

SEC Probes Fund Section 15(c) Process

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The Staff of the Securities and Exchange Commission (SEC), last spring, sent letters (SEC Staff Requests) to selected mutual funds (funds) requesting specified written information about their process for evaluating and approving investment advisory contracts (advisory contracts) under Section 15(c) of the Investment Company Act of 1940¹ (1940 Act) (Section 15(c) process). The SEC Staff Requests did not explain their purpose or context. However, William A. Birdthistle, Director of the SEC's Division of Investment Management, last March expressed² concern about the efficacy of the Section 15(c) process regarding funds with low investment performance (poor returns) and/or high fees, particularly poor returns over long periods. Director Birdthistle then spoke³ informally about this concern before professional groups during 2022. This article begins with a summary of Director Birdthistle's expressed concern. The article then: summarizes the Section 15(c) process, SEC enforcement actions, and the SEC Staff Requests; notes that the SEC Staff did not announce the process as an exam priority; explains how the SEC Staff Requests may reflect the views of SEC Chair Gary Gensler and Director Birdthistle as expressed in their respective books; and addresses the downward trend in fund expense ratios perhaps due to price competition spurred by SEC disclosure requirements.

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