

January 16, 2018

The Honorable Jeb Hensarling
Chairman, Committee on Financial Services
US House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member, Committee on Financial Services
US House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 4738, the Mutual Fund Litigation Reform Act

Dear Chairman Hensarling and Ranking Member Waters:

I am writing on behalf of the Investment Company Institute¹ (ICI) to express strong support for H.R. 4738, the Mutual Fund Litigation Reform Act, which would improve the ability of federal courts to curb abusive lawsuits without precluding meritorious suits.

H.R. 4738, introduced by Representative Tom Emmer (R-MN), would amend Section 36(b) of the Investment Company Act of 1940, which grants both the Securities and Exchange Commission (SEC) and fund shareholders the right to sue a mutual fund adviser to challenge whether advisory fees are excessive and constitute a breach of the adviser's fiduciary duty.

Plaintiffs' attorneys use Section 36(b)'s private right of action to bring lawsuits that lack merit; waste the time of courts, fund advisers, and fund independent directors; and rarely benefit fund shareholders.

- None of the lawsuits brought since Congress added Section 36(b) in 1970 has resulted in a final judgment against the defendant adviser.
- Recent lawsuits have been overwhelmingly brought against the largest advisers, even though their fees are within the normal range.

¹ The [Investment Company Institute](http://www.ici.org) (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$21.5 trillion in the United States, serving more than 100 million US shareholders, and US\$7.1 trillion in assets in other jurisdictions. ICI carries out its international work through [ICI Global](http://www.ici.org), with offices in London, Hong Kong, and Washington, DC.

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- Even if a judge views a Section 36(b) lawsuit as “nonsensical,” “thin,” or “doubtful,”² current procedures limit the judge’s ability to dismiss it at an early stage.
- Section 36(b) lawsuits can take five years or longer to resolve and fund advisers often spend \$10 million to more than \$20 million to defend each lawsuit.
- These lawsuits distract an adviser’s leadership and fund independent directors, imposing added burdens as they meet their missions of investing for and serving fund investors.
- Settlements rarely result in material payments to fund shareholders.

H.R. 4738 would not bar shareholders or the SEC from challenging fees with Section 36(b) lawsuits. Rather, the legislation would discourage plaintiffs’ attorneys from bringing non-meritorious lawsuits by allowing judges to dismiss those suits at an earlier stage. Specifically, the legislation would require plaintiffs’ attorneys to plead “with particularity” the factual basis for their claims in their initial complaints. This is the same standard adopted by the Private Securities Litigation Reform Act of 1995, which has successfully curbed abusive securities litigation.

Plaintiffs also would be required to meet a standard of “clear and convincing evidence,” showing that it is “substantially more likely than not” that their claims are true. This is the standard required for lawsuits under ERISA, various federal whistleblower statutes (e.g., Sarbanes-Oxley), patent law, and several other federal statutes.

We therefore urge you to vote for H.R. 4738. Thank you for considering our views.

Sincerely,



Paul Schott Stevens
President and CEO
Investment Company Institute

cc: Members of the Committee on Financial Services

² *Kasilag v. Hartford Inv. Fin. Servs.*, 2016 US Dist. LEXIS 47063 (D.N.J. Mar. 24, 2016)