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March 30, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW.
Washington, DC 20549-0609

Dear Mr. Katz:

I am writing the Securities and Exchange Commission to comment on proposed rule number 3235-AJ10: Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies.

I am a third year student in a four year dual degree program in which I will earn a Masters in Business Administration from The University of Toledo College of Business Administration and Juirs Doctor from The University of Toledo College of Law. My undergraduate degree was from The Richard T. Farmer School of Business at Miami University. My major was Management Information Systems with a minor in International Business. In my post-graduate work, I have concentrated my course work in the areas of business and commercial law, including but not limited to the areas of securities regulation, corporate finance and taxation.

I am interested in adding comments to this Securities and Exchange Commission rule because I believe the increased availability of investment information which this rule will provide will provide value to investors looking toward fund investment.

Enclosed are my comments for the Securities and Exchange Commission's proposed rule focusing on Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies.

Sincerely yours,

Andrew C. Spitler

Comments to proposed Securities and Exchange Commission proposed rule number 3235-AJ10: Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies

SUMMARY:

Improving the disclosure by registered investment management companies of decisions affecting investment advisory contracts in shareholder reports is useful to both potential investors and shareholders. Investors will benefit by gaining anther tool to evaluate a fund while shareholders gain more oversight over the board of directors' (directors) approval of investment contracts. So long as funds are required to include, at a minimum, a cross reference in the prospectus and reference in the Statement of Additional Information (SAI) to the shareholder reports, disclosure regarding the basis of the directors' approval of an existing investment advisory contract is no longer necessary in the SAI. A reference will provide notice to investors and a set location in which to look for the disclosure.

If the directors of a fund choose not to compare the compensation and services rendered among investment fund advisors, the directors should be required to disclose the reasons why they did not rely on such comparisons. This will prevent directors from escaping compliance with the rule and promote the underlying spirit of the rule, disclosure to investors. Further, no loophole should be available to allow directors to classify expenses unfairly and thereby circumvent the measures of disclosure proposed in this rule. The proposed disclosure requirements will not have a chilling effect on directors' consideration of investment advisory contracts. Directors, advisors, and investors all gain benefits through more purposeful and thorough investment advisor

searches. Funds should be given at least a quarter prior to the end of the calendar year in order to comply with this regulation.

SPECIFIC COMMENTS:

Inclusion of the proposed disclosure in shareholder reports will be useful to investors.

Section 80a-15 governing the contracts of advisors and underwriters requires any individual who serves as an investment advisor to a fund to be approved by a majority of a fund's shareholders. 15 U.S.C. §80a–15(a). The compensation and terms of the investment advisor's contract must also be approved by a majority of the fund's disinterested board of directors (directors). 15 U.S.C. §80a–15(c) mandates a fund's directors to disclose the material factors that formed the basis for the director's recommendation to the shareholders for approval of a new investment advisor contract. As for existing investment advisory contracts, directors' must disclose the basis for renewing investment contracts in a Statement of Additional Information (SAI). The underlying purpose behind these regulations is to allow shareholder access to information regarding how investment fund advisors are evaluated by the board of directors and specifically the amount of compensation to be paid out on advisory contracts.

Unfortunately, disclosure by fund directors has become increasingly vague with regard to material factors for the approval of advisory contracts, and concerns have been raised regarding the amount of fees charged and the completeness of review of the contracts by boards' of directors. (Carla Fried, *Pressure to Cut Fund Fees*, The New York Times, Jan 11, 2004, at sec. 3, pg. 26.; Hayashi and Lauricella, *Fund Report Disputes Critics' Study – Trade Group Rebuts Figures Cited by New York's Spitzer on High Management Fees*, The Wall Street Journal, Jan 7, 2004, at D9.). The proposed

rule bolsters the previously required disclosure to shareholders and places two additional requirements on directors. One, directors must accurately disclose the factors and compensation amounts tied to the recommendation of approval of new contracts as well as the re-approval of existing contracts. Two, if directors compare their fund advisor to other fund advisors, the nature and result of the comparison must be disclosed. These bolstered and new disclosure requirements will benefit investors and shareholders in at least three ways.

First, more informed investors are able to make better investment decisions. The proposed rule requires that funds include specific factors such as the nature and extent of services, compensation, performance of the fund and advisor, evaluation of economies of scale and how economies of scale are affected by the compensation in the contract. In addition to evaluating these factors, if the factors are compared to any other services, these comparisons must be disclosed. (Proposed Items 12(b)(10)(i) and 21(d)(6)(i) of Form N-1A; Proposed Item 18.13(a) and Proposed Instruction 6.e.(i) to Item 23 of Form N-2; Proposed Item 20(l)(i) and Proposed Instruction 6(v)(A) to Item 27(a) of Form N-3; Proposed Item 22(c)(11)(i) of Schedule 14A). Allowing investors access to this type of information gives them an additional tool to weigh the benefits of funds against each other. In time, investors may even be able to develop new investment strategies based heavily upon the fees paid out by particular funds in relation to the return gained from an investment advisor. These new regulations will encourage reasonable fees by stipulating that directors must consider and disclose the factors and comparisons. At the least, the increased transparency will act to prevent directors from overcompensating fund advisors and thereby prevent skimming profits form investors. In sum, disclosure benefits

investors, encourages reasonable fees, and reduces the possibility of profit skimming by directors and advisors.

Second, this regulation bolsters a fund's existing requirement to make disclosures that are more than broad-based generalizations as to the reasoning for the approval of advisory contracts. Under the current disclosure rules a basic statement suffices to satisfy the reasoning why directors propose a new contract to shareholders. This boilerplate type language was not what Congress contemplated in enacting 15 U.S.C. §80a-15. (Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734, 3744 (Jan. 16, 2001)].) Forcing directors' to disclose specific reasons for fund selection will force directors' to take a more active role in selecting and evaluating investment fund advisors. This benefits investors and directors' in at least three respects. Investors benefit from active directors who evaluate advisor options more thoroughly and consider more advisors. This will promote the selection of better investment contract advisors for their particular fund. Moreover, the compensation level of investment advisors could also be driven downward, leaving more assets for the fund.

Directors benefit from increased independence and effectiveness. More detailed analysis of the reasoning for proposing and renewing investment contracts swill cause directors to examine contract proposals more completely. This may also lead to directors' gaining negotiating leverage for contracts with investment advisors. Further, fund directors will be able to compare management strategies, which will lead to better director decision making and could create a basis for a fund to separate itself from competing funds.

Third, this rule is merely a small portion of what seems to be an overall push by the SEC to encourage disclosure to investors. (Investment Company Act Release (ICAR) No. 26195 (Sept 29, 2003) [68 FR 57760 (Oct. 6, 2003)]; ICAR No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)]; ICAR No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)]; ICAR No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)].) As such, this disclosure is a logical step in the progression of increased disclosure to investors. Given that the Commission is pushing for increased disclosure, the basis of the director's approval of an advisory contract should be required not only in shareholder reports but also in the fund's prospectus. This will allow for an opportunity for investors to discover the factors that went into the approval of an investment contract without having to obtain shareholder reports. In addition, the Commission should also encourage disclosure though other outlets such as fund's websites.

Disclosure regarding the basis of the director's approval of an existing investment advisory contract is unnecessary in the SAI, so long as funds are required to include a cross reference in the SAI, and at a minimum a reference in the prospectus to the shareholder reports.

If this proposed rule were put into effect, fund directors would be required to disclose the nature and the board's rationale behind approving an existing advisory contract in the shareholder reports and the SAI. Clearly the shareholder reports are an appropriate place for disclosure of the approval of an existing advisory contract. By contrast, the SAI is a catch all for information that does not fit into a readily identifiable category. As such, the average investor will have a more difficult time accessing the information contained in the SAI. Although full and accurate disclosure is key to establishing an effective market, a flood of repetitive and over information, particularly

where it may seem disjointed, may in the end be detrimental to investors. A more effective way to handle this additional information would be through a simple reference in the SAI to the shareholder reports. This would be sufficient to put investors on notice that they may have missed some valuable information well also allowing seasoned investors to continue to look to the SAI for a reference to information regarding advisory contract disclosures.

In addition, the prospectus should also contain advisory contract disclosures divulged in the shareholder reports so that new investors would have a consolidated source for the disclosures. At a minimum, the prospectus should contain a reference to the portion of the shareholder reports that contain the relevant disclosures.

Directors should be required to disclose reasons why they did not rely on a comparison of services to be rendered in relation to contract fees with other investment fund advisory contracts if they fail to take such steps.

In the process of approving an investment contract, the proposed rule requires the directors to indicate if they drew comparisons between investment fund advisors. If the directors relied on such comparisons they must describe the comparisons and which factors were most heavily relied upon. For example, it would seem logical that most directors would compare the fees to be paid to the corresponding package of services offered by individual investment advisors. If this in fact were the case, the directors must disclose this comparison in the shareholder reports. However, if the directors choose not to compare investment fund advisors the directors should still be forced to disclose both the reasons why the board chose not to compare investment fund advisors and the amount to be paid on the approved investment contract. Unless the final rule is amended to require some form of disclosure as proposed above, there is a substantial risk that

directors will have an incentive to avoid evaluating different advisors so that they can avoid disclosure of any comparison.

The underlying purpose behind this rule is to encourage fair and reasonable fund advisor fees though increased transparency. If funds are allowed to hide behind a veil by claiming that they have undertaken no comparisons, or worse, pay out excessive management fees to fund advisors without having to disclose the terms or rationale behind approving that contract, the spirit of the rule will be violated. All fund directors should be forced to make meaningful disclosures whether or not they engage in comparison shopping if this rule is to have a beneficial effect on investors.

Directors' should not be allowed to unfairly classify expenses and thereby circumvent the measures of disclosure proposed in this rule.

Funds should be required to disclose whether the board separately assessed the compensation directly for portfolio management services and any compensation given for services other than portfolio management. If directors are allowed to approve and disclose only a portion of an investment contract and the underlying reasoning for the approval, the inevitable shift would be for funds to classify compensation to fund advisors as a type other than management fees. This shift would allow funds to hide a significant portion of advisor compensation from shareholders. In this way, investors would again be left with a less accurate and less robust disclosure of the contract terms that this rule seeks to make available. Although directors may accurately classify compensation as for services other than portfolio management, investors still deserve to know the full extent and nature of the compensation given to an investment fund advisor

in relation to work performed for the fund. At a minimum, closing this loophole would prevent directors' from shirking disclosure requirements by classifying compensation.

The proposed disclosure requirements will not have a chilling effect on directors' consideration of investment advisory contracts.

The proposed rule will not create a chilling effect on the decisions of directors regarding investment contracts. Enacting this rule will force the directors of all funds falling under the rule into compliance by providing full and accurate disclosure. Were the rule only to penalize or force a portion of the market to disclose, then certainly directors of funds whom were forced to disclose while others were not would actively look to avoid disclosure. By preventing directors from escaping disclosure whether by refusing compare funds or by using loopholes to reclassify portions of investment fund contracts, every fund will be on equal footing. The resulting effect would then be quite the opposite of a chilling effect on fund directors. Once all directors' know the rationale and amount of compensation for fund advisors of all comparable funds, directors will have a wealth of information that will allow them to seek the best value in choosing an investment fund advisor. This effect will benefit investors, directors and advisors. Investors benefit by a more broadly conducted search for an advisor that best fits the fund. Directors benefit since they would be more actively participating and analyzing potential fund advisors, have an ability to compare strategies, and an opportunity to separate their fund from others on a low or high fee basis. Fund advisors who offer good value will benefit from a more competitive market and the chance to appeal to new fund boards who had previously fixated on only one or a small number of advisors. Thus, instead of a chilling effect, directors, investors and advisors will all subsequently benefit.

The compliance date for the amendments should be a least a quarter before the start of the calendar year.

The date for directors to bring their funds into compliance with this rule should be the beginning of the first calendar year following the approval of this rule, provided approval occurs at least 3 months before the end of the year. Allowing funds at least a quarter to comply with this new regulation they will give them plenty of time to react and conform to the rule. Given that the estimated total burden on each individual fund will only be an increase of two hours in preparation time, several months is sufficient to allow compliance.