S7-03-04

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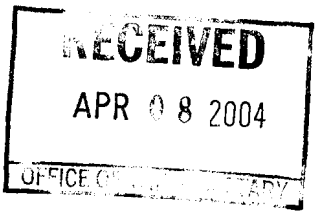
PRACTICE LIMITED TO ESTATE PLANNING AND ADMINISTRATION

REPLY TO:
Asheville Office

April 2, 2004



The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Dear Chairman Donaldson:

I am writing this letter to you to give additional input on the Securities and Exchange Commission's Proposed Rule on Investment Company Governance: IC-26323. I previously wrote to you on December 2, 2003 (a copy of which is enclosed), to voice my concerns regarding certain practices, which I believe have the effect of chilling shareholder involvement in mutual funds.

I serve as an independent director of several closed end publicly traded mutual funds; specifically I am on the board of the Investors First Fund (previously known as the SmallCap Fund), Progressive Return Fund, Cornerstone Strategic Return Fund, and Cornerstone Return Value Fund. With the exception of Investors First Fund, which is traded on the New York Stock Exchange, all of the other Funds are traded on the American Stock Exchange.

First, I would like to address the requirement for an independent chairman. None of the Funds on which I serve as a director have an independent chairman. The chairman is a board member and is an interested representative on behalf of a Fund's advisor. In my experience, I believe the "conflict" that exists between an advisor's interest and the Fund's interest is inherent in the pecuniary relationship that the advisor has in the Fund. The chairman's agenda is often dictated by this pecuniary interest and I believe that the Funds' shareholders would be better served by having an independent chairman.

Secondly, I believe that the boards of funds should be limited in their ability to propose bylaws that either entrench the current board or set up super majority requirements for shareholder votes. The shareholders should be able to set up

their own requirements for voting if they desire a super majority to approve election to the board, etc. The board of Investors First Fund has recently repealed bylaws where the previous board had required 50% of the Fund's shareholders to approve an election of directors. This bylaw provision, which is apparently permitted under Maryland law, does serve to perpetuate the existing board and make it virtually impossible for new board members to be elected since it is rare that more than 50% of outstanding shares are ever voted in mutual fund shareholder elections.

In summary, I commend the Securities and Exchange Commission on its oversight of potential abuses in mutual funds. I strongly urge the Commission to review the ability of boards to perpetuate themselves and to prevent shareholder democracy. Further, the Commission should take every possible step to prevent the fund's advisor who has a pecuniary interest in maintaining their advisory contract from having control of the board and control of the agenda for the board's deliberations.

I do agree with the letter from several Congressman dated March 11, 2004 (a copy of which is enclosed) urging the Commission to restore the confidence of mutual fund investors. Corporate governance reforms are definitely in order.

Sincerely,

Strauss & Associates, P. A.

Andrew A. Strauss, Esquire

AAS:ba

Enclosure(s)

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PRACTICE LIMITED TO ESTATE PLANNING AND ADMINISTRATION

REPLY TO:
Asheville Office

December 2, 2003

William H. Donaldson, Chairman
U. S. Securities & Exchange Commission
450 5th Street N. W.
Washington, DC 20549

RE: Mutual Fund Regulatory Action Regarding the Mutual Fund Industry

Dear Mr. Donaldson:

I am aware that you testified before the Senate Committee on Banking, Housing, and Urban Affairs on November 18, 2003. I am also aware that the Securities & Exchange Commission (SEC) is considering several proposed changes to the Investment Company Act of 1940 to ensure certain fundamental rights to which every mutual fund investor is entitled. I commend you and the SEC on its initiatives in this area and I would like to offer some comments based on my experience as a director of several closed-end mutual funds.

Over the last year and a half, I have experienced first hand problems that can arise when a mutual fund is governed with the interests of the advisor and when the interests of certain constituent board members are placed before the interests of the investors. Specifically, I have been a member of the Small Cap Fund (ticket symbol "MGC"), which recently changed its name to The Investors First Fund, Inc. with the same ticket symbol. The Investors First Fund is a registered closed-end investment company. The Fund was formed in 1987 as a Maryland corporation, and is a closed-end investment company registered with the SEC under the Investor Company Act of 1940.

I was elected as a director of the Fund in 2002. Prior to my election to the Board, the Fund directors increased the number of directors on the Board so that they would effectively maintain control of the Board notwithstanding my election and the election of Mr. Glenn Wilcox. The shareholders contest elected Mr. Wilcox and myself (through a proxy contest). The Board of the Fund increased the number of directors on the Board, and then passed a bylaw provision which provided that directors could only be elected

by "a vote of the holders of the majority of the shares of common stock outstanding and entitled to vote thereupon." This is reflected in the Fourth Restated Bylaws, Article Two, Section Seven of the Fund. This amended bylaw provision, along with the expansion of the Board, effectively allowed the advisor to maintain control of the Fund through its "swing vote".

I would like to propose for consideration to the SEC that it issue regulations that require that whenever a board increases the number of board members without shareholder votes that any appointed board members be subject to shareholder vote at the next shareholder election notwithstanding the fact that there might be a staggered or classified board. In the case of The Investors First Fund, only one of the appointed directors was up for election at the next shareholder meeting. One appointed director was not re-elected, but the other director that had been appointed continued to serve. Because of the 50% shareholder election requirement (see next paragraph), the appointed director could very well continue serving without ever having been elected by the shareholders because of the difficulty in achieving the 50% vote in any shareholder election. In other words, the appointed board member could very well be a "hold over" director, never having been elected by the shareholders.

I would like to further suggest to the SEC that it prevent fund directors from enacting by-law provisions that makes it more difficult for shareholders to elect directors to the board of a fund. For example, the aforementioned bylaw provision at MGC makes it impossible for shareholders to elect directors because of the difficulty in achieving a vote by 50% of the outstanding shares. In the case of MGC, the shareholders did elect new directors by over a 50% vote, but the margin was very small and Maryland law apparently allows boards (without shareholder approval) to set the number of shares necessary to elect directors. A board could very well set a 50% or 66 2/3% requirement for board election, effectively making the threshold so high that it perpetuates existing boards. This practice of chilling shareholder prerogatives should be stopped!

Further, I would like to propose for SEC consideration that it prevent boards of registered funds from enacting by-law provisions that impose super majority shareholder votes to overturn board action. The Investors First Board enacted certain by-law provisions, which now cannot be reversed by a new Board, without a 75% vote of shareholders. This has a chilling affect on shareholder voting and I believe it is counter to public policy since it imposes restrictions on shareholder actions that the shareholders themselves have not approved. Counsel for our Fund, Tom Westle, of the law firm of Blank Rome, is writing to you under separate cover advocating (some of the

changes I mentioned in this letter) on behalf of MGC. He will also be able to provide to the SEC the history of the by-law provisions that The Investors First Fund Board enacted that chilled shareholder voting and which are now practically impossible to reverse, notwithstanding the fact that more than 50% of the outstanding shares would want to do so.

In summary, the SEC should move to ensure that fund assets are being used for the benefit of investors and shareholders, and not entrenched advisors. The construct under Maryland law that the boards of funds have to act in the interest of the "fund" as opposed as to the interest of the shareholders is a travesty of shareholder democracy. The SEC should impose fiduciary obligations on the directors to require them to act in the best interest of shareholders and require, as you have testified, that a fund's board of directors have an independent chairman. I would be happy to provide more information or insight based on my experiences if you would so like.

Sincerely,

Andrew A. Strauss, Esquire

AAS:ba

Congress of the United States

House of Representatives

Washington, DC 20515

March 11, 2004

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Proposed Rule: Investment Company Governance (IC-26323)
(File No. S7-03-04)

Dear Chairman Donaldson:

We are writing to comment on the Securities and Exchange Commission's Proposed Rule: Investment Company Governance (IC-26323). The troubling trading activities and other abuses perpetrated against mutual fund investors appear to have resulted from a systemic failure of internal controls and, ultimately, inadequate oversight by fund directors. We thus believe that the Commission's proposal to require that mutual fund chairmen be independent from fund management companies is one of the most significant of the Commission's mutual fund-related rulemaking activities to date.

As the Commission explained in its release proposing the rule, "A boardroom culture conducive to decisions favoring the long-term interest of fund shareholders may be more likely to prevail when the board chairman does not have the conflicts of interest inherent in his role as executive of the fund adviser." As Mr. John C. Bogle has observed, mutual fund investors are simply not best served when "de facto control of a fund's board is held by the firm that earns its profits from being the principal provider of the services required for the fund's existence."

We agree with these observations. We believe that an independent chairman would set the proper "tone at the top" among those charged with overseeing the fund's internal controls and compliance by making it clear that the interests of fund shareholders, rather than that of management, are paramount. An independent chairman can foster the type of meaningful dialogue between fund management and independent directors that is critical for healthy fund governance.

Furthermore, mutual fund investors stand to benefit from a stronger negotiator on their behalf when it comes to keeping fees low. We are strongly opposed to the government at any level setting the fees imposed by private companies such as mutual funds. However, we are concerned about the continued

rise in mutual fund fees, which come directly out of shareholders' pockets. Stronger negotiations by the representatives of fund shareholders, that is, the independent directors of the fund, should reduce the fees that investors pay. In this regard, we again agree with the Commission's statement in the proposing release that "a fund board may be more effective when negotiating with the fund adviser over matters such as the advisory fee if it were not at the same time led by an executive of the adviser with whom it is negotiating." Warren Buffett said it well: "Negotiating with oneself seldom produces a barroom brawl."

It is vitally important for the Commission to help restore the confidence of mutual fund investors. Nothing sends a stronger message to the investing public than corporate governance reform that places the interests of mutual fund investors first.

We urge the Commission to adopt, without amendment, the proposed rule. Thank you for your consideration of this important matter.

Sincerely,

Michael G. Oxley
Chairman
Committee on Financial Services

Richard H. Baker
Chairman
Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises

Peter G. Fitzgerald
Chairman
Senate Governmental Affairs
Subcommittee on Financial Management, the Budget, and International Security

Daniel K. Akaka
Ranking Member
Senate Governmental Affairs
Subcommittee on Financial Management, the Budget, and International Security

Carl Levin
Ranking Member
Senate Governmental Affairs
Permanent Subcommittee on Investigations