



FIRST AMERICAN FUNDS™

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August 7, 2006

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OFFICE OF THE SECRETARY

Securities & Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Attention: Nancy M. Morris

Re: File Number: S7-03-04

Members of the Commission:

On behalf of the Board of Directors of the First American Funds, I am writing in response to your request for comments on the two previously approved rule amendments invalidated by a federal appeals court on April 7, 2006. As you know, those amendments would require mutual funds relying on certain exemptive rules under the Investment Company Act of 1940 to be (1) chaired by an "independent" director (the "Independent Chair Requirement") and, (2) governed by a board at least 75% of which is comprised of independent directors (the "75% Requirement"). We understand that the Commission seeks comments "regarding current cost data . . . for funds that have voluntarily complied with either or both of the conditions" and also regarding "additional provisions designed to achieve the underlying purpose of the amendments, which is the protection of funds and fund shareholders."

The First American Funds consist of 58 separate mutual funds having over \$66 billion in total assets. Our Board has been comprised *entirely* of independent directors since June 2003. In addition, we have had an independent chair for over eight years, well before the Commission approved the Requirements addressed in this letter. Our totally independent Board has proven to be an effective and useful governance structure focused on all directors fulfilling their fiduciary duties to shareholders. We have an arms' length relationship with a management organization that we respect and with which we work closely and collaboratively.

#### Independent Chair Requirement

I have served as the independent chair of our Board since September 1997. Given that my tenure predates the Independent Chair Requirement, complying with that Requirement would not result in added expenses to our Fund shareholders. Our cost of transition to an independent chair consisted of a \$12,500 increase in my compensation for assuming the leadership of our

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Board.<sup>1</sup> We did not retain additional staff as the management organization has supported us well before and after the transition. In fact, the management organization did not add staff either in light of the change. My increase in compensation represented 0.00089% of the assets under management at the time. As you can see, this added expense to shareholders was de minimis.

It is interesting to note, in considering the potential costs of the Independent Chair Requirement, the results of the Investment Company Institute's most recent "Overview of Fund Governance Practice." That study, which included information gathered from 7,549 funds, reports that as of December 31, 2004, 43% of complexes had an independent chair and 18% of complexes had an independent "lead director." This means that 43% of complexes surveyed would not incur additional costs to comply with the Independent Chair Requirement. Further, to the extent that the 18% of complexes with an independent lead director already compensate that director for the leadership role that he or she undertakes, the costs of transitioning from an interested to an independent chair are likely to range from zero to some de minimis amount (as it was for us when we transitioned). Finally, if our experience is common in that the only cost of that transition was an immaterial expense to Fund shareholders, we have no reason to believe that it should be different for the remaining 39% of participants in the ICI study nor for any other complexes that did not participate in that study.

Since the Commission also seeks comment on the "underlying purpose" of the Independent Chair Requirement, we would like to share what we believe to be three strong reasons in support of that Requirement.

- First, it reinforces what should be reflected as a reality in all fund boardrooms: that a fund's investment adviser is a service provider to the fund and that the fund is its client. We respectfully suggest that it is unseemly for a fund's board to be chaired by an employee of its investment adviser and that it exacerbates an inherent conflict of interest.
- Second, if the independent directors of a fund board are to be truly empowered to negotiate contracts on behalf of the fund and to monitor objectively the performance of all fund service providers (including the investment adviser), it is counterintuitive for the independent directors to be led in that function by an employee (often the CEO) of the investment adviser. It is difficult to think of a more awkward situation than this in any negotiation.
- Third, while independent directors are hailed as shareholder "watchdogs," the investment adviser's recognition of the power and role of the independent directors may be undermined when one of its senior officers controls the tempo of meetings

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<sup>1</sup> While not a cost of transition from an interested to an independent chair, the current cost of having an independent chair is approximately \$100,000 (depending on meetings attended and certain other assumptions). This figure equals the difference between the chair's annual aggregate compensation and that of each other independent director on the Board. While in absolute terms \$100,000 may be a significant amount, as a percentage of the \$66 billion in total assets under our Board's oversight, the additional compensation for the chair continues to be de minimis.

and the subjects discussed. Having an independent chair forcefully underscores the legitimate authority and function of independent directors.

75% Requirement

Given that our entire Board is independent, complying with the 75% Requirement would not result in any added expenses to our Fund shareholders. Further, when we became a 100% independent Board in 2003, it was after the sole, remaining interested Director resigned. To the extent that boards comply with the 75% Requirement through the resignation of one or more interested directors (as opposed to via the solicitation and selection of new independent directors), complying with the 75% Requirement should not result in added costs. The only complexes that may not have enough directors on the board to consider the resignation of an interested director may be complexes with small boards. For them, the only option may be to add directors to the board. We understand that the Commission has specifically asked small fund complexes to comment on the 75% Requirement. While we endorse the Requirement, we agree that it is important to understand how it might affect smaller complexes with proportionately fewer assets.

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Our Board strongly supports both the Independent Chair Requirement and the 75% Requirement. We believe that both initiatives likely involve immaterial costs for complexes which do not already meet them. When weighed against the benefits of continuing to empower independent directors as "watchdogs" for the interests of shareholders, the choice to us is clear. We applaud and support the efforts of the Commission to enhance our independence and that of our independent director colleagues in the fund industry. We hope that when the Commission renews its deliberations, it will continue to be guided by the same principles that led it to adopt these governance changes in July 2004.

Sincerely,

  
Virginia Stringer, Independent Chair,  
First American Funds