



## MFDF Board: Independent Directors Key to Success of Fund Industry

February 11, 2008

The **Investment Company Institute's** recent suggestion that Congress consider permitting a new type of fund without a board of directors did not go unnoticed by the **Mutual Fund Directors Forum**. The group's board of directors recently sent an e-mail to all MFDF members reiterating its view about the importance of fund independent directors. Additional advocacy efforts are expected.

The ICI's suggestion appeared in a December 2007 submission to **Treasury Department** Secretary **Henry Paulson**, responding to his call for comments on ways that the U.S. capital markets could be strengthened. The ICI suggested that Congress consider allowing a new "streamlined investment company structure" that, among other things, reflects the "economic reality" that an "investment company is an investment product established by its investment adviser/sponsor."

While the ICI's suggestion didn't overtly say anything about scrapping directors, it cited a book that did. The book, "*Competitive Equity: A Better Way to Organize Mutual Funds*," authored by **Peter Wallison** of the **American Enterprise Institute** and **Robert Litan** of the **Brookings Institution**, recommended that Congress amend the Investment Company Act to permit a new type of investment vehicle, the "managed investment trust," that would not have a board of directors. Instead of relying on boards to negotiate investment management fees, asserted the authors, market forces would keep fees low. Dedicated professional staff at the fund's trustee bank would be responsible for the other oversight activities currently being performed by boards. In fact, Wallison and Litan asserted that the presence of directors actually contributes to the lack of price competition within the mutual fund industry. "It is time, in our view, for policymakers to stop trying to make part-time boards of directors into something they can never be, and to try something else," they said. Wallison and Litan suggested that the new fund structure be tried as an alternative to, rather than a replacement of, the traditional investment company structure.

Not surprisingly, the MFDF, which represents mutual fund independent directors, didn't seem to think that was a good idea.

In an [e-mail](#) to MFDF members last month, the MFDF board noted that the ICI's recommendation "has been understood by many to mean that the ICI supports legislative change" to allow advisers to offer a pooled investment product similar to European UCITs funds, which are not overseen by an independent board of directors. While the board said it had "no desire" to "become involved in a debate over the meaning or intent of the ICI's recommendation," it added that given the continued debate over the role of independent directors, it was an "opportune time" to reiterate the MFDF's view that independent directors are "central to the success" of the U.S. fund industry. "[A]ny steps to fundamentally alter our model of fund regulation are unnecessary and would be unwise," said the board. "The approach to regulating mutual funds in the United States, especially our reliance on independent directors to oversee mutual funds and act on behalf of fund investors, has produced uniquely beneficial results for investors."

The MFDF board asserted that the benefits provided by independent directors cannot be replicated by any other approach. Board oversight, in an appropriate regulatory system, "is a far more cost effective means of minimizing the risks posed by conflicts of interest than the more intrusive regulatory system that would be required to protect investors in the absence of independent director oversight," it said.

The MFDF board did agree with the ICI that there are "ways to increase the benefits of mutual funds for investors." The board said it supported a "reexamination and improvement of the manner in which mutual funds are regulated," and that it planned to "explore the possibility of encouraging the SEC to initiate a regulatory

process through which it could reconsider the manner in which directors are called upon to exercise their business judgment in connection with their 15(c) review."

To date, the MFDF has not submitted a comment letter to Treasury, although it is expected to do so.

© Copyright 2008 IM Insight News. All rights reserved.