. Murphy agreed, adding that some applicants had spent more time planning for how to implement the structure than other applicants. Ms. Hui added that the fact that the applications were first filed over two years ago suggests that the low level of engagement by the SEC staff was consistent with their view that the SEC was not inclined to support the applications.

The panelists discussed whether US fund sponsors could learn lessons about offering ETF share classes from other jurisdictions where the structure is permitted, and Ms. Cullinane stated that while there are some lessons for US managers from other global structures, she believes that US fund systems are in need of a broader overhaul.

Mr. Weinberg asked whether the proposed GROWTH Act, which seeks to improve the tax treatment for long term mutual fund investors, would impact the ETF industry, and Mr. Murphy expressed his view that the Act could have an impact, but added that tax efficiency is not the only advantageous feature of ETFs. Ms. Antoniewicz agreed, and added that mutual funds and ETFs have different fan bases, with younger investors preferring ETFs to mutual funds. Ms. Hui added that the other benefits of ETFs include the ability to trade intraday and generally high liquidity.

Mr. Murphy explained that, for certain costs, the overall fund is required to bear such costs, but other costs may be charged or allocated to individual share classes. He reiterated that the SEC is concerned that the ETF class may wind up subsidizing the mutual fund classes due to the impact of cash transactions, but he added that there are ways to mitigate such impacts, including by netting inflows and outflows on a given day, managing tax lots, and monitoring the impact of brokerage costs, capital gains and cash drag.

Mr. Weinberg asked about the applications that asked to add a mutual fund share class to an ETF, and Mr. Murphy surmised that these applicants were hoping to gain access to 401(k) plans and the broader retirement channel. The panel discussed how the SEC will decide on what application model to advance toward approval. Mr. Murphy expressed his view that the approvals might not come down to one applicant and added that he expects that the SEC will communicate the required representations and conditions more broadly to ensure a level playing field.

Mr. Weinberg concluded by thanking the panelists and mentioning that the ICI will hold its first ETF conference in Nashville on September 8-10.

Session I: Key International Developments Shaping the Asset Management Industry in 2025 and Beyond

Moderator: Tracey Wingate, Moderator, Chief Global Affairs Officer, Investment Company Institute

Panelists: Jane Heinrichs, Head of US Regulatory Affairs, Federated Hermes, Inc.

Paula Kar, Executive Vice President and Chief Product Officer, Northern Trust Asset Management

Andrew Massey, Partner, K&L Gates LLP

James Sonne, Vice President, Government Affairs, PGIM

The panel discussed key policy trends driving regulatory changes across regions such as the UK, Europe, and Asia, and their implications for the asset management industry. Discussion focused on compliance challenges and strategic considerations, including insights on navigating the evolving regulatory landscape.

Mr. Sonne commented on recent geopolitical events and noted that the changing geopolitical landscape is reshaping global regulatory priorities. He remarked that since the pandemic, there have been 72 elections worldwide, and in almost all instances, the incumbents have lost. This populist shift, he noted, is creating challenges on a global scale.

Ms. Heinrichs noted that geopolitical tensions are causing market volatility, and from a regulatory standpoint, this has been and will remain challenging. She noted her belief that market volatility will be the norm for the next few years.

Ms. Kar concurred with Ms. Heinrichs as to market volatility. She noted that the US – China decoupling is a concern for Europe. She noted that many countries are bolstering their energy security and defense spending. She further noted that cybersecurity threats will likely increase as a result of some of these geopolitical tensions.

Mr. Massey stated that the key challenge for asset managers will be tailoring their business strategies for a fractured geopolitical landscape. He noted that asset managers would prefer a unified business model, but this is not a realistic expectation in the current fractured geopolitical environment. Instead of a unified strategy, he continued, asset managers will have to develop bespoke business strategies for different markets.

The panel discussed how asset management firms can adapt their business strategies in this era of fragmentation and dislocation resulting from the rising tide of economic nationalism. Ms. Kar noted that she is beginning to see large institutional clients in Europe, Australia, and New Zealand request bespoke arrangements. She noted that as fiduciaries, asset managers need to serve clients and, if a "one size fits all" approach is no longer possible, asset managers need to develop a scalable business while serving bespoke interests.

With respect to Europe, Mr. Massey noted that the UK and Europe did not have a harmonized regulatory framework to begin with, and that framework, he noted, will now be increasingly varied. As such, he added, the industry will need to push regulators for transparency on market barriers and clarity on costs and risks of each market. Relatedly, he stated, the industry will need to call on regulators to harmonize laws in areas where such harmonization is possible.

The panel discussed whether the EU is shifting to a pro-growth and simplification agenda. Ms. Heinrichs noted that she believes this will be the new norm in the EU because European companies need to focus on regional growth. She noted that defense spending, technology, and natural resources (minerals) will all have an inward focus. What this means for asset managers, she continued, is the need to adapt to regional priorities and mitigate risks associated with reduced global cooperation.

The panel discussed the status of the UK in a post-Brexit era and the UK's relationship with the EU. Mr. Massey remarked on the recent meeting between President Trump and President Zelensky and noted that, in the wake of such meeting, the UK Prime Minister, Keir Starmer, swiftly convened a meeting of European leaders to discuss the defense of Ukraine. Mr. Massey remarked that the speed at which this meeting occurred tends to indicate a thawing of tensions between the UK and Europe as each faces the new geopolitical world.

As to the UK and Europe and the asset management industry, the panel noted that asset management firms will need to deal with what might often be different sets of rules, such as the Sustainability Disclosure Requirements in the UK and the Sustainable Finance Disclosure Regulation standards in Europe. Mr. Sonne noted that there remains a very real need – not only in the EU but globally – to educate investors about investing, especially with respect to retirement savings.

The panel concluded with a lightning round of questions during which the panelists indicated that they believe the industry will continue to see growth in active ETFs, crypto assets, and certain emerging markets, especially India. The panelists also expressed caution regarding the use of generative AI in portfolio management decisions.

Session J: “Nobody Bats 1.000.” The SEC’s Record on Market Structure Reforms

Moderator: Kimberly Thomasson, Assistant General Counsel – Markets, SMAs & CITs, Investment Company Institute

Panelists: Nhan Nguyen, Director, Regulatory Affairs, US Government Affairs, BlackRock Advisors LLC

Ignacio Sandoval, Partner, Orrick, Herrington & Sutcliffe LLP

Ari Burstein, General Counsel and Chief Policy Officer, Imperative Execution

Aaron Friedman, Deputy US Head of Government and Regulatory Policy, Citadel Securities

Ms. Thomasson explained that the panel would review the SEC’s record of ambitious market structure reforms under Chair Gensler, noting that “nobody bats 1.000” is borrowed from a quote used by Chair Gensler and that the panel would have a baseball-themed approach to considering whether such reforms were “runs” or “strikes.”

T+1 Settlement Cycle. Ms. Thomasson asked the panel to discuss the implementation of T+1 settlement. Mr. Friedman noted that the impetus for moving to T+1 was the volatility experienced by financial markets during the pandemic, as well as the original meme stock frenzy of January 2021. He noted that the transition to a T+1 settlement cycle on May 28, 2024 was largely successful because there had been industry-wide acknowledgment and understanding of what needed to happen to complete the transition. He noted that The Depository Trust & Clearing Corporation (DTCC) and the Securities Industry and Financial Markets Association (SIFMA) played key roles in developing an industry playbook and educating financial institutions and market participants on the transition, and commented favorably on the collaboration among DTCC, SIFMA, and the SEC. He also noted that the SEC had accepted industry feedback and appreciated the operational complexities of the transition, taking all of this into account in formulating a realistic timeline. Mr. Sandoval pointed out that the industry had time to address open issues, such as recordkeeping responsibilities, prior to the transition date. The panel agreed that the implementation of T+1 settlement was successful, counting it as a run.

Market Structure Reforms. Ms. Thomasson asked the panel to discuss four market structure reforms: (i) the order competition rule proposal, (ii) the best execution proposal, (iii) amendments to Regulation NMS, and (iv) amendments to Rule 605. Mr. Burstein noted that these reforms are focused on the retail investor. He explained that the first proposal was the order competition rule, which was intended to create more competition for the market orders of individual investors. He noted that the issue with the proposal is that the industry does not understand it, finding that the proposal seems to limit, instead of promote, order competition. He noted that the proposal has not been adopted and that it is unlikely that the SEC will move forward with it.

Mr. Burstein discussed the best execution proposal, which is intended to codify a federal best execution standard pursuant to which broker-dealers would have to achieve the “most favorable price” for customers. The panelists agreed that this proposal was not well received and not well understood by the industry and that it is unlikely that the SEC will move forward with it.

Mr. Burstein discussed the amendments to Regulation NMS, which were adopted on September 18, 2024. He explained that the amendments (i) revise tick sizes to establish a variable minimum pricing increment model, (ii) reduce the access fee caps under Rule 610 and require exchanges to make fees and rebates determinable at the time of execution, and (iii) fast-track implementation of the round-lot and odd-lot information definition adopted in 2020. He noted that, in response to a lawsuit filed by Nasdaq and Cboe, among others, challenging the amendments, the SEC had granted a partial stay of the amendments to Rules 610 and 612 (which include reducing access fee caps and minimum pricing increments for certain NMS stocks), but that the SEC had not stayed the amendments to Rule 610(d) (which requires that all exchange fees charged, and rebates paid, for executing an order of NMS stock be determinable at the time of execution). Mr. Sandoval noted that SIFMA has submitted an amicus brief pointing out that considerations regarding tick sizes go hand-in-hand with access fees, meaning that a sub-penny tick cannot be implemented without a modification to the existing access fee cap. The panelists agreed that these amendments have been unsuccessful, counting them as strikes.

Mr. Burstein discussed the adopted changes to Rule 605 under Regulation NMS to enhance disclosure of order execution information. He noted that the amendments expand (i) the scope of entities subject to the rule, (ii) order types that are subject to reporting, and (iii) report contents to now include, for example, enhanced time-to-execution reporting. The panelists commented on the potential for improved transparency for execution quality, facilitating an investor’s ability to compare brokers, but also noted the additional obligations to review and analyze execution metrics among different venues.

Securities Lending and Short Interest Reporting. Ms. Thomasson asked the panel to discuss the securities lending and short interest reporting rules. Mr. Sandoval explained that both rules were mandated by the Dodd-Frank Act. First, he noted that the securities lending rules require some financial institutions to report securities loans to FINRA, as well as the public dissemination of certain loan details. He noted that the rules are intended to promote transparency around rebates, so that lenders and borrowers have a better sense of pricing. He noted that this information is expected to be collected by FINRA, which is tasked with operationalizing the reporting system, Securities Lending and Transparency Engine (SLATE). He noted that FINRA President and CEO Robert Cook recently requested an extension for launching SLATE, citing operational issues and technical challenges. Second, Mr. Sandoval noted that new Rule 13f-2 and related Form SHO require certain institutional asset managers to report short sale information to the SEC. He noted that the new rule is plagued by various interpretive issues. The panelists agreed that the securities lending and short interest reporting rules do not make sense together. Mr. Sandoval noted that both rules have been challenged in court and thus remain "on base."

Treasury Clearing. Ms. Thomasson asked the panel to discuss the Treasury clearing rule, which mandates central clearing for certain secondary market transactions involving US Treasury securities. She noted that, for now, the compliance dates have been extended. Mr. Nguyen noted that Chair Gensler was very passionate about promoting this rule, walking through how the rule would enhance margin practices, including how to calculate and hold margin, as well as how to segregate proprietary margin from customer margin. The panelists agreed that the new rule, which is intended to reduce risk and improve market resilience, has the potential to be quite impactful. In response to a question, Mr. Nguyen discussed the path to successful implementation, noting that market participants have raised questions about the possible entrance of additional registered covered clearing agencies (CCAs) and the potential for varying or conflicting access models and procedural requirements. In particular, Mr. Nguyen discussed the potential for "double margining" requirements for registered investment companies that, pursuant to separate SEC rules, already fully collateralize repurchase transactions. Mr. Friedman recognized that, at present, the Fixed Income Clearing Corporation, a subsidiary of DTCC, is the only CCA that provides central counterparty (CCP) services for US Treasury securities transactions. Mr. Friedman commented on ongoing efforts by ICE and CME to launch CCP services for US Treasury securities transactions. The panel agreed that this rule remains "on base."

The panel concluded with a discussion of the next baseball season – how Paul Atkins might approach market structure reforms. The panelists noted that, as a former SEC commissioner, Mr. Atkins was opposed to Regulation NMS and there is a possibility that, if confirmed as the next SEC Chair, he would undertake a holistic review of Regulation NMS. The panelists commented on the SEC's announcement of a Crypto Task Force, noting that the new administration is poised to promote notable changes for financial markets. The panelists also discussed developments in the use of AI systems and models by financial markets. The panelists commented on potential plans by Nasdaq to introduce 24-hour trading, which would allow exchanges to tap into global demand for US equities by attracting investors across time zones, debating whether this would add liquidity to the markets or fragment liquidity intra-day.

Recent SEC Exam and Enforcement Developments: Lessons Learned and How to Improve Compliance Programs

Moderator: Francine Rosenberger, Chief Compliance Officer, Transamerica Asset Management, Inc.

Panelists: Adam Aderton, Partner, Willkie Farr & Gallagher LLP

Carlo di Florio, President, ACA Group

Sarah Nilson, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission

Christine Connelly, Assistant Regional Director, Securities and Exchange Commission

Ms. Rosenberger welcomed the audience and introduced the panelists. She noted that the panel would focus on (i) the SEC's 2025 annual exam priorities, (ii) how the SEC selects risk-based exam topics, (iii) exam tips, (iv) the exam process, and (v) how matters are referred to Enforcement.

Ms. Connelly began by providing a standard SEC disclaimer on behalf of herself and Ms. Nilson. She explained that the fiscal year examination priorities list is prepared to enable the SEC staff to help improve compliance, prevent fraud, monitor risks, and inform policy. She observed that the examination priorities list is not meant to be an exhaustive list and often addresses new products and emerging risks. For registered investment advisers, she noted, the focus is on compliance with fiduciary standards (duties of care and loyalty), investment advice and recommendations, and disclosure. She noted that the SEC staff focuses on high fees, difficult-to-value securities, adherence to SEC and client rules and guidelines, and risks attendant to a fund's investment strategies. For registered investment companies, she noted, the SEC staff focuses on compliance programs, disclosures, investment strategies, developing practices, cybersecurity, privacy, AI, and T+1 settlement practices.

Mr. di Florio discussed how the SEC staff's priorities change over time, suggesting that the published priorities act as a ballast for the SEC examinations staff during transition periods. He noted that the SEC staff is always focused on "keeping the neighborhood safe" and on bipartisan issues, such as monitoring compliance with rules, observing that new innovations that purport to support capital formation and technology changes also are important. He then noted that there has been a significant "tone shift" as a result of the change in administration. He stated that the examinations program informs policy decisions, but it remains to be seen what impact the resource cuts will have on the Division's activity. One possibility, he said, is that DOGE or another program might drive the adoption of new and innovative technology solutions.

In response to a question from Ms. Rosenberger about whether the SEC's regional offices will have more autonomy or will require more coordination under the new administration, Mr. di Florio indicated that the regional offices will assist the SEC during the transition, and that D.C. headquarters would continue to handle analytics for regional office personnel.

Ms. Connelly described the November 2024 Risk Alert on SEC Exams (2024 Alert), which provided observations on findings from recent examinations. She noted that the 2024 Alert provides insight into the exam process and includes a model document request list to assist registrants in preparing for examinations. Mr. di Florio suggested that funds and advisers should focus on the key areas of risk, key deficiencies noted, and the exam tips contained in the SEC staff risk alerts from 2019, 2023, and 2024. Being prepared in advance, he continued, allows firms to take stock of their materials and modify their policies and practices before the SEC staff comes in. He noted that firms should look at relevant SEC enforcement actions to augment their compliance measures.

Ms. Rosenberger asked about the different types of exams – risk-based, routine, and focused – and Ms. Connelly explained that the SEC staff uses data analytics to determine how to conduct an exam. She added that it depends on the firm, the nature of their business, whether they charge high fees, whether they hold hard-to-value assets, whether there has been a change in their business, the risks posed by their service providers and internal personnel, conflicts of interest, and whether there has been a referral. Ms. Connelly explained that the SEC staff uses big data and machine learning, looking at Form ADV disclosures and filings such as Forms N-PORT, N-CEN and PF. She added that some firms are randomly selected regardless of their risk profile, and the reason for being selected for an examination is not made public.

Mr. di Florio mentioned a proposal to outsource examinations to a third-party service provider who would submit its findings to the SEC staff, particularly in light of the fact that the SEC staff is only able to examine 12-15% of registrants each year. He noted that this proposal has not gained traction to date, but it may come back if the size of the SEC staff is significantly reduced.

In response to a question, Mr. di Florio discussed trends in the types of examinations being conducted, adding that it is unclear how those priorities will change under a new SEC Chair. He explained that, after the 2008 global financial crisis, the SEC staff needed new technology and analytics to support its examination priorities, speculating that the growth of digital assets, private assets, and tokenization may again require new tools and capabilities. Ms. Rosenberger asked whether the SEC examinations staff is looking at board oversight of valuation given the growth of these new asset classes. Ms. Connelly noted that the SEC staff will look at hard to value assets and related valuation policies. Ms. Rosenberger noted that Acting Chairman Uyeda mentioned the use of links to required disclosures on fund websites as a potential area of focus. Addressing the steps needed to prepare for an exam, Mr. di Florio suggested that firms review the examination priorities list and risk alerts to gauge where there may be compliance gaps, using technology and analytics where possible. In response to a question about focus areas for BDC boards, Mr. di Florio opined that the retailization of private assets would be in focus due to the growth in this asset class and the extensive reliance on exemptive relief.

Ms. Rosenberger invited Ms. Connelly to discuss the examination process. Ms. Connelly stated that before an exam, the SEC staff performs background research by looking at filings and prior exam findings. After contacting the target firm, she continued, the SEC staff conducts an initial interview that informs the initial document request. She explained that, after the requested documents have been received, the SEC staff will schedule on-site or remote interviews, which may, in turn, lead to additional requests for documents or interviews. She noted that, at the conclusion of the examination, the SEC staff will conduct an exit interview to review any findings. She explained that this interview gives the targeted firm the opportunity to clarify any factual misunderstandings. Depending on the SEC staff's findings, she noted that a deficiency letter may be issued, which the registrant should respond to with plans for remediation, including any policy changes or other measures. She added that the registrant's response to the deficiency letter may warrant further SEC staff comment, adding that, alternatively, the registrant may receive a notice of no further action, which is not necessarily a clean bill of health. If the SEC staff uncovers serious infractions or material weaknesses in compliance, she noted that the matter may be referred to Enforcement.

Mr. di Florio recommended advance preparation to ensure that the examination goes smoothly, noting that mock examinations are helpful for identifying areas that need to be addressed prior to an examination. When the SEC staff is conducting an examination, he recommended being cooperative, adding that cooperation with the SEC staff can be considered as a mitigating factor should deficiencies be noted. He suggested starting the examination with a business overview that covers business locations, policies and procedures, and systems. He also recommended staying in touch with the SEC staff during the exam, noting that many deficiencies arise from a breakdown in the process between the registrant and the SEC staff. If there are significant deficiencies, he noted that a registrant may need to engage counsel. In response to a question, Ms. Connelly explained that the timeframe for closing an exam is typically 180 days from the receipt by the SEC staff of the last document requested. She added that if a deficiency letter is issued, there might not be a formal close-out notification delivered to the registrant.

Ms. Nilson noted that examination referrals provide a valuable source of cases for Enforcement, adding that not all referrals result in enforcement actions. She noted that the egregiousness of the conduct is a key element, as are the nature of the violations, the potential public impact, the length of time the violations persisted, the extent of any harm, the nature of the victims, any remediation measures undertaken, whether there has been full or partial compensation, whether there have been recidivist activities, and whether the SEC staff was obstructed. Mr. Aderton suggested that unremediated conduct, retail investor harm, repeated questions and inquiries from the SEC staff to the registrant that go unanswered, and the tone and body language of the examiners could all be warning signs that the registrant will need to reestablish credibility. He added that a higher value is placed on remediation now than in recent years, noting that the prior administration took enforcement action against firms that had fully remediated SEC staff concerns.

Ms. Nilson reviewed the current enforcement environment, which is admittedly uncertain given SEC staff reductions and changing priorities. She stated that holding bad actors accountable is a bipartisan issue that will remain a priority. Mr. Aderton reviewed some statistics regarding enforcement activities, noting that for advisers and registered investment companies, 25-30% will be involved in enforcement activities regardless of the sitting administration or Chair. He noted that he expects some changes, pointing to the recent pull-back from crypto enforcement and related litigation matters, noting, for example, that the recent *Silverpoint* case was voluntarily dismissed after being litigated. He suggested that “regulation by enforcement” is over for now, and that Enforcement will likely focus on allowing good actors to flourish.

Ms. Rosenberger noted that Enforcement can no longer issue formal orders of investigation on its own authority and must instead follow formal procedures when issuing subpoenas. Mr. Aderton explained that this policy change is a result of the centralization of decision-making at the Commission level.

Ms. Nilson discussed the new crypto and cybersecurity units at the SEC. She noted that the crypto unit seeks to develop consistent and clear regulations for crypto assets and products, including paths to registration and appropriate disclosures. Citing the EO on digital assets, she noted that the SEC staff will be looking at the regulation of stable coins and other assets identified for inclusion in the Strategic Crypto Reserve. She noted that the cybersecurity unit will ocus on cyber-related misconduct to root out fraud in crypto, AI and cyber systems.

Mr. Aderton provided an update on the recent “off-channel communications” actions, adding that such actions will likely be curtailed by the Trump administration. In response to a question, Mr. Aderton indicated that he expects that there will be some ESG enforcement actions, but likely fewer compared to the prior administration.

General Session: Conflicts of Interest: Navigating the Relationships Between Funds and Their Service Providers

Moderator: Shannon Salinas, Associate General Counsel – Retirement Policy, Investment Company Institute

Panelists: Andrew “Buddy” Donohue, Independent Director, BNY Mellon Funds

Peter Germain, Chief Legal Officer & Executive Vice President, Federated Hermes

Carla Teodoro, Partner, Sidley Austin LLP

Ms. Salinas welcomed the audience and introduced the panelists. She noted that the session would involve several polling questions regarding hypothetical scenarios presenting different conflicts of interest, and encouraged audience members to respond to the questions through the conference app.

Historical Context and Regulatory Framework. Mr. Donohue provided background on the regulatory framework governing conflicts of interest with respect to funds and their advisers. He explained that the 1940 Act was designed to address abuses in the investment industry by, among other things, defining “affiliated persons” and “interested persons” and implementing measures designed to prevent overreach by such persons, such as requiring 40% of fund directors to be “independent,” requiring annual board approval of advisory and underwriting contracts, and prohibiting certain transactions with affiliates.

He explained that the Advisers Act took a different approach from the 1940 Act by focusing on fiduciary duty and anti-fraud provisions. He noted that the Advisers Act, as originally conceived, did not require an adviser to register if the adviser’s only clients were investment companies as defined under the 1940 Act and, therefore, the provisions of the Advisers Act would not have applied to investment company-only advisers.

Managing Conflicts of Interest. Ms. Teodoro emphasized that conflicts of interest are common and not necessarily problematic if managed properly. The focus should be on identifying conflicts that could compromise services and implementing processes to manage them. She referred to the rules of professional conduct addressing conflicts of interest and the extent of disclosure that must be provided to clients to ensure their informed consent to certain conflicts. She noted that a theme of many of the conflicts discussed in the panel would be the “gray areas” where judgment is important.

Mr. Donohue noted that conflicts of interest are not inherently bad and that experience often comes with conflicts. For example, he suggested that you may not want to hire an attorney who is 100% free from conflicting representations because that may indicate that they do not have other fund clients and, therefore, do not have experience in the area. Ms. Teodoro agreed that, given the size and scale of industry participants today, complete avoidance of conflicts is nearly impossible.

Mr. Donohue also discussed the importance of avoiding any appearance of conflicts of interest, even if not strictly prohibited by regulation, especially in litigation contexts.

Independent Directors. Mr. Donohue discussed the definition of "interested person" under the 1940 Act and the standards for independent directors, including potential conflicts and the importance of avoiding any appearance of conflicts. He noted that one of the recommendations of the ICI's 1940 Act modernization working group was to bring more flexibility to the "interested person" definition, as had been discussed on previous panels.

Mr. Germain highlighted the challenges with independent directors serving on multiple boards, which include business conflicts, as well as the practical reality of time and resource constraints. The panel agreed that, while larger fund complexes may be able to enforce this, smaller fund complexes that prohibit service on multiple fund boards could be disadvantaged in their ability to recruit qualified directors.

Investment Advisers. Mr. Germain discussed principles for advisers managing multiple client accounts and ensuring fair treatment of funds, focusing on the allocation of investment opportunities. He emphasized the importance of documenting the rationale for deviations in standard allocation policies, whether they be pro rata or rely on a rotation or some other basis, and that the adviser must be able to back up its rationale that the allocation was fair. Ms. Teodoro further noted the complexities of judgment in allocation decisions and the importance of documenting reasons for deviations.

Legal Counsel. Ms. Teodoro reviewed the different models of fund and adviser counsel representation – i.e., counsel to the fund and adviser (the so-called New York model) and counsel to the fund and independent directors (the so-called Boston model) – and the conflicts that can arise under each model. As examples, she noted the conflicts inherent in compensation, including compensation paid by the fund to the adviser (a conflict of the New York model) or compensation paid by the fund to the independent directors (a conflict of the Boston model). She stated that she refers to the ABA model rules and SEC rules regarding conflicts of interest and disclosure when navigating these issues.

Mr. Donohue and Mr. Germain discussed the role of counsel in helping the adviser and the independent directors manage various conflicts and the importance of disclosure and fully informed consent. Mr. Donohue highlighted that just because a law firm has a conflicting representation does not mean that independent directors cannot determine that, notwithstanding such representation, such counsel is independent for purposes of the SEC rules.

Broker-Dealers. Mr. Donohue discussed the differences between advisers' duties and broker-dealers' duties, including the SEC's Regulation Best Interest (Reg BI), which requires broker-dealers to act in the best interests of retail customers. He explained that Reg BI encompasses a care obligation, a conflicts of interest obligation, and a compliance obligation, and that brokers must prioritize clients' interests above their own. He noted that Reg BI's standard differs from a fiduciary duty and added that the SEC has published a number of FAQs to help people appreciate the differences. The panel also discussed potential conflicts of interest involved in research and the use of "soft dollars."

Auditors. Ms. Teodoro covered the relevant PCAOB standards and the importance of auditor independence, including issues related to borrower/creditor relationships and employment relationships between auditors and their clients.

In closing, the panel emphasized the importance of having robust policies and procedures, ongoing management of conflicts, and the role of disclosure and informed consent in navigating conflicts of interest between funds and their service providers.

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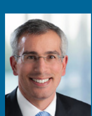

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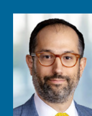

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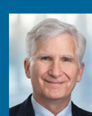

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