

June 24, 2005

The Hon. William H. Donaldson, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Cynthia A. Glassman, Commissioner
The Hon. Harvey J. Goldschmid, Commissioner
The Hon. Roel C. Campos, Commissioner

***Re: File No. S7-03-04, Investment Company Governance, Release No. IC-26323
("Release")***

Dear Commissioners:

I am writing to urge in the strongest terms that the Commission refrain at its meeting on June 29, 2005 from voting on the Independent Chairman rule that has been remanded to the Commission by the federal appellate court. Respect for the judicial process – indeed, respect for the rule of law – compels in this circumstance that the Commission not only deal with the issues in an open-minded, deliberate and informed way but be perceived to have so acted. This can be accomplished only if the Commission provides sufficient time to address the issues identified by the court – especially questions regarding cost and economic impact of the rule, and its potential implications for competition, efficiency and capital formation in the mutual fund industry and the capital markets. Input on these issues from both the industry and its client base must be obtained, and this evidence-gathering cannot be done in a week's time.

As a former SEC Commissioner, I am proud of the traditions which the Commission and its staff have maintained for well over half an century. These traditions reflect the shared values of countless individuals who have served as Commissioners or staff, values that transcend political party affiliation, differing views on the proper balance of competition and governmental rulemaking, and differences over particular rule proposals. Whatever policy differences have arisen in the past, the Commission has been steadfast over its history in honoring the rule of law, following the strictures that govern the administrative process and respecting the letter and spirit of judicial rulings.

It would seriously tarnish the Commission's well deserved reputation for fairness, prudence and independence were the Commission to make a hasty decision within a single week following the Court of Appeals' remand of the Independent Chairman rule. Indeed, such a course of action could easily be construed as an expression of contempt for the rule of law and the judicial process. Private individuals who engage in such behavior tend to undermine our societal values. When a governmental agency shows, or even appears to show, disregard for our legal process, the corrosive effects can be far greater and longer lasting. Again, I urge you to proceed on a more deliberate path, one that shows proper respect for the rule of law and the role of our courts.

I have two more points to make.

First, I was opposed to the rule at the outset, and wrote to the Commissioners to express that opinion, which is part of the record. I believe that every word of this letter would be the same, even had I been a supporter of the rule.

Second, the issue before the Commission at this time is saturated with politics, given the deep division within the Commission at the time the rule was adopted, and the fact, known to all, that the Chairman will be stepping down immediately after this meeting, to be replaced by a nominee whose record suggests a general desire and tendency for less, rather than more, regulation. In this context, for the Commission to rush to judgment only aggravates an already fraught condition at the agency, one that has hurt, is hurting and will increasingly hurt the agency going forward. This is not a legacy any Commissioner ought knowingly to leave behind.

Sincerely,

Bevis Longstreth

cc: Mr. Jonathan G. Katz