

September 15, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Proxy Disclosure and Solicitation Enhancements; File No. S7-13-09

Dear Ms. Murphy:

The Independent Directors Council¹ appreciates the opportunity to comment on the Securities and Exchange Commission's recent proposal to enhance the compensation and governance disclosures required by public companies and, in some instances, by investment companies. IDC's comments focus on those aspects of the proposal that relate to the governance of investment companies.² IDC strongly supports the Commission's efforts to enhance the quality of disclosures made to investors. An integral aspect of the regulatory framework applicable to funds is the required transparency of important information to investors. Research shows that investors consider a variety of information before buying fund shares, and they review a range of information when monitoring fund investments.³

¹ IDC serves the fund independent director community by advancing the education, interaction, communication, and policy positions of fund independent directors. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of \$11.02 trillion and serve over 93 million shareholders, and there are over 2,000 independent directors of ICI member funds. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

² Proxy Disclosure and Solicitation Enhancements, SEC Release No. IC-28817 (July 10, 2009), available at <http://www.sec.gov/rules/proposed/2009/33-9052.pdf>.

³ See Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information* (2006), available at http://www.idc.org/pdf/rpt_06_inv_prefs_full.pdf.

IDC firmly believes that any new disclosure requirements should help investors make informed choices about their investments and should not inadvertently impose new responsibilities on fund boards. Thus, as discussed below, while IDC generally supports the proposed disclosure requirements, we object to certain elements that would not provide useful information to investors or would inappropriately suggest board involvement beyond oversight in fund management level activities, such as risk management.

1. Enhanced Director and Nominee Disclosure

The proposal would require disclosure of any directorships held by each director and nominee at any time during the past five years at public companies, and would lengthen the time during which disclosure of legal proceedings is required from five (as currently required) to ten years. IDC supports these new disclosure requirements and believes that they may provide useful information to investors who are interested in learning more about the backgrounds of the directors who oversee their funds.

The Commission's proposal also would expand the disclosure required about individual directors and nominees and supplement the current director qualification disclosures. Specifically, disclosure would be required that describes, in light of the fund's business and structure, the "specific experience, qualifications, attributes, or skills that qualify that person to serve as a director and as a member of any committee that the person serves on or is chosen to serve on (if known)." IDC believes that disclosure of objective, factual information, such as the *experience* of a director or nominee, may be informative to investors, whereas disclosure of subjective matters of opinion, such as the "qualifications," "attributes" or "skills" of the director or nominee would not be useful to investors. A person's experience typically is the type of information provided on a resume to help a prospective employer assess the capabilities of a prospective employee. This type of information may help investors discern the background of a director or nominee or compare the background of different directors or nominees.

Qualifications, attributes and skills, on the other hand, suggest that certain qualities or personality traits are preferable for a fund board. Disclosure rules have a tendency to regulate certain behavior, and IDC cautions the Commission against inadvertently regulating the composition of fund boards. Fund boards are well-equipped to make these decisions themselves and use the self-assessment process to consider the effectiveness of their boards. Moreover, requiring disclosure about a person's qualifications, attributes or skills could encourage expansive self-promotion and boasting of matters

that are not verifiable. For these reasons, IDC urges the Commission to not require disclosure regarding the qualifications, attributes, or skills of a director or nominee.

II. New Disclosure about a Board's Leadership Structure

The Commission's proposal would require a fund to disclose whether its board chair is an "interested person" of the fund, and if so, whether the board has a lead independent director. If a board has a lead independent director, the fund would have to disclose what specific role it plays in the leadership of the fund. IDC supports this disclosure requirement.

The idea for this disclosure is not new. In litigation challenging the Commission's 2005 adoption of a rule requiring that boards have an independent chair, the court opined that the Commission should have considered alternatives, such as a rule requiring disclosure as to whether boards have an independent chair.⁴ Former Commissioners Atkins and Glassman and the Investment Company Institute noted that disclosing whether a board has an interested or independent chair would allow investors to choose among funds on this basis if this type of information is important to them.⁵ IDC agrees that investors may benefit from this disclosure. IDC also agrees that mandating disclosure as to whether boards have an independent chair is preferable to mandating that all fund boards elect one. This approach appropriately permits boards to have the discretion to determine for themselves the leadership structure that works best for them and the funds they oversee. And, now that the Commission is choosing the disclosure option, IDC urges the Commission to take formal action to close the pending issue of whether boards are required to elect an independent chair.⁶

⁴ See *Chamber of Commerce v. SEC*, No 04-1300 (D.C. Cir. June 21, 2005). The litigation also challenged the aspect of the rule requiring that fund boards be comprised of 75% independent directors.

⁵ See Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins *Investment Company Governance*, Release No. IC-26520 (July 27, 2004); Letter from the Investment Company Institute to Ms. Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission re: *Investment Company Governance*; File No. S7-03-04 (August 21, 2006).

⁶ In light of recent industry research showing that the vast majority of fund boards meets the 75% independent director requirement, the Commission also should take formal action to close this issue. See *Overview of Fund Governance Practices, 1994-2006*, available at http://www.ici.org/pdf/rpt_07_fund_gov_practices.pdf (noting that nearly 90% of fund boards have at least 75% independent directors).

III. Board's Role in the Risk Management Process

Boards take their oversight responsibilities very seriously, and oversight of risk management is no exception. Risk management is a function that continues to evolve, and the fund director community recognizes its importance. IDC has devoted numerous conference and workshop panels to the issue,⁷ ICI's risk management advisory committee published a paper about the role of mutual fund chief risk officers,⁸ and a trade publication recently devoted a special issue to the subject.⁹ Nevertheless, IDC believes that requiring disclosure about the role of the board in this area is inappropriate.

As IDC has pointed out in previous submissions to the Commission, the role of fund boards is one of oversight.¹⁰ Also, as noted above, disclosure rules have a tendency to regulate behavior, and IDC is very concerned that the proposed risk management disclosure would "regulate" board practices regarding risk management and encourage fund boards to engage in fund management, rather than fund oversight, functions. For example, by noting the Commission's belief that it is important for investors to understand how "the board implement[s] and manage[s] *its* [emphasis added] risk management function," the Commission is implying that the proper role for a fund board is to have a hands-on role in a fund's day-to-day risk management function. Active day-to-day involvement in risk management may even be interpreted as a "best practice" encouraged by the Commission. IDC firmly believes that this should not be the case and is inconsistent with the oversight role of the board.

Board oversight encompasses the receipt of regular reports on matters relating to the fund, including compliance, portfolio investments and risk management. If the Commission determines that a board should receive certain types of reports and from whom, it should outline these requirements in

⁷ See e.g., 2008 Investment Company Directors Workshop, Valuation and Risk Management: Critical Considerations for Fund Directors (April 2, 2008) (featuring panels on investment risk management and operational risk management); 2007 Investment Company Workshop: Capital Markets and Trading Considerations for Fund Directors (March 30, 2007) (featuring a panel on portfolio compliance and mitigating portfolio risk). See also Board Oversight of Derivatives, Independent Directors Council Task Force Report (July 2008) (providing fund directors with guidance on derivatives and related topics, including investment risk management issues), available at http://www.idc.org/pdf/ppr_08_derivatives.pdf.

⁸ See *Chief Risk Officers in the Mutual Fund Industry: Who Are They and What is Their Role Within the Organization?* Investment Company Institute (August 7, 2007), available at <http://www.idc.org/pdf/21437.pdf>.

⁹ See BoardIQ (August 18, 2009).

¹⁰ See Letter from the Independent Directors Council to Andrew J. Donohue, Director, Division of Investment Management, U.S. Securities and Exchange Commission, re Director Outreach Initiative (February 26, 2008).

a substantive rule proposal, as it did for the fund compliance program rule. The Commission's indirect effort to regulate board oversight of risk management through a disclosure requirement is not helpful to funds, their boards, or their investors, and potentially infringes on a fund board's ability to perform its oversight responsibilities in a manner that works best for it and the funds it oversees.

In addition, the proposal fails to take into account the business model of investment companies and the risk disclosures that they already provide. Unlike traditional operating companies, a fund's primary business is to invest its assets, and the primary risks facing a fund and the shareholders' investments in the fund are portfolio investment risks. A fund's investment risks are required to be disclosed in the fund's registration statement (and the fund must be managed in a manner consistent with those disclosures).¹¹ When it comes to risk, investors are more likely to care about the risk of an investment in the fund than about the governance practices relating to the oversight of the risk management process. Moreover, a disclosure requirement relating to the management of the panoply of risks facing a fund (*e.g.*, branding, reputation, compliance, valuation) would not yield meaningful information that would help investors make informed choices about their investments. General disclosure would become boilerplate and would be of little value, while any specific disclosure runs the risk of creating opportunities for exploitation.

IV. Application and Location of New Disclosure

The Commission also seeks comment on where each of the disclosures should be required (*e.g.*, proxy statements, statements of additional information, and/or shareholder reports). IDC believes that any disclosure requirements that the Commission ultimately decides to adopt, including disclosure relating to board oversight of risk management, should be in both proxy statements and SAIs, as the Commission proposed. Information relating to the governance of funds may be of interest to some investors, but we do not believe the majority of investors will make investment decisions based, even in part, on this type of disclosure. In fact, research shows that investors rarely review or ask questions about a fund's board of directors before buying shares of the fund.¹² Providing investors with access to this type of disclosure in a fund's statement of additional information and not repeating it in the shareholder reports is consistent with the layered disclosure approach that the Commission has

¹¹ See Item 2(c) of Form N-1A.

¹² See *supra* note 3.

Ms. Elizabeth M. Murphy

September 15, 2009

Page 6 of 6

developed.¹³ This will enable investors to have access to detailed information about a fund's board without obscuring other information about their investment that is likely to be of greater interest to them. In addition, providing investors with enhanced governance disclosure in proxy statements may help them make more informed decisions about the election of directors for their funds.

* * * * *

If you have any questions, please do not hesitate to contact me at (202) 326-5824 or amy@ici.org.

Sincerely,



Amy B.R. Lancellotta
Managing Director

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

Andrew J. Donohue, Director
Susan Nash, Associate Director
Division of Investment Management

¹³ See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Rel. No. IC-28584 (Jan. 13, 2009) (adopting a summary prospectus rule and providing for a layered approach to disclosure).