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March 2, 2007

Via electronic & U.S. mail

Mr. Christopher Cox, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Mutual Fund Chairman and Board Independence Rules

Dear Chairman Cox:

I am writing on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") to express our continued strong support for the independent chair and 75 percent independent board requirements by mutual funds. These rules were among the most important reforms adopted by the SEC in the wake of the mutual fund trading and sales abuse scandals. We would view any retreat from these requirements as an unwarranted weakening of crucial protections for mutual fund shareholders.

A compromise that eliminates the independent chair requirement and simply requires funds that do not have an independent chair to disclose this to shareholders fails to provide adequate investor protection. Requiring boards to designate a lead independent director, in the absence of an independent chair, may provide an adequate check on management as long as significant duties are delegated to the lead independent director and disinterested directors. We would support a compromise that allows boards to replace the independent chair with a lead independent director provided that the following investor protections are implemented: (1) the lead independent director sets the agenda for each board meeting and determines what materials are presented to the board; (2) the lead independent director plays a key role in negotiating advisory contracts; (3) at board meetings, the chairman is prohibited from presenting any agenda item that presents a conflict of interest between the fund and the adviser; and (4) all advisory contracts and contracts with service providers who are affiliates of the adviser are approved by the disinterested directors in a session at which no persons who are interested parties of the adviser are present.

In its December 15, 2006 release, the Commission requested comments on two papers prepared by the Office of Economic Analysis to evaluate the economic implications associated with the independent chair and the 75 percent independent directors requirements ("OEA Studies"). After reviewing these papers, the AFL-CIO continues to believe strongly that these two independence requirements, or compromises that provide equivalent independent oversight, are necessary to enable fund boards to operate effectively as a check on fund managers' conflicts of interests.

Nothing in these studies undermines the basis for the Commission's position, taken in its response to the first remand of this rulemaking, that the benefits of these requirements greatly exceed even the highest estimates of the costs of compliance. From the perspective of the investing public, the costs are dwarfed by the value to investors of having mutual fund fees aggressively and honestly negotiated by individuals with the interests of the investing public at heart.

The labor movement's interest in mutual fund independence stems from the fact that union members are also investors. Union members participate in benefit plans with over $5 trillion in assets. Union-sponsored pension plans hold approximately $400 billion in assets, and union members also participate in the capital markets as individual shareholders. Mutual funds increasingly make up the primary or secondary retirement savings vehicle for tens of millions of working Americans through 401(k) and IRA accounts.

The independent chair and 75 percent independence requirements were implemented in response to mutual fund scandals such as market timing, late trading, and breakpoint and sales abuse. Since then, new grievances that could implicate interested directors and investment advisers have arisen including "special trading privileges granted to some large investors, secret revenue-sharing pacts in which fund companies paid securities brokers to push their sometimes inferior products, and possibly improper use of mutual-fund investors' money to pay for research and other services disproportionately benefiting the fund adviser."[1] In our opinion, all of these issues clearly demonstrate the need to protect the interests of America's roughly 91 million mutual fund shareholders by requiring independent oversight of a mutual fund's investment adviser.

Prior to the SEC's implementation of independence requirements, the traditional mutual fund board of directors included a majority of directors who were also executives of the mutual fund's investment adviser. These directors owe a fiduciary duty to both the shareholders, as their representatives on the fund's board, and to the adviser, as employees and members of senior management. Since a major responsibility of the board of directors is to hire the fund's investment adviser and negotiate fees, conflicts of interest are inherent within the traditional fund governance structure. The independence requirements provide valuable shareholder protections that mitigate these conflicts of interest.

In the absence of sufficient data to assess the impact of chair independence or board independence on performance history, proper considerations of the economic

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[1] *In the Top Cop's Office in Washington, The Search for More Fund Skeletons.* By Diya Gullapalli. Wall Street Journal (February 5, 2007) Page R1.

impact of these independence requirements must focus on fund expenses. The recent OEA Studies confirm the views expressed in our earlier letters to the Commission that, unlike past performance, mutual fund expenses are a reliable predictor of mutual fund returns and that the independent chair and 75 percent independence requirements strengthen a mutual fund board's ability to negotiate operating fees that devour a substantial percentage of investor returns.

We continue to believe that any incremental costs associated with independence requirements will be offset by reduced operating expenses. The inference drawn in the OES Memorandum, *Literature Review on Independent Mutual Fund Chairs and Directors* (December 29, 2006), that "[b]oards with a greater proportion of independent directors are more likely to negotiate and approve lower fees, merge poorly performing funds more quickly or provide greater investor protection from late trading and market timing" reinforces our position.

We commend your efforts to address the Court's concerns related to the accuracy of the Commission's cost estimates for the implementation of the independent board chair and 75 percent independent board requirements. These requirements reflect settled Commission precedent that was well vetted during prior notice and comment periods. The OEA Studies provide no basis for a departure from the Commission's determination that "[t]o be truly effective, a fund board must be an independent force in fund affairs rather than a passive affiliate of management."[2]

We strongly encourage the Commission to preserve these rules in their current form. If we can be of further assistance please do not hesitate to contact Damon Silvers at 202-637-3953.

Sincerely,

Richard L. Trumka
Secretary-Treasurer

RLT/me
opeiu #2, afl-cio

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel Campos
Commissioner Annette L. Nazareth
Chairman Kathleen L. Casey

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[2] 69 Fed. Reg. 46377, 46380 (Aug. 2, 2004).