INVESTMENT COMPANY INSTITUTE

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Mrs. Charlotte Chevalier
Sous-directrice de la fiscalité des personnes
Direction de la Législation Fiscale
Bâtiment Vauban 139, rue de Bercy Télédoc 549
75572 Paris Cedex 12

RE: *French Trust Reporting Rules Should Not Apply to U.S. CIVs Regulated under the Investment Company Act of 1940*

Dear Mrs. Chevalier:

The Investment Company Institute ("ICI")[1] respectfully requests confirmation that the new French trust reporting rules do not apply to any U.S. collective investment vehicle ("CIV") that is regulated under the U.S. Investment Company Act of 1940 ("the Investment Company Act").[2] This request, obviously, is limited to those CIVs that are organized under state law as trusts (in contrast to those CIVs organized as state law corporations).

The Investment Company Act, as discussed below, is in all relevant respects equivalent to the UCITS Directive.[3] Moreover, the investors' ownership interests in U.S. CIVs and in UCITS are comparable. In each case, the investors own shares or units in the investment entity (CIV or UCITS); the investment entity's assets are owned by the entity itself.

Because UCITS are exempt from the trust reporting rules, the same exemption should apply to all U.S. CIVs regulated under the Investment Company Act.

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds ("ETFs"), and unit investment trusts ("UITs"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.3 trillion and serve over 90 million shareholders.

[2] 15 United States Code §§ 80a-1 *et seq.*

[3] A UCITS fund is one that satisfies the requirements of the Fourth Undertakings for Collective Investment in Transferable Securities ("UCITS") Directive ("the UCITS IV Directive").

BACKGROUND: CORE PRINCIPLES OF THE INVESTMENT COMPANY ACT

The core principles of the Investment Company Act, as discussed in detail below, are:

(1) strict separation of the CIV's assets from the CIV's investment adviser through explicit rules concerning the custody of portfolio securities;

(2) ensuring that the market and investors receive sufficient information about the CIV, including its strategy and investment risks, and that the information is accurate and not misleading;

(3) prohibiting complex, unfair, or unsound capital structures by, for example, placing constraints on the use of leverage;

(4) offering shareholders liquidity and objective, market-based valuation of their investments;

(5) prohibiting or restricting affiliated transactions and other forms of self-dealing;

(6) providing for specific diversification standards; and

(7) providing for a high degree of oversight and accountability.

BACKGROUND: TYPES OF U.S. CIVS

U.S. CIVs may be structured for securities law purposes in various forms. The most common type of U.S. CIV that is registered under the Investment Company Act is the mutual fund (also known as the "open-end investment company").[4] The other types of U.S. CIVs that are registered under the Investment Company Act are closed-end funds,[5] exchange-traded funds,[6] and unit

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[4] Mutual funds (also known as an "open-end investment companies") have a fluctuating number of shares outstanding. Most mutual funds continuously offer their shares to the public; all mutual funds are required to redeem their shares at any time for the shares' net asset value ("NAV"), which is determined by dividing the fund's net assets by the number of shares outstanding. Many mutual funds have "actively managed" portfolios; some are managed to mirror the return on a basket of securities.

[5] Closed-end funds issue shares in public offerings that trade on exchanges. Closed-end funds, like mutual funds, typically have "actively managed" portfolios.

[6] ETFs are hybrids in the sense that they are open-end investment companies the shares of which are purchased by individual investors on exchanges. Although most ETFs are managed to mirror the return on a basket of securities, some have more "actively managed" portfolios.

investment trusts.[7] Although there are minor differences in how these funds operate, the regulatory regime under the Investment Company Act applies generally to all of these structures.

The description below of U.S. CIVs and their regulation under the Investment Company Act focuses primarily on mutual funds.

BACKGROUND: THE ORGANIZATION OF A U.S. MUTUAL FUND

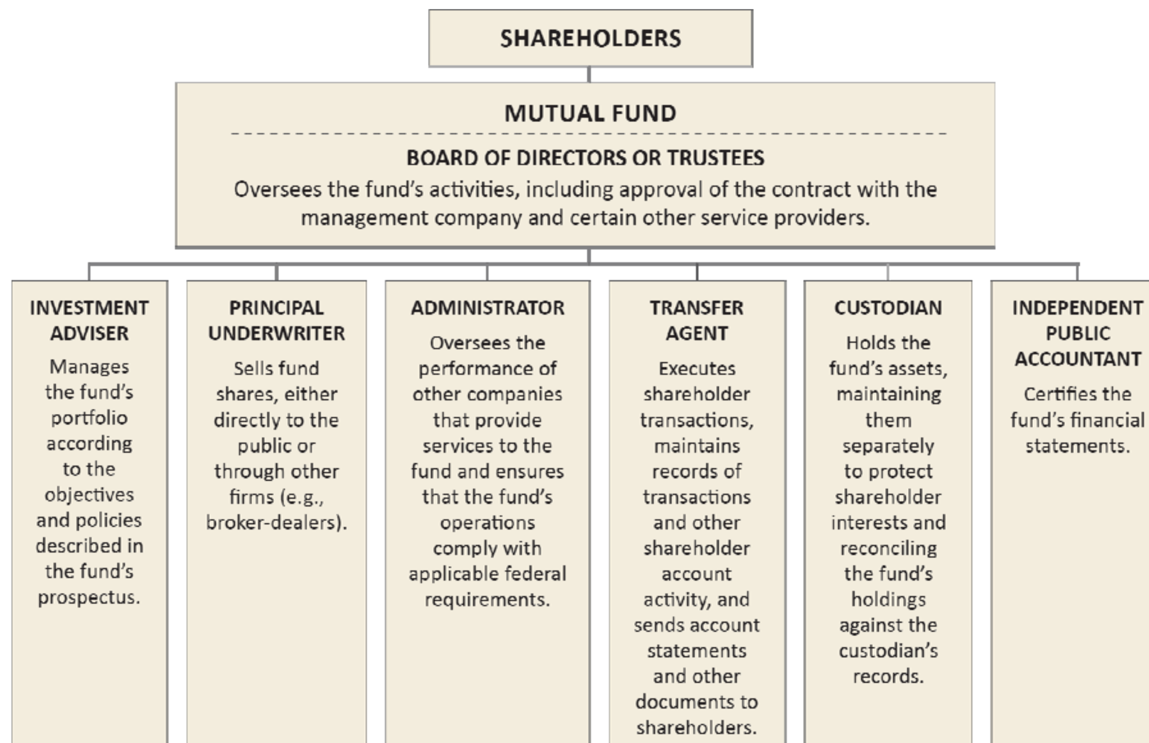
Each U.S. mutual fund is a separate legal entity, organized under state law either as a corporation or a business trust (sometimes called a "statutory trust"). Mutual funds have officers and directors (if the fund is organized as a corporation) or trustees (if the fund is organized as a business trust).[8] The fund's board plays an important role, described in more detail below, in overseeing fund operations.

Unlike other companies, a mutual fund is externally managed; it is not an operating company and it has no employees in the traditional sense. Instead, a fund relies upon third parties or service providers – either affiliated organizations or independent contractors – to invest fund assets and carry out other business activities.

The following diagram shows the primary types of service providers usually retained by a mutual fund. These service providers include the investment adviser, the principal underwriter, the administrator, the transfer agent, the custodian, and the independent public accountant.

[7] UITs generally have fixed lives. UIT units are issued in an initial public offering. While UIT units are redeemable upon shareholder demand, they often trade on a secondary market maintained by the trust sponsor.

[8] Hereafter, for simplicity, both directors and trustees are referred to as "directors."


SHAREHOLDERS
MUTUAL FUND
BOARD OF DIRECTORS OR TRUSTEES
Oversees the fund's activities, including approval of the contract with the management company and certain other service providers.
INVESTMENT ADVISER
Manages the fund's portfolio according to the objectives and policies described in the fund's prospectus.
PRINCIPAL UNDERWRITER
Sells fund shares, either directly to the public or through other firms (e.g., broker-dealers).
ADMINISTRATOR
Oversees the performance of other companies that provide services to the fund and ensures that the fund's operations comply with applicable federal requirements.
TRANSFER AGENT
Executes shareholder transactions, maintains records of transactions and other shareholder account activity, and sends account statements and other documents to shareholders.
CUSTODIAN
Holds the fund's assets, maintaining them separately to protect shareholder interests and reconciling the fund's holdings against the custodian's records.
INDEPENDENT PUBLIC ACCOUNTANT
Certifies the fund's financial statements.

<u>DISCUSSION: CORE PRINCIPLES UNDERLYING MUTUAL FUND REGULATION</u>

Mutual funds are subject to a comprehensive regulatory scheme under the U.S. securities laws that provides important protections for shareholders and limits the potential for systemic risk. Mutual funds are regulated under all four of the major U.S. securities laws: the Securities Act of 1933, which requires registration of the fund's shares and the delivery of a prospectus; the Securities Exchange Act of 1934, which regulates the trading, purchase and sale of fund shares and establishes antifraud standards governing such trading; the Investment Advisers Act of 1940, which regulates the conduct of mutual fund investment advisers and requires them to register with the U.S. Securities and Exchange Commission ("SEC"); and, most importantly, the Investment Company Act of 1940, which requires all mutual funds to register with the SEC and to meet certain operating standards.

The Investment Company Act goes far beyond the disclosure and anti-fraud requirements that are characteristic of the other U.S. federal securities laws by imposing substantive requirements and prohibitions on the structure and day-to-day operations of a mutual fund. The core principles of the Investment Company Act, as noted above, are:

- strict separation of the mutual fund's assets from the fund's investment adviser through explicit rules concerning the custody of portfolio securities;

- ensuring that the market and investors receive sufficient information about the mutual fund, including its strategy and investment risks, and that the information is accurate and not misleading;

- prohibiting complex, unfair, or unsound capital structures by, for example, placing constraints on the use of leverage;

- offering shareholders liquidity and objective, market-based valuation of their investments;

- prohibiting or restricting affiliated transactions and other forms of self-dealing;

- providing for specific diversification standards; and

- providing for a high degree of oversight and accountability.

Each of these core principles is discussed in more detail below.

Custody

The Investment Company Act, similar to UCITS requirements for the protection and safekeeping of fund assets,[9] requires all mutual funds to maintain strict custody of their assets, separate from the assets of the adviser. Although the Investment Company Act permits other arrangements, nearly all mutual funds use a bank custodian for domestic securities.[10] Foreign securities are required to be held only in the custody of certain eligible foreign banks or securities depositories.

A mutual fund's custody agreement with a bank is typically far more elaborate than the arrangements used for other bank clients. The custodian's services generally include safekeeping and accounting for the fund's assets, settling securities transactions, receiving dividends and interest, providing foreign exchange services, paying fund expenses, reporting failed trades, reporting cash transactions, and monitoring corporate actions at portfolio companies.

A mutual fund's portfolio assets are never considered assets of the investment adviser, custodian, or any other fund. No creditor of the adviser or custodian will have a claim against the assets of the fund, and gains or losses of the fund cannot be used to offset losses or gains in any other fund or portfolio.[11] As a result, the failure of the mutual fund's custodian or investment adviser would have little impact on the portfolio.

The Investment Company Act's strict rules on custody and reconciliation of fund assets are also designed to prevent the types of theft and other fraud-based losses that have occurred in less regulated investment products. Shareholders are further insulated from these types of losses by a provision in the Investment Company Act that requires all mutual funds and closed-end funds to have fidelity bonds designed to protect them against possible instances of employee larceny and embezzlement.

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[9] UCITS IV generally requires a UCITS to entrust its assets to a depository that has been approved by the competent authority in its home member state; the competent authority must specify the depository's tasks and liabilities. *See* Directive 2009/65/EC.

[10] The Investment Company Act contains six separate custody rules for the different types of possible custody arrangements for mutual funds.

[11] Each mutual fund stands on its own. It will generate gains or losses based on the performance of its portfolio, less its expenses, independent of the fortunes of any other fund managed by the adviser or serviced by the custodian, and indeed, independent of the fortunes of the adviser or custodian.

Transparency

Similar to the disclosure and reporting provisions applicable to UCITS, mutual funds are subject to extensive disclosure requirements that ensure that the market and investors receive sufficient information about the fund.[12] The combination of registration statements, annual and semi-annual shareholder reports, quarterly portfolio holdings disclosure, and proxy voting disclosure, described below, provide the investing public, regulators, media, and other interested parties with far more information on mutual funds than is available for other types of investments in the U.S., such as separately managed accounts, bank-sponsored collective investment trusts, and private pools, such as hedge funds or private equity funds. The information filed by mutual funds is publicly available via the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR') system. In addition, numerous private-sector vendors, such as Morningstar, are in the business of compiling publicly available information on mutual funds in ways designed to benefit investors and the market.[13]

Registration Statements

The cornerstone of the disclosure regime for mutual funds is the registration statement, which is comprised of the prospectus, the statement of additional information ("SAI"), and certain other information.[14] Mutual funds are required to maintain a current prospectus, which provides investors with information about the fund, including its investment objectives, investment strategies, risks, fees and expenses, and performance, as well as how to purchase, redeem, and exchange fund shares. Importantly, the key parts of this disclosure with respect to performance information and fees and expenses are standardized to facilitate comparisons by investors.[15] Certain information is required to be included in a specific manner (*e.g.*, a fee table with specified entries and nothing additional), location, and/or order in the prospectus. The prospectus must be provided to investors who purchase fund shares. In addition, most mutual funds deliver an updated prospectus to existing shareholders annually.

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[12] The SEC's website contains a description of information available to mutual fund shareholders, available at http://www.sec.gov/answers/mfinfo.htm.

[13] Investment advisers to mutual funds also are required to register with the SEC and disclose information about their business and operations.

[14] The registration statement for mutual funds (Form N-1A) is available at http://www.sec.gov/about/forms/formn-1a.pdf; for closed-end funds (Form N-2) at http://www.sec.gov/about/forms/formn-2.pdf; and for UITs (Form N-8B-2) at http://www.sec.gov/about/forms/formn-8b-2.pdf.

[15] Mutual funds are permitted to provide investors with a "summary prospectus" containing key information about the fund, while making more information available on the Internet and in paper upon request.

Mutual funds also are required to make their SAI available to investors upon request and without charge. The SAI conveys extensive and more detailed information about the fund. The SAI includes information about the history of the fund, offers detailed disclosure on certain investment policies (such as borrowing and concentration policies), lists officers, directors, and persons who control the fund, discloses the compensation paid to directors/trustees, certain officers, affiliated persons and service providers, and describes a range of information about a fund's portfolio managers, including their management of other accounts. In addition, funds must disclose in their SAI the extent of the board's role in the risk oversight of the fund, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

Mutual fund registration statements are amended at least once each year to ensure that financial statements and other information have not become stale. These funds also amend registration statements throughout the year as necessary to reflect material changes to their disclosure.

Annual and Semi-Annual Reports

Mutual fund shareholders receive audited annual and unaudited semi-annual reports within 60 days after the end, and the mid-point, of the fund's fiscal year, respectively. These reports contain updated financial statements, a list of the fund's portfolio securities,[16] management's discussion of financial performance, and other information current as of the date of the report.

Portfolio Holdings and Proxy Voting Disclosure

Following their first and third quarter, mutual funds file an additional form with the SEC, Form N-Q, disclosing the complete schedule of their portfolio holdings.

Mutual funds also are required to disclose annually how they voted on specific proxy issues at portfolio companies on Form N-PX. Funds are the only shareholders required to publicly disclose each and every proxy vote they cast.

Limits on Leverage

The Investment Company Act prohibits complex capital structures and, similar to the UCITS framework, includes provisions that limit the use of leverage. It imposes various

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[16] A fund is permitted to include a summary portfolio schedule in its shareholder reports in lieu of the complete schedule of holdings in securities of unaffiliated issuers, provided that the complete portfolio schedule is filed with the SEC and is provided to shareholders upon request, free of charge. The summary portfolio schedule includes each of the fund's 50 largest holdings in unaffiliated issuers and each investment that exceeds one percent of the fund's net asset value. Each report discloses fully investments in, and advances to, affiliates as well as investments that are not securities, regardless of whether a summary schedule is used.

requirements on the capital structure of mutual funds, including limitations on the issuance of "senior securities" and borrowing.[17] Generally speaking, a senior security is any debt that takes priority over the fund's shares, such as a loan or preferred stock.[18] These limitations minimize the possibility that a mutual fund's liabilities could exceed the value of its assets.

The SEC also takes the view that the Investment Company Act prohibits a mutual fund from creating a future obligation to pay unless it "covers" the obligation. A fund generally can cover an obligation by owning the instrument underlying the leveraged transaction. For example, a fund that wants to take a short position in a certain stock can comply with the Investment Company Act by owning an equivalent long position in that stock. The fund can also cover by segregating or earmarking, on its or its custodian's books, liquid securities equal in value to the fund's potential exposure from the leveraged transaction. The assets set aside to cover the leveraged security transactions must be liquid, unencumbered, and marked-to-market daily. They may not be used to cover other obligations and, if disposed of, must be replaced.

The Investment Company Act also limits borrowing. With certain very limited exceptions, any promissory note or other indebtedness generally would be considered a prohibited senior security. Mutual funds are permitted to borrow from a bank if, immediately after the bank borrowing, the fund's total net assets are at least three times total aggregate borrowings, *i.e.,* the fund must have at least 300 percent asset coverage.

Many mutual funds voluntarily go beyond the prohibitions in the Investment Company Act, adopting policies that restrict further their ability to issue senior securities or borrow. Mutual funds often, for example, adopt a policy stating that they will borrow only as a temporary measure for extraordinary or emergency purposes and not to finance investments in securities. In addition, they may disclose that borrowings will be limited to a small percentage of fund assets (such as five percent). These are meaningful voluntary measures because, under the Investment Company Act, a mutual fund's policies on borrowing money and issuing senior securities (as well as other policies the fund may deem "fundamental") cannot be changed without the approval of fund shareholders.

Daily Valuation and Liquidity

Mutual funds offer shareholders liquidity and objective, market-based valuation of their investments. Mutual fund shares are redeemable on a daily basis at a price that reflects the current

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[17] The Investment Company Act also significantly restricts the ability of a RIC to invest in securities of other investment companies ("pyramiding").

[18] The SEC has historically interpreted the definition of senior security broadly, taking the view that selling securities short, purchasing securities on margin, and investing in many types of derivative instruments, among other practices, may create senior securities.

market value of the fund's portfolio securities; these values are calculated according to the requirements of the Investment Company Act and the policies established by each fund's board of directors.

The Investment Company Act includes detailed provisions for determining the value of each security in a mutual fund's portfolio.[19] The value is determined either by a market quotation, if a market quotation is readily available, or at "fair value" as determined in good faith by the board of directors. Under the Investment Company Act, the board of directors is specifically responsible for fair value determinations.

The daily pricing process is a critically important core compliance function that involves numerous staff, oversight by the mutual fund board, and, in some cases, pricing vendors.[20] The fair valuation process, a part of the overall pricing process, receives particular scrutiny from funds, their boards, regulators, and independent auditors. Under SEC rules, all mutual funds must adopt written policies and procedures that address the circumstances under which securities may be fair valued, and must establish criteria for determining how to assign fair value in particular instances.

The daily valuation process results in a net asset value, or NAV, for the mutual fund. The NAV is the price used for mutual fund share transactions—new purchases, sales (redemptions), and exchanges from one fund to another within the same fund family. It represents the current mark-to-market value of all the fund's assets, minus liabilities (*e.g.*, fund expenses), divided by the total number of shares outstanding.

The Investment Company Act requires mutual funds to process transactions based upon "forward pricing," meaning that shareholders receive the next computed share price (NAV) following the fund's receipt of their transaction order. Mutual funds must price their shares at least once per day at a time determined by the fund's board. Many funds price at 4:00 p.m. eastern time or when the New York Stock Exchange closes.

When a shareholder redeems shares in a mutual fund, he or she can expect to be paid promptly. Mutual funds may not suspend redemptions of their shares (subject to certain extremely limited exceptions)[21] or delay payments of redemption proceeds for more than seven days.

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[19] *See* Investment Company Act Section 2(a)(41) and Rule 22c-1 under the Investment Company Act.

[20] While mutual funds do retain independent pricing services to assist them in fulfilling their valuation responsibilities, those services simply provide an evaluation based on their own methodologies and judgment of a security's value. Mutual funds consider this evaluation together with other information in establishing the price of any particular security.

[21] With the exception of a newly adopted provision for money market funds, the SEC must declare an emergency to exist to trigger an exception that allows a fund to suspend redemptions. Examples of circumstances deemed an emergency by the SEC include the assassination of President Kennedy in 1963, the blackouts that affected lower Manhattan in 1990,

In furtherance of these requirements, SEC guidelines require a mutual fund to have no more than 15 percent of its assets in illiquid securities. A security is generally deemed to be liquid if it can be sold or disposed of in the ordinary course of business within seven days at approximately the price at which the mutual fund has valued it. Many funds adopt a specific policy with respect to investments in illiquid securities; these policies are sometimes more restrictive than the SEC requirements.[22]

Conflicts of Interest and Prohibitions on Transactions with Affiliates

Like UCITS IV, the Investment Company Act includes provisions to address conflicts of interest. The Investment Company Act contains a number of strong and detailed prohibitions on transactions between a mutual fund and fund insiders or affiliated organizations (such as the corporate parent of the fund's adviser).[23] These prohibitions are intended to prevent over-reaching and self-dealing by fund insiders.

Although there are a number of affiliated transaction prohibitions in the Investment Company Act, three are particularly noteworthy:

- Provisions generally prohibiting direct transactions between a fund and an affiliate;
- Provisions generally prohibiting joint transactions, where the fund and affiliate are acting together vis-à-vis a third party; and
- Provisions preventing investment banks from placing or "dumping" unmarketable securities with an affiliated fund.[24]

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and certain natural disasters. A mutual fund would not be permitted to unilaterally suspend redemptions on the basis of a suspension being in the best interests of the integrity of the market.

[22] Money market funds have more specific liquidity requirements under Rule 2a-7 under the Investment Company Act, including specific daily and weekly requirements, and must limit their illiquid investments to five percent of the portfolio.

[23] In addition, a mutual fund's investment adviser has a fiduciary duty to put the fund's interest before the adviser's interest and is subject to numerous restrictions on transactions that may pose conflicts of interest.

[24] The Investment Company Act grants the SEC the ability to exempt certain transactions by rule or order, provided that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

Diversification

Both tax law and the Investment Company Act provide diversification standards for mutual funds. Under the tax laws, all mutual funds seeking to qualify as "regulated investment companies" must meet a diversification test every quarter. The diversification test requires a fund with a modest cash position and no government securities to hold securities from at least 12 different issuers; as a practical matter, funds typically hold the securities of many more issuers.

The Investment Company Act sets higher standards for mutual funds that elect to be diversified. For these mutual funds, the Investment Company Act requires that, with respect to at least 75 percent of the portfolio, no more than five percent may be invested in the securities of any one issuer and no investment may represent more than ten percent of the outstanding voting securities of any issuer. Although securities-law diversification is not mandatory, but all mutual funds must disclose whether they are diversified under the Investment Company Act's standards.

Oversight and Accountability

All mutual funds are subject to a strong system of oversight from both internal and external sources. Internal oversight mechanisms include boards of directors, which include independent directors, and written compliance programs overseen by chief compliance officers, both at the fund and adviser levels. External oversight is provided by the SEC, the Financial Industry Regulatory Association,[25] and external service providers, such as certified public accounting firms.

Mutual Fund Boards

Mutual funds, as noted above, are organized as corporations (with boards of directors) or as business trusts (with boards of trustees). The Investment Company Act requires at least 40 percent of the members of a fund board to be independent from fund management. In practice, most fund boards have far higher percentages of independent directors or trustees. As of year-end 2008, independent directors made up 75 percent of boards in almost 90 percent of fund complexes.[26]

An independent director is a fund director who does not have any significant business relationship with a fund's adviser, underwriter, or affiliates. An independent director also cannot own any stock of the investment adviser or certain related entities, such as parent companies or subsidiaries.

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[25] The Financial Industry Regulatory Association ("FINRA") is a self-regulatory organization that oversees those who distribute RIC shares and RIC advertising.

[26] *See* Fund Governance Practices: 1994-2008, Investment Company Institute and Independent Directors Council, available at http://www.ici.org/pdf/23833.pdf.

Independent fund directors play a critical role in overseeing fund operations and are entrusted with the primary responsibility for looking after the interests of the fund's shareholders. They serve as "watchdogs" furnishing an independent check on the management of funds. Like directors of operating companies, they owe shareholders the duties of loyalty and care under state law. But independent fund directors also have specific statutory and regulatory responsibilities under the Investment Company Act; these duties are beyond those required of other types of directors. Among other things, for example, they oversee the performance of the fund, fair valuation determinations for securities held by the fund, and voting of proxies for the fund's portfolio securities. They also approve the fees paid to the investment adviser for its services, and oversee the fund's compliance program.[27]

Compliance Programs

The internal oversight function played by the board is complimented by a formal requirement that all mutual funds have a chief compliance officer ("CCO") and adopt a written compliance program reasonably designed to prevent, detect, and correct violations of the federal securities laws.[28] Compliance programs must be reviewed at least annually for their adequacy and effectiveness; mutual fund CCOs are required to report directly to the independent directors. Like mutual funds, investment advisers also must have their own written compliance programs that are overseen by CCOs to ensure compliance with all relevant laws and regulations.

At a minimum, a mutual fund's compliance program must address:

- portfolio management processes (*e.g.*, allocation of trades);
- trading practices (*e.g.*, best execution, trade aggregation);
- proprietary and personal trading;
- accuracy of disclosure to investors;
- safeguarding of assets;
- accurate and safe records;
- valuation processes;
- privacy safeguards; and
- business continuity plans.

[27] For more information on governance, *see* http://www.ici.org/idc/policy/governance/overview_fund_gov_idc and http://www.ici.org/idc/policy/governance/faq_fund_gov_idc.

[28] A mutual fund's compliance program must be adopted by the fund's directors, including a majority of the fund's independent directors. *See* Board Oversight of Fund Compliance, Independent Directors Council, Task Force Report, September 2009, available at http://www.ici.org/pdf/idc_09_compliance.pdf.

In addition, the SEC expects fund compliance programs to address:

- pricing of portfolio securities;
- processing fund share transactions;
- identifying affiliated persons;
- protecting non-public information;
- fund governance requirements; and
- market timing.[29]

A mutual fund's board also often is engaged in the selection and ongoing oversight of its service providers, such as the fund's custodian. For example, in evaluating a service provider for the first time, the board may consider a wide variety of information regarding the resources, capabilities and reputation of the service provider. Similarly, a board may be involved in evaluating whether to renew a service provider's contract; the board thus can shift focus to an evaluation of the service provider's performance over the existing period, as well as to whether or not any different fees may be appropriate. Ongoing oversight also is important. In particular, the board at least annually receives a written report from the CCO regarding the operation of the compliance policies and procedures of its investment advisers, principal underwriters, administrators and transfer agents; the board is required to approve and annually review the policies and procedures of these service providers.[30] In addition, many boards receive periodic reports at regular board meetings from fund management regarding service providers' delivery of services and level of performance. The board also may receive periodic reports or presentations from representatives of the service providers.

Regulatory Oversight

Internal oversight of mutual funds is accompanied by a number of forms of external oversight and accountability. Mutual funds are subject to inspections, examinations, and enforcement by their primary regulator, the SEC. Depending on their circumstances, mutual funds also are subject to varying levels of oversight by self-regulatory organizations (such as FINRA and stock exchanges), state securities regulators, and banking regulators (to the extent the fund is affiliated with a bank).[31]

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[29] These are the minimum requirements; mutual funds may have additional policies and procedures based on the particular fund (*i.e.*, policies and procedures regarding the use of derivatives).

[30] For additional discussion regarding a board's oversight of mutual fund service providers, *see* Board Oversight of Service Providers, Independent Directors Council, Task Force Report, June 2007, available at http://www.ici.org/pdf/21229.pdf. This paper provides practical guidance and insight into a fund board's oversight responsibilities with respect to service providers, such as a fund's administrator, custodian and transfer agent.

[31] In addition, like officers of public companies, officers of mutual funds are required to make certifications and disclosures required by the Sarbanes-Oxley Act. For example, officers must certify the accuracy of the financial statements.

Auditors

Mutual funds' financial statement disclosure also is subject to several internal and external checks. Annual reports, for example, include audited financial statements certified by a certified public accounting firm subject to oversight by the Public Company Accounting Oversight Board ("PCAOB"). This ensures that the financial statements are prepared in conformity with generally accepted accounting principles ("GAAP") and present fairly the fund's financial position and results of operations. It also serves as a check on valuation because, as part of the process, auditors independently verify the prices for all portfolio securities held by the fund at the report date.

Additional Regulation of Advisers

In addition to the system of oversight applicable directly to mutual funds, investors enjoy protections through SEC regulation of the investment advisers that manage fund portfolios. All advisers to mutual funds are required to register with the SEC, and are subject to SEC oversight and disclosure requirements.[32] Advisers also owe a fiduciary duty to each fund they advise, meaning that they have a fundamental legal obligation to act in the best interests of the fund pursuant to a duty of undivided loyalty and utmost good faith and to make full and fair disclosure of all material facts.

MUTUAL FUND ASSETS

Mutual funds generally may invest in stocks, bonds, short-term money market instruments, other securities or assets, or some combination of these investments. Specifically, the Investment Company Act defines an "investment company" (of which a mutual fund is one type) as any issuer which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."[33] The term "security" is defined as "any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant

[32] The investment adviser registration form (Form ADV) requires information about the adviser's business, ownership, clients, employees, business practices, affiliations, and disciplinary events.

[33] Section 3(a)(1)(A) of the Investment Company Act of 1940.

or right to subscribe to or purchase, any of the foregoing.[34] A mutual fund may invest no more than 15% (5% for money market funds) of its net assets in illiquid securities.

A mutual fund's investment activities are constrained, beyond the requirement to invest primarily in securities, by the fund's investment objective and policies. In particular, a mutual fund is required to disclose the policy of the fund in respect of each of the following types of activities: (a) the classification and sub-classifications (*e.g.,* whether diversified or non-diversified under the securities laws) within which the registrant proposes to operate; (b) borrowing money; (c) the issuance of senior securities; (d) engaging in the business of underwriting securities issued by other persons; (e) concentrating investments in a particular industry or group of industries; (f) the purchase and sale of real estate and commodities, or either of them; (g) making loans to other persons; and (h) portfolio turnover (including a statement showing the aggregate dollar amount of purchases and sales of portfolio securities, other than Government securities, in each of the last three full fiscal years preceding the filing of such registration statement).[35] In addition, to prevent "pyramiding" of funds, the Investment Company Act restricts the ability of a fund to invest in securities of other registered investment companies.[36]

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Consequently, we respectfully request confirmation that the new French trust reporting rules do not apply to any U.S. collective investment vehicle ("CIV"), organized as a trust, that is regulated under the U.S. Investment Company Act of 1940. As discussed above, the Investment Company Act is in all relevant respects equivalent to the UCITS Directive and investors' ownership interests in U.S. CIVs and in UCITS are comparable. Because UCITS are exempt from the trust reporting rules, the same exemption should apply to all U.S. CIVs regulated under the Investment Company Act.

Please feel free to contact me (at lawson@ici.org or 001-202-326-5832) if I can provide you with any additional information. The ICI and its members appreciate your attention to this request.

Sincerely,

/s/ Keith Lawson

Keith Lawson
Senior Counsel – Tax Law

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[34] Section 2(a)(36) of the Investment Company Act of 1940.

[35] Such recital consists in each case of a statement whether the mutual fund reserves freedom of action to engage in activities of such type; if such freedom of action is reserved, a statement indicates briefly, insofar as is practicable, the extent to which the fund intends to engage therein. *See* Section 8 of the Investment Company Act of 1940.

[36] *See* Section 12 of the Investment Company Act of 1940.