



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

August 17, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Proposed Rulemaking Regarding Facilitating Shareholder Director Nominations, File No. S7-10-09

Dear Ms. Murphy:

The Mutual Fund Directors Forum (“the Forum”)¹ appreciates the opportunity to comment on the proposed rulemaking by the Securities and Exchange Commission (“Commission”) regarding “Facilitating Shareholder Director Nominations.”²

The Forum, an independent, non-profit organization for investment company independent directors, is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through continuing education and other services, the Forum provides its members with opportunities to share ideas, experiences, and information concerning critical issues facing investment company independent directors and also serves as an independent vehicle through which Forum members can express their views on matters of concern.

As fiduciaries charged with representing the interests of mutual fund shareholders, the Forum's members share the Commission's commitment to enhancing the effectiveness of the proxy process. A corporation's annual proxy, particularly the annual election of its directors, is the fundamental means through which shareholders can hold management and the board accountable. In overseeing the voting of the proxies of the portfolio companies owned by the

¹ The Forum's current membership includes over 600 independent directors, representing 82 independent director groups. Each member group selects a representative to serve on the Forum's Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum's Board of Directors, although it does not necessarily represent the views of all members in every respect.

² Proposed Rulemaking: Facilitating Director Shareholder Nominations, Release No. 33-9046 (June 10, 2009) [74 FR 29024 (June 18, 2009)] (“Release”)

funds they oversee, mutual fund directors seek to ensure that those proxies are voted responsibly and in the best interests of their funds' shareholders.

We also recognize the similarities between traditional corporations and mutual funds with respect to proxies and the election of directors. In particular, as is the case with operating companies, fund boards must be responsive and accountable to the funds' shareholders. We therefore agree that funds should be treated similarly to operating companies with respect to shareholder access to proxy statements.

In order to exercise these proposed rights effectively and intelligently, it is important that fund investors understand certain fundamental differences between traditional corporate boards and mutual fund boards. Notably, open-end funds, the dominant form of investment companies, rarely solicit proxies and most open-end fund boards oversee multiple separate funds within a complex, thereby achieving various efficiencies and benefits of scale. Unless fund investors who are considering nominating a new director to a particular fund (or are asked to decide whether to vote for a shareholder-nominated director) understand these differences, they will be unable to responsibly exercise their proxy.

Infrequent Shareholder Meetings

Unlike their corporate counterparts, mutual funds are generally not required to hold annual shareholder meetings. Funds are required to solicit proxies to elect or reelect their boards only when less than two-thirds of the sitting directors have been elected by shareholders.³ Because most director elections are uncontroversial and independent directors self-nominate (and because a quorum of fund shareholders is often difficult and time-consuming to achieve), these rules spare funds and their shareholders the often significant costs of proxy solicitations, thereby ultimately enhancing the overall return obtained by long-term fund investors. As a result, a shareholder wishing to nominate a director to an open-end fund will have fewer opportunities to do so.

The Unique Structure of Most Fund Boards

While a publicly traded operating company is a single corporate entity, mutual funds are often part of complexes composed of numerous separate investment companies. The different investment companies, however, generally do not each have a distinct set of directors overseeing each separate investment company. Rather a single board often oversees all funds in the complex (a unitary board) or, in some instances, a few distinct boards each oversee groups of investment companies within the complex (a cluster board).

Although this practice has sometimes raised concerns that directors, who must oversee each fund independently, will become overloaded, actual practice has shown that the unitary and cluster boards have many benefits for shareholders. In particular, they provide significant operational efficiencies and assure board members increased familiarity with complex-wide operations and

³ Although Section 16 of the 1940 Act permits board vacancies to be filled between shareholder meetings without a shareholder vote provided that at least two-thirds of the board has been elected by shareholders, exchange requirements may mandate that funds traded on securities exchanges hold annual shareholder meetings. Most open-end funds, however, are not subject to exchange rules.

regulatory requirements. In many cases, these greater efficiencies, combined with increased familiarity with the adviser's operations, allow boards to exert greater influence on behalf of their shareholders and make them more likely to identify and work with management to resolve systemic problems within the complex.

More specifically, the 1940 Act and its regulations impose a number of duties on mutual fund directors. While some of these duties must be considered on a fund-by-fund basis – such as approval of a fund's investment advisory contract – others apply to all funds in a complex. For example, boards are responsible for establishing compliance policies and procedures designed to prevent a fund's investment adviser, principal underwriter, administrator, and transfer agent from violating the federal securities laws. Because all funds in a complex generally share these common service providers, these procedures will be consistent across the entire fund complex.

The familiarity with the third parties serving most, if not all of the funds, that results from having unitary or cluster boards oversee the funds in a complex may also benefit fund shareholders. By serving multiple funds within a complex, directors can develop a deeper understanding of the structure of their funds' primary service providers and enable them to efficiently resolve issues on a complex-wide basis where appropriate, while also devoting necessary time to issues that are best dealt with on an individual fund level. A single director of just one fund in a unitary or cluster complex who lacks the familiarity with complex-wide matters shared by the rest of the board likely will find effective decision making challenging.

Additionally, a unitary or cluster board can provide other operational efficiencies by allowing directors to establish strong relationships with their funds' chief compliance officer (CCO) and other personnel. Familiarity with the CCO and other service providers may better enable a board to measure intangibles, such as the tone at the top between fund management and the CCO, that may not be readily apparent when simply discussing whether a fund is in compliance with regulatory requirements. Similarly, when reporting to a single board (or a cluster) overseeing a complex, the CCO is able effectively and efficiently to advise directors on complex-wide systemic risks. A board whose composition is different from the structure used by the rest of the fund family may face more difficulties in establishing this sort of productive working relationship with the CCO and other personnel.

Less tangible, though possibly more important, is the enhanced ability of a unitary or cluster board to negotiate with management and other service providers on behalf of fund shareholders. By overseeing a number of funds and having a greater understanding of the service providers for the complex, a unitary or cluster board may be able to achieve improved results for all funds in the complex. For example, a board that oversees all (or a significant portion) of the funds managed by an adviser may have increased ability to negotiate lower fees for shareholders with the fund's service providers. Additionally, management and other services providers to the complex may be better able to respond efficiently to requests that apply to all funds in a complex.

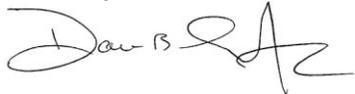
We recognize, of course, that the benefits of having one or a small number of boards for a fund complex should not preclude shareholders from nominating and electing directors of their own choosing in appropriate circumstances. However, in order to exercise their vote intelligently and responsibly, fund shareholders must weigh the potential costs of effectively altering the structure

of their fund's board against any perceived benefits.

A fund's board of directors represents the combined buying power of shareholders in negotiating with the adviser and other service providers and stands in for shareholders in monitoring the investment performance and conduct of the adviser and the other third parties that provide services to the fund. Additionally, directors' detailed knowledge about – and familiarity with – the funds they oversee allows them to act quickly, flexibly, and responsively to issues that arise. Fund directors thus play a critical, if often unseen, role in protecting the savings of fund investors, and we share the Commission's desire to ensure that boards of directors are responsive to the needs of shareholders.

The Forum very much appreciates the opportunity to comment on this important proposal. We would be happy to discuss any of the issues raised in our comment letter with you or the Commission's staff at any time.

Sincerely,

A handwritten signature in blue ink that reads "David B. Smith, Jr." with a stylized flourish at the end.

David B. Smith, Jr.
Executive Vice President and General Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Andrew J. Donohue, Director, Division of Investment Management