



RMR FUNDS  
RMR ADVISORS, INC.

March 2, 2007

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

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RE: File Number S7-03-04

Dear Ms. Morris:

This letter is intended to present comments invited by the Commission on December 15, 2006 in Release No. IC-27600 regarding the proposed rules requiring 1940 Act companies to have 75% disinterested trustees and an independent chairman. These comments represent the unanimous view of the RMR Funds' Boards of Trustees and of RMR Advisors, Inc., the investment adviser to the RMR Funds. We have previously submitted a letter of comment on these matters to the Commission on August 14, 2006. Many of our comments contained in that letter are repeated herein for your convenience.

Each of the RMR Funds was formed between December 2003 and May 2006. These funds include: RMR Real Estate Fund; RMR Hospitality and Real Estate Fund; RMR F.I.R.E. Fund; RMR Preferred Dividend Fund; and RMR Asia Pacific Real Estate Fund. As of February 28, 2007, these five funds have a combined common equity market value of \$298 million, and total market capitalization (including preferred share leverage in four of the five funds) of \$418 million.

Each of the RMR Funds has a board of trustees of five persons including two persons affiliated with RMR Advisors who are sometimes designated as "Managing Trustees" and three persons who are "disinterested" as that term is defined in the 1940 Act and are sometimes designated as "Independent Trustees". Each board has three committees: an audit committee; a compensation committee; and a nominating committee. The three Independent Trustees are all of the members of these committees and each serves as chairman of one committee. None of the boards have a designated chairman. Agendas for board meetings are prepared by the president of the RMR Funds (who is also president of RMR Advisors) after consultation with the funds' portfolio managers,

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officers and outside professional advisors (i.e., lawyers, accountants and representatives of the sub administrator, State Street Bank). The president also reviews the minutes of prior board meetings to determine if there are carryover matters. Any board member can request a matter be added to the agenda. The agenda and board materials are usually reviewed in advance of distribution to the boards by one of the Managing Trustees. Discussions at RMR Funds' board meetings are led by one of the Managing Trustees, except that topics which are first considered by the audit committees, the compensation committees or the nominating committees are generally presented by the Independent Trustee who is the chairman of the concerned committee.

If the S.E.C. proposed governance rules are adopted, compliance by the RMR Funds will require that either: (i) one of the Managing Trustees resign creating boards of four members, three of whom will be disinterested, or (ii) that the boards be increased from five to at least eight members; and that a disinterested trustee serve as chairman of the boards. We do not believe that rules requiring such actions will be in the RMR Funds best interests:

- If one Managing Trustee is removed, the RMR Funds would achieve technical compliance with the proposed 75% rule. There would be no compensation savings by the funds since Managing Trustees are not paid for their services as trustees separately from their compensation from RMR Advisors. However, we believe reducing the boards to four members with only one Managing Trustee might result in intangible detriments to the funds. The continuity of management would be less smooth if the one Managing Trustee becomes no longer available to serve. Certain important functions in the day to day operations of the funds would no longer be performed by a person with the status of a Managing Trustee. Also, the Independent Trustees would not have the opportunity to have possibly divergent views from two Managing Trustees colleagues.
- Adding three disinterested trustees to the RMR Funds' boards might increase the number of opinions expressed at board meetings, but there seems little reason to believe that the possibly increased number of opinions will be worth the added costs or that the informed quality of the opinions will be enhanced. Adding three disinterested trustees will double the cost of trustee compensation and expenses paid by the RMR Funds. At present, each of the Independent Trustees on the RMR Funds boards serve on all three board

committees and each is chairman of one committee. This creates a working environment where each Independent Trustee is well prepared for all of the important matters which come before the board. By adding three disinterested trustees, an unintended consequence may be to add board members who do not serve on certain committees, who do not have the vested interest of serving as chairman of a board committee and who are less well informed about board matters.

- To effectively serve as an independent chairman of a fund board, a disinterested trustee should require increased compensation and staffing. While a fund adviser might provide office space and some staffing, we believe an independent chairman should be paid by the fund and may require independent staff. Frankly, for smaller fund groups like the RMR Funds, we believe it will be difficult to locate qualified persons and persuade them to make the time commitments necessary to serve as an independent chairman of the boards. To make the proposed rules work effectively and to justify the increased costs, the RMR Funds are considering asking an independent chairman of the board to also serve as chairman of the various board committees. Again, the unintended consequences of the proposed rule would be either to have an ineffective chairman or to concentrate information and responsibility in one disinterested trustee rather than have three well informed, disinterested trustees as currently exist at the RMR Funds.

The Commission recently released two papers prepared by its Office of Economic Analysis (OEA) that relate to issues regarding mutual fund board independence. The first paper, entitled Literature Review on Independent Mutual Fund Chairs and Directors, notes that economic theory provides no clear guidance as to the best structure of a fund board, either in terms of board chair status or the percent of directors who are independent. The paper also notes that what works for one fund (or operating company) may not be appropriate for another. The paper also states that the empirical data does not clearly indicate the superiority of any particular board arrangement. For example, the paper notes that studies have indicated that "boards with a greater proportion of independent directors are more likely to negotiate and approve lower fees." On the other hand, the paper indicates that there is no consistent evidence that funds with independent chairs have either lower fees or better performance.

The paper also points out that the optimal structure of a firm's board, from a firm value standpoint, depends on the relative importance of the board's expertise or independence versus the need for access to hidden, firm specific information. The paper notes that this optimum may prove to be quite different for firms with different characteristics. Changes in board structure may affect the quality of decisions within the firm and thereby may affect investor value. The theoretical literature on board composition reflects the observation that the incremental value of outsider expertise and independence, relative to information access, may vary widely among firms.

In another section, the paper notes that empirical literature is generally silent about what specific independence majority requirements are optimal. It identifies one study, however, that suggests that a simple majority of independent directors constitutes a focal point that balances information of insiders with independence of outsiders. Seemingly in support of that study, the paper notes that there are many decisions that boards make, unseen by investors and researchers, where greater insider participation could potentially benefit shareholders.

The second paper, entitled Power Study as Related to Independent Mutual Fund Chairs, examines three recent studies that have concluded that there are no demonstrable economic benefits to having an independent board chair. The studies concluded that there is no relationship between a fund's board being led by an independent chair and better outcomes for the fund's investors along these dimensions. The paper argues that it still may be the case that an independent board chair would lead to superior outcomes, but that such a result is difficult to pinpoint because of the limits of data and statistics.

RMR Funds find that the OEA papers effectively make the case that there is no empirical basis for imposing the independent chairman rule or the requirement to have 75% of a fund's board of directors be independent. In fact, the so called agency conflict cited in the OEA's first paper is largely moot because of the combined effect of the "Exemptive Rule" that requires that a majority of mutual fund boards consist of independent directors and the rule that advisory contracts for a mutual fund be approved solely by independent directors.

The Commission's initial release specifically requested that comments address, among other matters, the impact of the proposed rules upon efficiency, competition, costs and protection of investors:

Efficiency. Reducing the RMR Funds' boards or any fund board to four members, at least three of whom are disinterested,

will not promote efficiency. The matters now reported to the RMR Funds' board by a second Managing Trustee may have to be reported through the remaining Managing Trustee. Board meetings might have to be delayed or rescheduled in order to accommodate the one representative of RMR Advisors on the boards.

Increasing the RMR Funds' boards to include at least eight members will require more repetition and intra-board communications.

The proposed requirement for an independent chairman of the board is likely to have the unintended consequence of concentrating information in one disinterested trustee and, in effect, may create another level of information flow: management through the Managing Trustees to the independent chairman of the board to the other disinterested trustees vs. the current information flow from management through the Managing Trustees to the Independent Trustees.

Competition: There are obvious economies of scale in the money management industry. The SEC regulated part of this industry is becoming an oligarchy which is dominated by huge firms. It is very difficult for a start up money management business to locate qualified persons to serve as disinterested trustees. Requiring a larger number of such persons or that a disinterested person also assume the responsibilities of an independent chairman will make these tasks harder and make it less likely persons who wish to enter the money management business will register under the 1940 Act. We believe an unintended consequence of the proposed rules will make it more likely than at present that prospective money managers will elect to be unregulated hedge fund operators and that smaller mutual fund businesses will sell out. Without doubt, the proposed regulations will lessen competition in the SEC regulated business of money management and further limit the investment choices available to small investors who do not qualify to invest in hedge funds. We suspect that some larger fund companies may support these regulations because they may afford them competitive advantages in operations, they may prevent some new money management businesses being started and they may cause small companies to sell out.

Costs. As previously noted, adding three disinterested trustees to the RMR Funds' boards will double the costs now paid to disinterested trustees. The requirement of an independent chairman of the boards will also increase costs. For small fund groups these increased costs are likely to be material. We estimate that these proposed rules will increase the total costs borne by RMR Funds' shareholders by about \$150,000 to \$250,000

per year, or by about a 7% to 13% increase in total fund expenses (excluding advisory fees) paid by the RMR Funds.

Investor Protection: For the reasons presented above, we do not believe the proposed regulations will enhance investor protections. To improve investor protections, we suggest that the Commission consider alternatives to the proposed rules as follows:

- **Increased Disclosure:** Instead of requiring that a fund board have any specific number or percentage of disinterested trustees different from the requirements in the 1940 Act, we suggest that the Commission consider a rule which requires communication to shareholders which explain why a fund board has determined that a certain number of trustees and a certain percentage of disinterested trustees are appropriate. Similarly, we suggest the Commission consider a rule which requires a fund board to tell shareholders why it has determined to have, or to not have, an independent chairman of the board.
- **A 60% Rule:** Instead of a rule requiring that 75% of a fund's board be disinterested trustees, we suggest a rule requiring that at least 60% of a fund's board be disinterested. A 60% rule would allow a five member board with three disinterested trustees. Based upon the RMR Funds' experience we believe this ratio can effectively serve the interests of investor protection without adding unnecessary costs and without lessening efficiency or competition.
- **Independent Committee Chairmen:** As an alternative to an independent board chairman, we suggest the Commission permit each fund board to decide to have either: (i) an independent board chairman; or (ii) independent chairmen of its audit, compensation and nominating committees. The compensation committee should also be composed 100% of disinterested trustees and be charged to recommend advisory compensation. Of course, where the compensation committee includes all of the disinterested trustees, as it does in the case of the RMR Funds, the committee itself could determine the advisory fees. 1933 Act companies are now effectively required by Commission approved rules to have independent chairmen of these committees and such rules seem to work. We suggest that 1940 Act companies be afforded an option to have either an independent board chairman or independent committee chairmen. We believe this alternative has worked well

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for the RMR Funds and we request that the final rules permit it to continue without the added costs created by a requirement for an independent board chairman.

We hope these comments are helpful to the Commission.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas M. O'Brien".

Thomas M. O'Brien  
President, RMR Funds  
and RMR Advisors, Inc.