THE FINANCIAL SERVICES ROUNDTABLE

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June 27, 2005

Mr. Jonathan Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Investment Company Governance Rule 69 Fed. Reg. 46,378 (August 2, 2004)
File No. S7-03-04 (the "Rule")

Dear Mr. Katz:

I am writing on behalf of the member companies of The Financial Services Roundtable[1] (the "Roundtable") to request that the Commission reopen the record of the above-cited Rule in order to solicit public comment and to consider additional information on the costs and disclosure alternatives to the Rule that have developed since initial proposal of the Rule. We believe that such a procedure is required by the opinion of the Circuit Court of Appeals for the District of Columbia in *Chamber of Commerce of the United States of America v. Securities and Exchange Commission*, No. 04-1300 (June 21, 2005) (the "Opinion"). We also request that, while the Commission is scheduled to discuss the Opinion at its open meeting on June 29, 2005, no final action on the Rule be taken prior to the conclusion of this new public comment and fact-finding process. Finally, we request that this submission be included in the record on this matter and be considered by the Commission in the course of any decision that it might make at its open meeting.

The Decision of the Circuit Court of Appeals

As you know, the Circuit Court of Appeals has invalidated the Rule, holding that the Commission violated the Administrative Procedure Act ("APA") by not adequately determining the economic implications of the Rule. Op. at *15-16. The Court also stated that the Commission violated the APA because it gave inadequate consideration to suggested alternatives, including a proposal that each mutual fund be required

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine, accounting directly for $18.3 trillion in managed assets, $678 billion in revenue, and 2.1 million jobs.

prominently to disclose whether it has an interested or an independent chairman and thereby allow investors to make an informed choice. Op. at *17. The Court then remanded the matter to the Commission to address the deficiencies. Op. at *19.

As detailed below, we believe that many relevant developments have occurred since proposal and adoption of the Rule. Analysis and consideration of these developments is not reflected in the record of the Rule and, consistent with the Court's opinion, should be included in the record before finalization of the Rule. Any action taken without gathering and analyzing such information would deprive the Commission (and the mutual fund shareholders it protects) of significant additional information necessary for an informed and fair decision.

New Information

As stated above, a number of events have occurred since the Commission first undertook the process to adopt the Rule, which was proposed in January 2004 and adopted in July 2004. [Investment Company Act Release Nos. 26323 (January 15, 2004), & 26520 (July 27, 2004)]. These events and their economic effects, as well as other events that may come to light through the public comment process, must be considered.

First, the Commission has imposed through its enforcement process on mutual funds affiliated with certain investment advisers the independent chairman and 75 percent independent director requirements in the Rule.[2] The impact of these actions on such

[2] *See, e.g.*, In the Matter of Putnam Investment Management, Investment Advisers Act Release No. 2192 (November 13, 2003) (partial settlement alleging violations of Sections 203(e)(6), 204A, 206(1), and 206(2) of the Advisers Act, and Section 17(j) and Rule 17j-1 under the Investment Company Act); In the Matter of Alliance Capital Management, Investment Advisers Act Release No. 2205 (December 18, 2003, amended and reissued as No. 2205A on January 15, 2004) (alleging violations of Sections 204A, 206(1), and 206(2) of the Advisers Act, and Sections 17(d), 20(a), 34(b) and Rules 17d-1 and 20a-1 under the Investment Company Act); In the Matter of Massachusetts Financial Services Company, Investment Advisers Act Release No. 2213 (February 5, 2004) (alleging violations of Sections 206(1) and 206(2) of the Advisers Act, and Section 34(b) of the Investment Company Act); Bank of America, SEC Press Release dated March 15, 2004 (announcing a settlement in principle); Fleet Boston Financial, SEC Press Release dated March 15, 2004 (announcing a settlement in principle alleging violations of Sections 10(b), 15(c) , 17(a) and Rule 10b-5 under the Exchange Act, Sections 17(d) and 34(b) and Rule 17d-1 under the Investment Company Act, and Sections 206(1) and 206(2) under the Advisers Act); In the Matter of Strong Capital Management, Inc., et al, Investment Advisers Act Release No. 2239 (May 20, 2004) (alleging violations of Sections 204A, 206(1), and 206(2) of the Advisers Act, and Section 34(b) of the Investment Company Act); In the Matter of Pilgrim Baxter & Associates, Ltd., Investment Advisers Act Release No. 2251 (June 21, 2004)(alleging violations of Sections 204A, 206(1), and 206(2) of the Advisers Act, and Section 34(b) of the Investment Company Act); In the Matter of Banc One Investment Advisors Corp., Investment

mutual fund groups would provide important economic evidence relevant to the before-and-after costs of the Rule. While some of those settlements occurred during the January to July 2004 timeframe, the transition from interested chair to independent chair and to 75 percent independent directors would have occurred at most of those mutual funds after the Commission adopted the Investment Company Governance Rule. Therefore, the Commission should review information that those mutual fund groups could bring to the discussion by reopening the comment period and extending the period for collecting information about the costs incurred by those mutual fund groups in complying to the Rule.

Second, since the Commission issued the adopting release, several mutual fund independent directors groups have actively addressed many of the issues raised by the Investment Company Governance Rule. Specifically, the Independent Directors Council issued a report in January 2005 regarding the independent chairman requirement, and in February 2005 they issued a report on the self-assessment process. *See* Independent Directors Council, Task Force Report, Implementing the Independent Chairperson Requirement (January 2005) (identifying the duties and responsibilities of an independent chair as including: managing the board meeting and setting the agenda; coordinating communication with the investment adviser and others; managing board operations;

Advisers Act Release No. 2254 (June 29, 2004)(alleging violations of Sections 204A, 206(1), and 206(2) of the Advisers Act, and Sections 17(d), 34(b), and Rule 17d-1 of the Investment Company Act); In the Matter of Franklin Advisers, Inc., Investment Advisers Act Release No. 2271 (August 2, 2004) (alleging violations of Sections 206(1) and 206(2) of the Advisers Act, and Section 34(b) of the Investment Company Act); In the Matter of CIHC, Inc. et al, Investment Company Act Release No. 26526 (August 9, 2004) (alleging violations of Section 10(b) and Rule 10b-5 under the Exchange Act, Section 17(a) of the Securities Act, and Section 34(b) of the Investment Company Act); In the Matter of Inviva, Inc. et al, Securities Exchange Act Release No. 50166 (August 9, 2004) (alleging violations of Section 10(b) and Rule 10b-5 of the Exchange Act, and Section 34(b) of the Investment Company Act); In the Matter of Janus Capital Management LLC, Investment Advisers Release No. 2277 (August 18, 2004) (alleging violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 17(d), 34(b), and Rule 17d-1 of the Investment Company Act); In the Matter of PA Fund Management et al, Investment Advisers Act Release No. 2292 (September 13, 2004) (alleging violations of Sections 204A, 206(1), and 206(2) of the Advisers Act, and Sections 17(d), 34(b), and Rule 17(d)-1 of the Investment Company Act); In the Matter of RS Investment Management, Inc. et al, Investment Advisers Act Release No. 2310 (October 6, 2004)(alleging violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 17(d), 34 (b), and Rule 17d-1 of the Investment Company Act); In the Matter of INVESCO Funds et al, Investment Advisers Act Release No. 2311 (October 8, 2004) (alleging violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 17(d), 34(b), and Rule 17d-1 of the Investment Company Act); In the Matter of Freemont Investment Advisers, Investment Advisers Act Release No. 2317 (November 4, 2004)(alleging violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 34(b), 17(d), Rules 17d-1, and 22c-1 of the Investment Company Act).

guiding the investment advisory contract renewal process; and managing the board's self-assessment process); Independent Directors Council, Task Force Report, Board Self-Assessments: Seeking to Improve Mutual Fund Board Effectiveness (February 2005) (identifying the process for self-assessment as embracing: composition of the board; board committees; board meetings; meeting materials; oversight of multiple funds; director compensation; overall assessment of the board; and self-assessment of individual directors).[3] These Task Force Reports describe specific activities that ought to take place as a matter of "best practices" in attempting to comply with the Investment Company Governance Rule. An evaluation of these Task Force Reports would inform the Commission in a much more nuanced, detailed way about the kinds of costs that have been or will be incurred to comply with the Investment Company Governance Rule, and would provide a more informed basis for its reconsideration than the stale information that the Commission considered from January to June 2004.

Third, the mutual fund groups that were required to have an independent chair and 75 percent independent directors as a result of settling an enforcement case with the SEC have continued to compete with other mutual fund groups that do not have an independent chair or 75 percent independent directors. Presumably, investors read the prospectuses issued by the mutual fund groups with corporate governance mandated by settlements (Group A), prospectuses issued by mutual fund groups that have decided to comply voluntarily with the Investment Company Governance Rule (Group B), and certain other mutual fund groups that still have interested chairs or less than 75 percent independent directors (Group C), and have made informed decisions to buys shares of mutual funds in Group A, Group B, and/or Group C. It would be very informative to analyze the relative costs being borne by mutual fund shareholders in Group A, Group B, or Group C, and it would be interesting to compare the investment performance being achieved by mutual funds in Group A, Group B, and Group C. That information could be solicited during an extended comment period, and would provide an informed basis for the Commission's consideration of the disclosure alternative embraced by the Opinion.

[3] "Independent Fund Directors Group Gives Guidance for Independent Chair Rule," 37 BNA Sec. Reg. & L. Rep. 134 (January 24. 2005); "Declaration of Independents Issued," Wall Street J., January 20, 2005, at C15; "Fund Boards Get Set for Self-Reviews," Wall Street J., February 14, 2005, at C15 (news account of practical considerations being considered by the Independent Directors Council in evaluating methodologies for self-assessments), "Fund Directors Group Releases Report to Assist Boards in Their Self-Evaluations," 37 BNA Sec. Reg. & L. Rep. 311 (February 21, 2005); "Independent Chairmen Move Into Place," Wall Street J., May 2, 2005, at R1 (description of decisions by different boards of trustees to proceed or to wait in selecting independent chairpersons).

Conclusion

For the reasons set forth above, the Roundtable strongly urges the Commission to reopen the record, to solicit additional information, and to conduct its reconsideration of the Rule only after it has had an opportunity to reflect in a deliberate, considered fashion on the new information that is now available to it. If the Roundtable, or any of our member companies, can provide additional information, please do not hesitate to contact us.

Respectfully submitted,

Richard M. Whiting

Richard Whiting
Executive Director and General Counsel

cc: Honorable William H. Donaldson, Chairman
Honorable Paul S. Atkins, Commissioner
Honorable Roel C. Campos, Commissioner
Honorable Cynthia A. Glassman, Commissioner
Honorable Harvey J. Goldschmid, Commissioner
Giovanni P. Prezioso, Esq., General Counsel
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