

S7-03-04

34

EQ ADVISORS TRUST

March 4, 2004



U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Attention: Jonathan G. Katz, Secretary

Re: File No. S7-03-04: Investment Company Governance– Release No. IC-26323

Ladies and Gentlemen:

This letter is written on behalf of the independent trustees of the EQ Advisors Trust, which is an open-end investment company registered under the Investment Company Act of 1940, to present our comments relating to the Securities and Exchange Commission's (the "Commission") proposed amendment to Rule 0-1(a), which would add a definition for "fund governance standards." Specifically, we wish to comment on the Commission's proposed requirement that "fund governance standards" will be met only if a fund has a disinterested¹ director (1) serving as its chairman or (2) otherwise presiding over board meetings with the same responsibilities as a chairman (the "Disinterested Chair Proposal" or the "Proposal").

As discussed more fully below, we believe that the Disinterested Chair Proposal is unnecessary, restrictive, and would create a burden for investment companies that will ultimately be financed by shareholders without affording any substantial increase in investor protection.

¹ A disinterested director refers to a director who is not an "interested person" as defined by Section 2(a)(19) of the Investment Company Act of 1940 (the "1940 Act").

Disinterested Chair Proposal

In the Commission's proposing release,² which sets forth the Disinterested Chair Proposal, the Commission states that the 1940 Act and state law are silent as to who should fill the important role of fund board chair. For the reasons discussed below, we believe that it is appropriate for the Commission to remain silent with respect to this matter.

Each fund should continue to have the flexibility to decide how the chair role should be filled. Most fund complexes have boards comprised of a majority of disinterested directors in order to rely on certain relief provided by the rules promulgated under the 1940 Act. We believe that the disinterested directors on these boards are familiar with their duty to ensure that the chair is capable and qualified to perform his or her role, and we believe that the disinterested directors are able to select an appropriate person to serve as chair³.

In particular, the Board of Trustees of the EQ Advisors Trust is over 75% composed of disinterested Trustees and has a chairman who is affiliated with the Trust's adviser as well as a lead disinterested Trustee. Despite the chairman's affiliation with the Trust's adviser, the disinterested Trustees have experienced no problems with having items placed on the agenda that are worthy of discussion and responses to requests for information have always been met. Having a disinterested chair would not improve the current relationship.

As discussed below, requiring a disinterested chair would create additional costs for fund complexes that would be borne by shareholders and may not afford any substantial increase in investor protection. Accordingly, we believe that it is appropriate that fund boards maintain the flexibility to select a chair from a universe of potential candidates that may include persons affiliated with the fund's adviser.

² Proposed Rule: Investment Company Governance, Release No. IC-26323 (Jan. 15, 2004).

Request for Comment – Would the Disinterested Chair Proposal strike the correct balance between management of the fund and the proper role of disinterested directors?

We believe that the Disinterested Chair Proposal would not strike the correct balance between management of the fund and the proper role of disinterested directors. The chair position encompasses a level of familiarity with the adviser and the details of the fund's operations that may not realistically be held by a disinterested director. The role of a fund's chair comprises a managerial component that in many ways represents the public face of the fund and the adviser. Because the operation of the fund is in reality a function of the adviser, a chair who is part of the adviser's organization will normally be more intimately aware of the fund's operations and its relationship with the adviser and third party service providers than any disinterested director could be and in many cases is most suited for the chair role. The disinterested director chosen to fill the chair position would likely be required to maintain a day-to-day relationship and physical presence with the fund's adviser in order to most effectively perform his or her duties. As a practical matter, many fund groups would have difficulty finding qualified individuals who are willing to accept this depth of responsibility and the associated time commitment. This problem would be more acute for those fund groups located in less accessible geographic locations. It would also be a burden for fund groups whose disinterested directors live out of town or have significant professional or business commitments. Furthermore, a fund group would need to compensate the disinterested chair commensurate with his or her additional responsibility and time commitment and would need to hire additional support for that individual. The costs associated with travel, time requirements, increased staff and increased compensation for the disinterested chair would impact all funds, with a greater impact on smaller funds and on fund groups with multiple board chairs. These additional costs would be borne directly by fund shareholders.

³ See, *Id.* (Majority of disinterested directors may empower the disinterested directors to select the appropriate person to

In light of the fact that there is little or no evidence that a disinterested chair would have prevented or mitigated any of the abuses in the mutual fund industry which have led to proposals like this one, we believe it would be inappropriate to ask fund shareholders to finance the costs that would be brought about by the Proposal. Of course, a fund board would still be free to determine that, considering the particular circumstances of the fund group, a disinterested chair best serves the interests of fund shareholders and that a qualified and willing candidate is available.

Request for Comment – Would the Disinterested Chair Proposal have the result of improving boardroom culture and reducing the advisers' ability to dominate the board?

In our experience, disinterested directors are not dominated by advisers. Moreover, we do not believe that the Disinterested Chair Proposal would have the result of improving boardroom culture. The adviser is an integral component of fund operations and, therefore, we believe having the adviser primarily responsible for setting the agenda, with oversight and guidance supplied by the disinterested directors, provides the most efficient means to ensure proper fund compliance and governance. This process should continue, even if the chair is disinterested. As discussed below, we believe the Disinterested Chair Proposal could actually weaken fund governance, which could negatively impact boardroom culture.

Request for Comment – Would a disinterested chair weaken fund governance because a disinterested director could not effectively lead the board through a discussion of a detailed and complex agenda?

We strongly believe that a disinterested chair could actually weaken fund governance in many cases because a disinterested chair may not be able to effectively lead the board through a discussion of a detailed and complex agenda. As discussed above, a continuous presence with the adviser would need to be established by the disinterested chair to fully understand the day-to-day

operations of a fund, which is required to effectively lead the board. Even if integral familiarity with fund operations was established, it would take time to develop and fund governance could be weakened during this period to the detriment of shareholders.

Request for Comment – Is a “lead director” or a requirement that the chairman be elected annually by the board, including a majority of the disinterested directors, an equally effective alternative?

We believe that having a lead director or a requirement that the chair be elected annually by the board, including a majority of the disinterested directors, would be a more effective alternative to requiring a disinterested chair. In particular, designating a lead disinterested director would provide a more efficient means of providing effective disinterested director oversight over the fund’s activities at a cost that would be less burdensome for shareholders. The viability of the lead director alternative is evident as many fund boards are already considering or have already appointed a lead disinterested director. As discussed above, a lead disinterested director could be required to approve the board agenda to ensure that all matters deemed important by the disinterested directors would be addressed. Further, in practice, effective lead directors reliably foster the type of meaningful dialogue between management and disinterested directors that is critical for healthy fund governance and for a culture conducive to decisions favoring the long-term interests of shareholders.

A lead disinterested director could also assist the board with negotiating advisory fees. The proposing release suggests that a board may be more effective when negotiating advisory fees, if the board had a disinterested chair. We believe that the requirements of Section 15(c) of the 1940 Act already establish a framework for fund boards to effectively negotiate advisory fees; however, a lead disinterested director could fill an important role after an executive session to

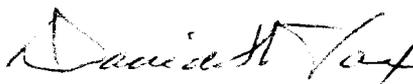
U.S. Securities and Exchange Commission
Attention: Jonathan G. Katz, Secretary
March 4, 2004
Page 6

communicate director concerns with respect to fees to management and make additional requests
for information.

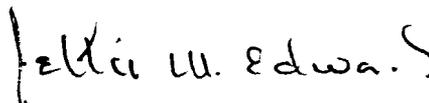
* * * * *

Thank you for the opportunity to comment on these matters.

Respectfully submitted on behalf of the
Disinterested Trustees of EQ Advisors Trust,



David W. Fox
Lead Disinterested Trustee



Jettie M. Edwards
Audit Committee Chairman

cc: Ted Athanassiades, Disinterested Trustee
William M. Kearns, Jr., Disinterested Trustee
Christopher P.A. Komisarjevsky, Disinterested Trustee
Harvey Rosenthal, Disinterested Trustee
Gary Schpero, Disinterested Trustee