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Welcoming Remarks, 2015 ICI Securities Law Developments Conference

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As prepared for delivery.

Good morning, everyone.

I'd like to begin by thanking our sponsors, our speakers and panelists, and the entire ICI team. Without their time, effort, and expertise, we simply would not be able to host events like this one.

I'd also like to thank you all, for joining us here in Washington, DC. Welcome to ICI's 2015 Securities Law Developments Conference.

"Developments" is the operative word in our title. Over the last several years—even since last year's conference—the pace of developments in our industry has been absolutely stunning. Both here and abroad, the regulatory landscape for funds and fund advisers is evolving faster than it ever has.

We designed today's program around some of the most pressing of these developments—the ones that could most dramatically affect our industry.

So, as you might expect, we've got a lot to get to. But before we get started, I'd like to talk briefly about two of the developments we'll be hearing about later today:

- First, progress on SEC Chair Mary Jo White's agenda for asset management …
- and second, the debate around the U.S. Department of Labor's fiduciary rule proposal.

I'll start with Chair White's agenda.

A year ago last week, she outlined an ambitious plan to enhance the SEC's oversight of the asset management industry. And in the 12 months since, the SEC has made substantial progress in moving it forward, with three important rule proposals so far:

- The first would increase the amount of information that regulated funds must report to the Commission and disclose to the public, and increase how often they must do so.
- The second would revise how regulated funds manage their liquidity risk.
- The third—which came out just last Friday—would redefine how regulated funds use derivatives.

Next year, the staff will deliver two more proposals—one on stress testing for regulated funds, and another on transition planning for asset managers.

ICI supports Chair White's agenda wholeheartedly. We support its approach—a focus on activities, not designation of individual funds or their advisers. And we support the SEC as the right regulator to pursue it—given the Commission's deep expertise in the capital markets and the asset management industry.

If honed carefully and implemented effectively—with attention to input from market participants—the SEC's proposals will have great potential to further enhance the important role that regulated funds play for investors and the capital markets.

Realizing potential, of course, can sometimes be tricky. Even as the long tail of the financial crisis has kept a spotlight on risk—and brought some bank-centric regulatory bodies into the asset management space—the SEC must always approach this agenda with its three-part mission in mind:

- to protect investors …
- to maintain fair, orderly, and efficient markets …
- and to facilitate capital formation.

That mission has guided the SEC's outstanding service to investors for more than 80 years. Staying true to it will be especially important as the Commission considers its liquidity risk management proposal—a matter that is incredibly complex and ripe with the potential for unintended consequences.

One of the proposal's main components would require every U.S. regulated stock and bond mutual fund and open-end ETF to adopt formal programs to manage their liquidity risk.

ICI and our members see a number of benefits in requiring funds to adopt formal liquidity risk management programs that target investment strategies warranting additional focus. Still, we encourage the SEC to consider two points as it begins to work through comments on the proposal:

- The first is a question. Are the program requirements appropriately risk-based, so that a fund will be able to customize its program to its investment strategies and portfolio composition? In my opinion, our industry is far too diverse for a one-size fits-all approach.
- The second is an observation. Even without formal programs, U.S. regulated funds have ably met redemptions for more than 75 years. And fund managers have done so using sound liquidity management within good overall fund portfolio management.

As we continue to gather input from our members, and prepare our own comments, we look forward to providing the SEC with any assistance we can—to ensure that any final rule meets the SEC's mission and is well-founded, practicable, and effective.

Let me move now to the Department of Labor's fiduciary rule proposal—which, if adopted in its current form, would truly create some severe problems.

I'll explain.

The proposal aims to redefine what counts as a fiduciary relationship under ERISA—the federal statute governing retirement plans.

The principle at the heart of the proposal is a good one. There's really no doubt about it—financial advisers absolutely should be required to act in their clients' best interests when offering personalized investment advice.

Unfortunately, in drafting the proposal, the DOL lost sight of some important concepts:

- First, fiduciary duty should apply only in situations where there is a true relationship of trust and confidence.
- Second, it should focus on the duty of loyalty and the duty of care—and not create compliance and litigation traps for the unwary.

As proposed, the DOL's new definition does not adequately distinguish the interactions that would trigger a fiduciary relationship from those that wouldn't.

Many financial services firms have informed us that, faced with this lack of clarity, they would be left with little choice but to forgo providing retirement savers with essential investment information—for fear that doing so could inadvertently trigger fiduciary status and invite legal liability.

The net effect would be tremendous harm to retirement savers. Many millions would find themselves cut off from even the most commonplace exchanges of information—like those with call-center representatives … at walk-in centers … and on websites.

What a terrible outcome it would be if a retirement saver is no longer able to call someone at a mutual fund shop to talk about basic investment considerations—like whether a particular asset allocation would be appropriate for her savings goals, or which types of funds might match up with her risk tolerance. Even discussions about whether to roll over a 401(k) account into an IRA or to take a distribution could become off-limits.

The DOL's proposed exemption to the rule—the so-called Best Interest Contract Exemption—won't help either. To qualify for it, financial services firms would have to navigate a minefield of compliance traps and barriers, effectively rendering the exemption impossible to use.

There is a lot of support behind revising the proposal to draw a clearer, common-sense line between fiduciary advice and investment information, and to eliminate its problematic parts.

The proposal also has garnered a great deal of focus on Capitol Hill. A bipartisan group of lawmakers recently announced that it is working toward a responsible alternative to the proposal, and already has issued principles that would form the foundation for a bill.

We are fortunate to have Tim Hauser here to speak during lunch about the DOL's latest thinking on the proposal. We hope to hear about the DOL's focus on making the rule workable.

I bring up these two developments—the agenda for asset management and the fiduciary rule proposal—because our perspectives on them highlight one of ICI's defining qualities. No matter where we come down on an issue, our thinking is informed by real-world experience, rigorous analysis, and an objective consideration of costs and benefits. It's this type of thinking that I hope we all will bring to the discussions today.

Now, I'm very pleased to introduce our first speaker of the day, David Grim. As you all know, Dave heads the Division of Investment Management. He has worked in IM, and risen up the ranks, for more than two decades—his entire career.

Dave is responsible for administering the Commission's regulatory functions for more than 10,500 mutual funds and ETFs and nearly 12,000 investment advisers, with more than $62 trillion in assets under management. No small undertaking.

Over the years, Dave has seemingly been involved in every issue of importance to the fund industry—for example, he helped write the SEC's amicus brief in Jones v. Harris. From our days together at the SEC, I know first-hand his exceptional talent, and his steadfast commitment to the SEC's mission.

Ladies and gentlemen, please join me in welcoming Dave Grim.

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