



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

September 15, 2009

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

Re: Proposed Rulemaking Regarding Proxy Disclosure and Solicitation Enhancements, File No. S7-13-09

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 “Proxy Disclosure and Solicitation Enhancements.”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.

We commend the Commission for its efforts to improve investors’ understanding of how the companies in which they invest, including investment companies, are overseen and governed. Indeed, while we recognize the importance of the Commission’s efforts to increase investor knowledge of the governance of operating companies, we believe that the importance of mutual funds as an investment vehicle for individual investors makes it equally important to enhance fund investors’ understanding of how their investments are governed.

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: Proxy Disclosure and Solicitation Enhancements, Release No. 33-9052 (July 10, 2009) [74 FR 35076 (July 17, 2009)] (“Release”)

Mutual funds have become the primary means through which individual investors participate in the financial markets. While investment performance is clearly the most important component of the returns realized by fund shareholders, effective governance of the fund can also contribute to investors' returns. Most importantly, the directors of mutual funds, particularly the independent directors, are responsible for negotiating and approving the fees paid by fund investors to those who manage their money as well as for monitoring their fund's other expenses, ensuring that the fund has proper compliance procedures covering a broad range of issues, monitoring investment performance, and overseeing management of the conflicts of interest often inherent in money management. By overseeing their funds assiduously and successfully, independent directors can thus have a direct and positive impact on the returns earned by shareholders.

And yet, in spite of the importance of effective fund governance to the returns earned by fund investors, little information regarding how and by whom their funds are governed is available. Although the Commission has taken numerous steps over the past 10 to 15 years to strengthen boards, to give them the tools and resources necessary to perform their roles effectively, and to require that they actively oversee all key aspects of their funds' operations, clear, specific and understandable disclosure regarding how the funds in which they have invested are governed is not readily available.³ Given the Commission's central role in regulating how mutual funds are governed, we strongly agree that the Commission should seek to improve the transparency of the governance structure. More specifically, the Forum supports the proposals in the Release related to additional disclosure about a fund's leadership structure, the qualifications of directors or nominees, and the board's role in risk oversight.

Disclosure Regarding a Fund's Leadership Structure

The Commission's proposal would require new disclosure as to the nature of the leadership structure of the fund board. The Forum agrees that a transparent governance structure can benefit shareholders, and therefore supports additional disclosure in this area.

Fund statements of additional information currently must include a brief description of the responsibilities of the board of directors with respect to fund management.⁴ We agree with the Commission that this disclosure could be enhanced by providing shareholders and potential shareholders with further information about how their fund's governance system is structured, and particularly how that governance structure is intended to protect their interests. Such disclosures would allow shareholders to evaluate a governance structure and decide whether that structure will influence their investment decisions. To be of most use to fund shareholders, this disclosure should be included in both proxy statements and fund statements of additional information.

³ We recognize that Item 22(d)(6) of Form N-1A, which requires annual disclosure of a board's reasons for renewing the advisory contract, represents an effort to provide transparency with respect to fund governance. However, as the Commission's current proposal recognizes and as we discuss below, we agree that shareholders would benefit from different types of disclosure about the governance of their funds.

⁴ See Item 12 of Form N-1A.

Disclosure Regarding Qualifications of Directors

The Forum generally supports the Commission's desire to help investors understand the skills and talents that individual directors bring to their boards, and, in particular, its desire to provide useful information regarding each director's "risk assessment skills, particular areas of expertise, or other relevant qualifications." We note, however, that the regulatory and statutory duties imposed on fund directors may require a different set of skills than would be ideal for corporate directors, so shareholders should not expect the backgrounds of fund directors necessarily to mirror the backgrounds of their corporate counterparts.

Boards tend to function most effectively when their individual members bring a diverse set of skills to the boardroom, thereby creating a board with a mosaic of skills and perspectives. Accordingly, the proposal to briefly disclose "the specific experience, qualifications, attributes or skills that qualify that person to serve as a director for the Fund" may produce helpful information for investors who seek to know more about their fund's board. Including material information for more than the prior five years will similarly enhance investor understanding. We agree that the proposed disclosure appropriately relates directly to the unique and important duty of a fund board to oversee the management of potential conflicts of interest while also facilitating disclosure of organizational and leadership skills, which are key skill sets required for a strong fund board.

As the Commission considers requiring disclosure of whether a board periodically conducts an evaluation of its performance, we note that a board overseeing funds relying on commonly used exemptive rules already must evaluate the board and its committees annually.⁵ The Commission imposed this requirement believing that requiring boards to review their operations would help boards gain a better understanding of their role.⁶ As the Forum has noted, this process has challenged fund boards, and has helped them ensure that the directors have the appropriate skills to meet their fiduciary obligations to fund shareholders.⁷

Directors also need to keep abreast of developments in the fund industry in order to most effectively act on behalf of shareholders, and it has long been viewed as a "best practice" for boards and directors to avail themselves regularly of continuing education, both as a board and individually.⁸ Just as with the legal, medical, and accounting professions, continuing education reflects a desire to stay abreast of industry developments. If these rules are adopted, we believe

⁵ See Rule 0-1(a)(7)(5) under the Investment Company Act.

⁶ See *Investment Company Governance*, Rel. No. IC-26323 (January 15, 2004).

⁷ See *Report of the Mutual Fund Directors Forum: Practical Guidance for Directors on Board Self-Assessments*, January 2008 (available at <http://www.mfdf.com/site/pages/documents/FinalSelf-AssessmentReport.pdf>).

⁸ See, e.g. ICI, Report of the Advisory Group on Best Practices for Fund Directors, *Enhancing a Culture of Independence and Effectiveness*, June 24, 1999 at 31-32. (Available at http://www.ici.org/pdf/rpt_best_practices.pdf). See also Report of the Mutual Fund Directors Forum, *Best Practices and Practical Guidance for Mutual Fund Directors*, July 2004. (Available at http://www.mfdf.com/site/documents/best_pra.pdf.)

that many boards will disclose their policies regarding director participation in continuing education programs as part of their fund's disclosure about its governance system and its directors' qualifications.

Finally, because open-end funds rarely solicit proxies, we agree that shareholders may find information about director qualifications included in fund statements of additional information more helpful than simply requiring the information in proxy statements.

Disclosure of a Board's Role in the Fund's Risk Management Process

Under the Commission's proposal, funds would be required to disclose the board's role in the risk management process and any effect that role has on the board's leadership structure. Risk oversight by fund boards is critical, and hence it is unsurprising that it is already tightly woven into the statutory structure governing mutual funds. It is implicit in a board's review of a fund's advisory contract, annual internal control review, approval of new products and valuation considerations. New disclosure requirements in this area, however, will focus additional attention on the role of fund boards in risk oversight, and likely will spur additional conversations in the board room about how to work effectively with management to develop and maintain risk management policies and procedures designed to address or avoid uncompensated or avoidable risks.

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,



Carolyn McPhillips
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