INVESTMENT COMPANY INSTITUTE

Elizabeth Krentzman
GENERAL COUNSEL

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

202/326-5815 FAX: 202/326-5812
ekrentzman@ici.org

August 21, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: Investment Company Governance
File No. S7-03-04

Dear Ms. Morris:

The Investment Company Institute[1] is pleased to respond to the Commission's request for additional comment on rule amendments under the Investment Company Act of 1940 that would require virtually all fund boards to be comprised of at least 75 percent independent directors and to have an independent director as chair.[2]

As the Commission's release notes, the independent chair and 75 percent independent director requirements were invalidated by a federal appeals court earlier this year, but the court suspended issuing its mandate to give the Commission the opportunity to request further comment. In response to the court proceedings, the Commission announced that, in addition to requesting additional public comment, it is initiating a "top-to-bottom review" of its process for complying with legal obligations to analyze the economic impact of proposed rules.[3] We strongly support this review. We believe it is a worthwhile exercise that has the potential to strengthen the integrity of the Commission's rulemaking process.

---

[1] The Investment Company Institute is the national association of the American investment company industry. More information about the Institute is included at the end of this letter.

[2] The requirements would apply to funds that rely on certain exemptive rules under the Investment Company Act. *See* Investment Company Governance, Investment Company Act Release No. 26520 (July 27, 2004) [69 FR 46378 (Aug. 2, 2004)] ("Adopting Release") at n. 9. Virtually all funds rely on one or more of those rules.

[3] *See* SEC Complies with Court Order on Mutual Fund Rules, SEC Press Release 2006-95 (June 13, 2006).

Like the Commission, the Institute supports strong and effective fund governance. With the benefit of additional practical experience and in light of regulatory and other developments since the Commission first proposed these requirements, the Institute continues to believe that the choice of a chairperson should be left to the members of the board, and continues to support a requirement that two thirds of a board's members be independent, rather than 75 percent.[4]

Close to three years have passed since the Commission issued its proposal, which was part of a comprehensive slate of reform proposals developed in response to revelations of mutual fund trading abuses in September 2003. Since that time, the Commission has adopted, and funds have implemented, numerous new rules aimed at improving investment company governance.[5] Those measures have accomplished a great deal in addressing the SEC's regulatory concerns.

Even though the independent chair and 75 percent board independence requirements have not gone into effect, the expectation that they might, the increased regulatory and public focus on fund governance, and some of the other new regulatory requirements have led many fund boards to review and some to change their structure and composition. Today, boards continue to operate successfully under a variety of governance models. Some boards have independent chairs and others do not. That different models persist shows that the considered judgments of fund directors can lead to different – but equally responsible and legitimate – conclusions as to which structure best serves the needs of a particular board and the interests of fund shareholders.

Importantly, most funds have a supermajority of independent directors, be it two thirds or 75 percent, which assures that the independent directors control the voting process. In addition, the independent directors must approve by a separate vote key matters such as a fund's advisory contract and any 12b-1 plan.[6] The chair's status (independent or not) and the exact proportion of independent directors on the board (two thirds or 75 percent) have no effect on these significant protections.

Against this backdrop, the Institute does not believe it has been shown that *mandating* that virtually *all* fund boards appoint an independent director as chair will produce benefits and therefore

---

[4] *See* Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 10, 2004 ("2004 ICI Letter").

[5] In its adopting release for the requirements currently under consideration and related fund governance requirements that have not been challenged, the SEC described the requirements as part of a "package" to address concerns about the governance of mutual funds. *See* Adopting Release at n. 5 and accompanying text. The unchallenged requirements provide that fund boards must (1) perform annual self-assessments, (2) hold separate meetings of the independent directors at least once each quarter, and (3) have express authority to retain experts and hire staff. The other rules in the fund governance package are listed in Appendix A.

[6] Similarly, most of the other exemptive rules (in addition to Rule 12b-1) that would be amended to add the independent chair and 75 percent board independence requirements already condition the exemptive relief on the approval of the board, including a majority of the independent directors. *See id.* at n. 9.

we cannot support this requirement. In addition, while we support requiring a supermajority of independent directors on fund boards, we believe the Commission should adopt a two-thirds standard, rather than 75 percent.

Independent Chair Requirement

The Institute recommends that the Commission not pursue the independent chair requirement. An across-the-board requirement to appoint an independent chair is overly broad and unnecessary.

Fund Directors Are in the Best Position to Select the Most Appropriate Chair of the Board

As we stated in our previous comment letter, the selection of the best person to serve as chair of the board rightfully is, and should continue to be, a decision made by the directors themselves.[7] The directors are uniquely positioned to choose the most appropriate candidate for the position of chair, and in some cases that person may be an interested director.[8]

Since the Commission's initial proposal, many, if not most, fund boards have considered who should serve as chair. Institute research indicates that many boards have chosen an independent director as chair.[9] While some of these boards elected an independent chair in anticipation of the requirement taking effect, even in the absence of a requirement, independent directors are fully empowered to choose an independent chair if they wish, since they generally must comprise at least a simple majority of the board. As discussed further below, the Institute supports requiring that at least two thirds of the board consist of independent directors, which will further bolster the independent directors' ability to control the choice of a chair. A one-size-fits-all approach should not displace case-by-case board decisions grounded in the directors' exercise of their fiduciary obligations.

The Commission Has Not Demonstrated that Any Benefits of Mandating An Independent Chair Justify the Costs

---

[7] *See* 2004 ICI Letter, *supra* note 4.

[8] Many experienced independent directors share this view. *See* Appendix B to this letter. *See also* Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins, Adopting Release, *supra* note 2, at 46392, n. 38 ("We contend that a conscientious board might reasonably determine that the most qualified and capable candidate is someone with deep familiarity with day-to-day fund operations.")

[9] According to a study of fund boards conducted by the Institute and the Independent Directors Council, 52.4 percent of responding fund complexes reported having at least one fund board with an independent chair at year-end 2005. *See* Investment Company Institute and Independent Directors Council, Directors' Practices Study: Practices and Compensation (August 2006) ("Directors' Practices Study"). The Directors' Practices Study includes information reported by 185 complexes, representing approximately 88 percent of the industry's total net assets. These complexes reported information on 1,471 independent directors.

The Institute recognizes that an independent chair arrangement works well for some boards. At the same time, we do not believe that the Commission has adequately demonstrated the benefits of *mandating* this governance structure for virtually *all* fund boards.

There Is No Empirical Evidence of Benefits

The Commission acknowledged the "limited and conflicting empirical evidence" of benefits when it first adopted the independent chair requirement.[10] The Institute is aware of only two studies examining the relationship between the status of the board chair and various measures of fund governance. These studies show no significant correlation.[11]

The Commission further noted that "[w]e are not aware of any conclusive research that demonstrates that the hiring of an independent chairman will improve fund performance or reduce expenses, or the reverse."[12] The Institute recognizes that performance and expense levels are not correlated with particulars of fund governance. Our review of the research analyzing these factors, including studies released after the Adopting Release, confirms that the evidence of these benefits is inconclusive.[13] Nonetheless, assuming *arguendo* that any correlation can be drawn on these issues, the studies of which we are aware suggest that funds with independent chairs have in the past generally had weaker performance and higher expenses than funds with management chairs.[14]

---

[10] Adopting Release, *supra* note 2, at 46383.

[11] *See, e.g.,* Sophie X. Kong and Dragon Y. Tang, *Mutual Fund Governance: What Works and What Doesn't?,* unpublished working paper, Kennesaw State University (2006) (finding no significant correlation between independent chairmen and good governance as measured by Morningstar, Inc.'s Stewardship Grades); Stephen P. Ferris and Xuemin Yan, *Do Independent Directors and Chairmen Really Matter? The Role of Boards of Directors in Mutual Fund Governance*, unpublished working paper, University of Missouri (2004) (concluding that a fund's likelihood of being involved in the recent trading scandals was unrelated to whether the fund board had an independent chair).

[12] Adopting Release, *supra* note 2, at 46383, n. 52. The Commission also cited comments recognizing the lack of conclusive research. *See, e.g.,* Remarks by John C. Bogle, Founder and Former CEO, The Vanguard Group, before the Institutional Investor Magazine Mutual Fund Regulation and Compliance Conference (May 5, 2004), File No. S7-03-04, *quoted in* Adopting Release, *supra* note 2, at 46383, n. 52 (stating that the "data constitute muddy and unpersuasive evidence").

[13] In addition, as an SEC staff report to the Commission stated, such analyses are highly sensitive to method and data samples. *See* Exemptive Rule Amendments of 2004: The Independent Chair Condition: A Report in Accordance with the Consolidated Appropriations Act, 2005, Staff Report to the U.S. Securities and Exchange Commission, April 2005.

[14] *See, e.g.,* Geoffrey H. Bobroff and Thomas H. Mack, *Assessing the Significance of Mutual Fund Board Independent Chairs,* paper prepared for Fidelity Investments (2004) (concluding that funds with independent chairs have not performed as well as those with interested chairs, and that their funds have had competitive to high expense levels, depending on how expenses are measured and aggregated); Stephen P. Ferris and Xuemin Yan, *supra* note 11 (finding no evidence that funds with independent chairs have had lower fees); J. Felix Meschke, *An Empirical Examination of Mutual Fund Boards,* unpublished working paper, University of Minnesota, 2005 (finding that funds with independent chairs have had higher fees and

<u>The Commission's Goals Have Been Achieved in Other Ways</u>

Acknowledging the inconclusive nature of the empirical research, the SEC relied on "its own and its staff's experience, the many comments received, and other evidence" in concluding that an independent chair can "provide benefits and serve other purposes…."[15] The purposes articulated by the SEC included addressing a perceived "breakdown in management controls."[16] The SEC also sought, through this requirement, to "place fund boards in a better position to demand that management adhere to the highest of compliance standards,"[17] and to "establish a boardroom culture that can foster the type of meaningful dialogue between fund management and independent directors that is critical for healthy fund governance."[18] These purposes have already been addressed by a combination of factors, including the other rules the Commission adopted as part of its fund governance package.[19]

For example, the compliance rules adopted in 2003 are designed to assure that funds and their advisers have in place effective compliance controls. The intense and sustained focus on such controls, greater sensitivity to conflicts of interest, and increased compliance testing occasioned by these rules are a more direct and effective way to address a perceived "breakdown in management controls."

In addition, in adopting the fund compliance rule, the SEC stated that the "rule provides the board with a powerful tool to exercise its oversight responsibilities over fund compliance matters," by providing the board with "direct access to a single person with overall compliance responsibility for the fund who answers directly to the board."[20] The rule provides for enhanced communication to the board about compliance matters. It requires, for example, that the chief compliance officer annually furnish the board with a report on the operation of the fund's compliance policies and procedures and those of its service providers, including its investment adviser. According to the Commission, the chief compliance officer is responsible for "keeping the board apprised of significant compliance events at the

---

expenses but better performance than those with management chairs); Sophie X. Kong and Dragon Y. Tang, *supra* note 11 (presenting evidence that funds with independent board chairs have had higher fees and weaker performance, although the effects are statistically insignificant).

[15] Adopting Release, *supra* note 2, at 46383-84.

[16] *Id.* at 46379.

[17] *Id.*

[18] *Id.* at 46383.

[19] *See supra* note 2.

[20] Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)], at 74722.

fund or its service providers and for advising the board of needed changes in the fund's compliance program."[21]

The rule's requirement that the chief compliance officer meet at least annually in an executive session with the independent directors "creates an opportunity for the chief compliance officer and the independent directors to speak freely about any sensitive compliance issues of concern to any of them."[22] The requirement under the fund governance rules that independent directors meet in an executive session at least quarterly provides another "opportunity for a frank and candid discussion among themselves regarding the management of the fund, including its strengths and weaknesses."[23] These discussions among the independent directors and with the chief compliance officer provide multiple opportunities for a board to assess management's performance and demand high standards of compliance. These regulatory enhancements further strengthen the hand of independent directors who, as noted above, already must constitute at least a simple majority of the board and must approve key items such as a fund's advisory contract and any 12b-1 plan by a separate vote.

Perhaps most importantly, the culture of the boardroom has evolved. According to several Institute members, regular executive sessions have increased cohesion among the independent directors, which has helped to foster meaningful dialogue between independent directors and fund management. Also, as a result of the annual board self-assessment requirement, directors continually revisit the effectiveness of how they operate. Even apart from any specific regulatory requirements, increased regulatory and public scrutiny, enforcement actions, and private litigation stemming from the trading scandals have heightened the attention of fund directors and fund management to the importance of maintaining a culture of compliance, regardless of whether the chair is independent. Thus, through a variety of different means, the SEC's goals in proposing the independent chair requirement have already been accomplished, diminishing the possibility of benefits flowing from the requirement.

<u>The Costs Are Not Justified in the Absence of Demonstrable Benefits</u>

It is an axiom of cost/benefit analysis that the lower the benefit of a proposal, the lower the acceptable cost for implementing it. As the Commission recognizes, there are costs involved in electing and maintaining an independent chair.[24] Institute members who have made the transition voluntarily confirm that having an independent chair imposes a variety of additional costs, such as increased compensation paid to the chair in recognition of his or her expanded responsibilities, costs to train a new chair, greater reliance on the board's outside legal counsel, and heavier utilization of management

---

[21] *Id.*

[22] *Id.* at 74721.

[23] Adopting Release, *supra* note 2, at 46385.

[24] *See, e.g.,* Investment Company Governance, Commission Response to Remand by Court of Appeals, Investment Company Act Release No. 26985 (June 30, 2005) [70 FR 39390 (July 7, 2005)] at 39394-95.

staff. Such costs have a much greater impact on small funds.[25] These costs are in addition to the significant costs associated with implementing the other rules the SEC included in its fund governance package.

Where boards have decided that they are best served by having an independent chair, they have implicitly determined that the costs incurred to elect and maintain one are warranted. But given the lack of empirical evidence of benefits of an across-the-board requirement, the other new rules and outside forces that have already addressed the Commission's goals, and the successful experiences of boards with each structure, the costs of a one-size-fits-all requirement are not justified.

If Additional Measures Are Needed, There Are Less Costly and Disruptive Alternatives

To the extent the Commission continues to believe that additional measures are needed to address board independence, there are several less costly and disruptive alternatives to the independent chair requirement, many of which have been proposed by the Institute and others in previous comment letters.[26] For example, the Commission could require fund boards that do not have an independent chair to appoint a "lead independent director." Many boards already have done so in response to the recommendation of the Advisory Group on Best Practices for Fund Directors in its 1999 report.[27] A lead independent director can provide a source of independent leadership on the board. The main difference between this structure and an independent chair is that the lead independent director does not run board meetings. This alternative would preserve flexibility for directors to choose the arrangement that works best for their funds.

Another approach would be to require funds to disclose more prominently to shareholders whether they have an interested or independent chair. As Commissioner Atkins and former Commissioner Glassman have argued, this approach would allow investors to choose among funds on this basis if the status of the board chair is important to them.[28]

Board Composition

The Institute has long supported requiring a supermajority of independent directors, for the same reasons as the SEC. In 1999, the Advisory Group concluded that having a supermajority of independent directors on fund boards would help assure that independent directors control the voting

---

[25] *See* Letter from Members of the Small Funds Committee, Investment Company Institute, to Nancy M. Morris, Secretary, Securities and Exchange Commission, dated August 21, 2006 ("Small Funds Letter").

[26] *See, e.g.,* 2004 ICI Letter, *supra* note 4.

[27] *See Enhancing a Culture of Independence and Effectiveness*, Report of the Advisory Group on Best Practices for Fund Directors (June 24, 1999).

[28] *See, e.g.,* Adopting Release, *supra* note 2, at 46393.

process, particularly on matters involving potential conflicts of interest. The Advisory Group specifically recommended that at least two thirds of the directors on a fund board be independent.[29] The Institute continues to support a requirement that codifies this practice, just as we did when the Commission first proposed a 75 percent standard. Most fund boards already comply with the recommended two-thirds supermajority standard.[30] A 75 percent requirement imposes additional costs on funds, but research has found no consistently evident benefits.[31]

The Institute recognizes that there are costs inherent in not only reaching but also maintaining a supermajority of independent directors.[32] Institute members have reported additional costs such as fees for additional independent directors, initial training for them, and a heavier burden on adviser staff to support the independent directors. If funds alter their board composition by either replacing one or more interested directors with independent directors or adding independent directors without eliminating interested directors, shareholder elections may be required pursuant to Section 16(a) of the Investment Company Act, adding the cost of a proxy solicitation. Finally, a supermajority requirement reduces the flexibility of a board to adjust after director turnover, potentially requiring the addition of new independent directors to maintain the appropriate balance. Even if elections are not required under Section 16(a), finding, appointing, and training new directors consumes time and resources, and diverts a board's and management's attention from its other duties.

While these costs may also be incurred under the Institute's proposed two-thirds requirement, they are amplified by a 75 percent requirement, most notably because of the reduced flexibility in board composition.[33] According to the Directors' Practices Study, the most common numbers of interested

---

[29] *See Enhancing a Culture of Independence and Effectiveness*, *supra* note 27.

[30] According to the Directors' Practices Study, 80 percent meet the 75 percent standard, and 93 percent meet the two-thirds standard. *See* Directors' Practices Study, *supra* note 9. These results reflect the responses of 147 fund complexes in the study that utilize a unitary board structure (one board overseeing all funds in the complex) and exclude complexes that utilize a cluster structure (separate boards overseeing groups of funds within the complex).

[31] *See*, *e.g.,* Stephen P. Ferris and Xuemin Yan, *supra* note 11 (finding that the proportion of independent directors on a fund's board has had no influence on either fund fees or the likelihood that a fund complex was involved in the recent mutual fund scandal); J. Felix Meschke, *supra* note 14 (concluding that funds with a high proportion of independent directors have had higher expense ratios and worse performance than other funds); Sophie X. Kong and Dragon Y. Tang, *supra* note 11 (finding mixed and inconclusive results about the influence of a board composed of 75% or more independent directors on fund fees, fund performance, and the likelihood of being involved in the mutual fund scandal). *But see* Peter Tufano and Matthew Sevick, *Board Structure and Fee-Setting in the U.S. Mutual Fund Industry*, 46 JOURNAL OF FINANCIAL ECONOMICS 321 (1997), (concluding that mutual funds whose boards have a higher percentage of independent directors tend to charge lower fees).

[32] These costs, too, disproportionately affect small funds, and are discussed in more detail in the Small Funds Letter. *See supra* note 25.

[33] The rule contains an exception allowing boards with only three directors to have one interested director. *See* Adopting Release, *supra* note 2, at 46382.

directors on boards are one or two, and the most common board size is eight.[34] An eight-person board with two interested directors, for example, would be in violation of the requirement after a single independent director resigned, but would not be in violation of a two-thirds requirement until *three* directors resigned. Put another way, a board with two interested directors would need at least nine members overall – more than the average board – before it could withstand a single independent director resignation without needing a replacement. By contrast, under a two-thirds standard, even a seven-person board with two interested directors could withstand a resignation without needing to elect or appoint another independent director.[35]

These costs – both in dollars and decreased flexibility – come without any apparent corresponding benefit. Independent directors already vote separately on the most significant items that come before the board, including approval of the advisory contract and 12b-1 plans. With respect to these matters, the proportion of independent to interested directors should be irrelevant. More importantly, as discussed above, Institute members report that a culture of independence is already well developed on their boards as a result of a variety of factors including the compliance rule, executive session requirements, increased regulatory scrutiny, and the voluntary movement by many funds to increase the proportion of independent directors to at least two thirds. We do not believe that a requirement that 75 percent of the board be independent would further these objectives any more than a two-thirds requirement.

For these reasons, the Institute supports the Commission's efforts to require a supermajority of independent directors on all fund boards, but recommends that the Commission revise its proposal so as to require a two-thirds supermajority of independent directors.

*   *   *

[34] *See* Directors' Practices Study, *supra* note 9. As indicated above, this board composition information is based on 147 complexes in the study that utilize a unitary board structure.

[35] There are good reasons to keep interested directors on the board. As the Advisory Group on Best Practices for Fund Directors explained in its 1999 report, among other things, board membership by representatives of the adviser facilitates more direct accountability on the part of the adviser and a better exchange of information with the adviser, and subjects those representatives to the same fiduciary standards as independent directors. *See Enhancing a Culture of Independence and Effectiveness, supra* note 27. *See also* Letter from Vern O. Curtis (an independent director of the Pimco funds) to Nancy M. Morris, Secretary, Securities and Exchange Commission, dated July 13, 2006 ("It is reasonable that an advisor would want to have two seats on a board for continuity, convenience and training. A supermajority of 75% would require six independent directors, whereas a supermajority of 66-2/3% would require four independent directors.").

The Institute appreciates the opportunity to comment on these important matters. If you have any questions about our comments or would like any additional information, please contact me at 202/326-5815.

Sincerely,

/s/

Elizabeth R. Krentzman
General Counsel

cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Annette L. Nazareth
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director
Robert E. Plaze, Associate Director
Division of Investment Management

About the Investment Company Institute

The Investment Company Institute's membership include 8,719 open-end investment companies (mutual funds), 653 closed-end investment companies, 211 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately $9.225 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 89.5 million shareholders in more than 52.6 million households.

APPENDIX A

Additional Rules in the SEC's Fund Governance Package

1) ***Compliance Programs of Investment Companies and Investment Advisers***, Investment Company Act Release No. 26299, 68 FR 74714 (Dec. 24, 2003) (final rule)

2) ***Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings***, Investment Company Act Release No. 26418, 69 FR 22300 (Apr. 23, 2004) (final rule)

3) ***Disclosure of Breakpoint Discounts by Mutual Funds***, Release No. 26464, 69 FR 33262 (June 14, 2004) (final rule)

4) ***Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies***, Investment Company Act Release No. 26486, 69 FR 39798 (June 30, 2004) (final rule)

5) ***Investment Adviser Codes of Ethics***, Investment Company Act Release No. 26492, 69 FR 41696 (July 9, 2004) (final rule)

6) ***Prohibition on the Use of Brokerage Commissions to Finance Distribution***, Investment Company Act Release No. 26591, 69 FR 54728 (Sept. 9, 2004) (final rule)

7) ***Mutual Fund Redemption Fees***, Investment Company Act Release No. 26782, 70 FR 13328 (Mar. 18, 2005) (final rule; request for additional comment); *see also* Investment Company Act Release No. 27255, 71 FR 11351 (Mar. 7, 2006) (proposed amendments)

8) ***Amendments to Rules Governing Pricing of Mutual Fund Shares***, Investment Company Act Release No. 26288, 68 FR 70388 (Dec. 17. 2003) (proposed rule)

APPENDIX B

Excerpts from Selected Comment Letters filed by Independent Fund Directors on Independent Chairman Requirement (File No. S7-03-04)

"In our view, the "right" approach for any fund will depend on many factors, including the board's experience with the personnel and operations of the fund's management company, the level of meaningful dialogue and exchange of information between the independent directors and the management company, and the composition, backgrounds and dynamics of the board itself."

Letter from the Independent Directors of the Vanguard Funds to Nancy M. Morris, Secretary, SEC (July 31, 2006); see also Letter from the Independent Directors of the Vanguard Funds to Jonathan G. Katz, Secretary, SEC (March 10, 2004)

"We believe that in our case such a requirement would detract from fund governance. We have a chair who is a member of Nicholas Applegate's top management, and is in a position to know what is happening at the funds on a day-to-day basis. No independent director can have that knowledge, and without it, we do not believe that a chair could effectively lead our meetings."

Letter from George Keane, Chairman, Audit Committee of the Nicholas Applegate Funds, to Jonathan G. Katz, Secretary, SEC (March 10, 2004)

"A well-functioning board, as in the case of the Fidelity Funds board, can act independently and effectively without having an Independent Trustee serve as chairman. The key structural component of assuring that independent trustees are in a position to control the board is to ensure that they constitute a substantial majority of the board...."

Letter from the Independent Trustees of the Fidelity Funds to Jonathan G. Katz, Secretary, SEC (March 9, 2004)

"We strongly believe that a disinterested chair could actually weaken fund governance in many cases because a disinterested chair may not be able to effectively lead the board through a discussion of a detailed and complex agenda."

Letter from the Disinterested Trustees of EQ Advisors Trust to Jonathan G. Katz, Secretary, SEC (March 4, 2004)

"The proposed rule to require the chair be an independent director is not necessary and could interfere with the proper balance between the role of fund management and the role of independent directors. This is because it would impose a functional organization on the boards of all mutual funds that does not (and obviously cannot) take into account the unique dynamics of each board...."

Letter from the Independent Directors of the T. Rowe Price Mutual Funds to Jonathan G. Katz, Secretary, SEC (Feb. 25, 2004)