Message from IDC Chair Mike Scofield re: Jones v. Harris Briefs

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The Supreme Court rarely decides a case affecting the mutual fund industry.

On November 2, however, the Court will hear oral arguments in *Jones v. Harris Associates*. The decision in that case will have implications for the mutual fund industry and fund directors for many years to come.

In *Jones*, the Court will determine the appropriate standard for a court's review of an excessive fee claim against a fund's adviser under Section 36(b) of the 1940 Act. Prior to this case, most courts reviewed such claims under the *Gartenberg* standard, articulated by the Second Circuit Court of Appeals almost 30 years ago. This standard has helped shape the advisory contract review process followed by boards and advisers.

In significant cases like this, interested groups frequently file *amicus curiae* ("friend of the court") briefs in support of one of the parties. These *amicus* briefs provide additional information and perspectives regarding the issues before the Court.

Because of the importance of this case, IDC retained experienced Supreme Court counsel who has written a compelling *amicus* brief that speaks to the crucial role that independent directors play in evaluating and approving advisory contracts. This brief, which was filed yesterday, does an outstanding job of explaining the rigorous nature of the contract review and approval process. It persuasively argues that, in excessive fee cases, courts should defer to the business judgment of the fund directors who approved the advisory fee, absent a fundamental deficiency in the approval process. I encourage you to read this superb brief as well as IDC's memorandum, which provides a summary of the brief. *Amicus* briefs were also filed by other interested parties, including ICI. They are summarized in the memo as well.

The Court will issue its opinion sometime before the term ends in June 2010. We will keep you posted as developments unfold.We will keep you posted as developments unfold.