This is the fourth edition of the American Bar Association Section of Business Law’s Fund Director’s Guidebook (the “Guidebook”). It is intended to assist directors of investment companies registered under the Investment Company Act of 1940 (the “1940 Act”) in fulfilling their responsibilities. The Guidebook should be useful to directors of both open-end investment companies (typically referred to as mutual funds) and closed-end funds. The Guidebook was inspired in part by the Corporate Director’s Guidebook, which was originally published by the Section of Business Law in 1978 and most recently updated with the sixth edition in 2011.

The Guidebook was initially published in 1996 and updated in 2003 with the publication of the second edition and in 2006 with the publication of the third edition. The second edition reflected a number of significant developments that had occurred since 1996 affecting the responsibilities of fund directors, particularly the enactment of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”). The third edition primarily reflected a broad range of reform initiatives undertaken by the Securities and Exchange Commission (the “SEC”) in response to mutual fund trading abuses occurring in 2003 and 2004. These reforms resulted in significant changes in the manner in which funds, fund directors, and their service providers conduct business. The SEC reform package included expanded governance provisions designed to enhance the independence and effectiveness of fund boards; a new compliance rule mandating a comprehensive compliance regimen for funds, advisers, and certain other service providers; and expanded disclosure requirements in a number of areas.
Since 2006, there have been significant developments affecting funds in the wake of the 2008–2009 financial crisis and the resulting legislation, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”). Among other things, there has been increased civil litigation involving funds and their service providers, and a more active role of the SEC and its staff in asserting securities law fund-related violations, including SEC enforcement actions against independent directors brought under the 1940 Act’s compliance rule. There also has been an emphasis by the SEC on what has been described as a “gatekeeper” role that independent directors play, an increased focus on the activities of money market funds (including two major rulemakings by the SEC), and a renewed focus by the SEC on the use of third-party intermediaries to distribute and service funds and the compensation received by the intermediaries for these services. The industry has also experienced tremendous growth in exchange-traded funds and funds that use alternative investment strategies.

This Guidebook uses the terms “fund” and “investment company” interchangeably. These terms also encompass each portfolio in the case of a series fund. In addition, for convenience, the Guidebook uses the terms “director” and “board of directors” even though many funds are organized as business trusts and thus have “trustees” and a “board of trustees.” The term “independent directors” means directors who are not “interested persons” of the fund as defined in Section 2(a)(19) of the 1940 Act, and the term “inside directors” means directors who are “interested persons.” Statements made about directors and their responsibilities under the 1940 Act apply equally to trustees. In addition, the terms “investment advisory contract” and “investment management agreement” refer to the contractual arrangements between the fund and its investment adviser or manager that govern the provision of investment advisory and management services. The Guidebook covers open-end funds, closed-end funds and exchange-traded funds. Closed-end funds differ from open-end funds in that they do not stand ready to redeem their shares daily at net asset value and generally do not engage in continuous public offerings of their shares. Shares of closed-end funds are traded in the market and may be listed on stock exchanges. Exchange-traded funds (or ETFs) often are structured as open-end funds, but trade their shares on securities
exchanges in a manner similar to shares of listed closed-end funds. The differences between open-end, closed-end, and exchange-traded funds are discussed in Sections 13 and 14. For convenience, commonly used investment company terms are defined in the Glossary.
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Fourth Edition

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