



1401 H Street, NW, Suite 1200  
Washington, DC 20005-2148  
Phone 202/326-8300  
Fax 202/326-5828  
www.idc1.org

February 26, 2008

Andrew J. Donohue  
Director  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Director Outreach Initiative

Dear Mr. Donohue:

The Independent Directors Council (IDC)<sup>1</sup> strongly supports your Director Outreach Initiative. Fund directors play a significant role in overseeing the \$12 trillion fund industry, and we are pleased that you and your staff have undertaken a thorough examination of directors' regulatory responsibilities in an effort to enhance fund boards' effectiveness.

We are writing to offer our assistance to you and your staff with this important initiative. In this regard, we have considered the full range of fund director responsibilities and preliminarily identified several rules that may warrant modification to enhance fund boards' effectiveness. We also have identified certain board functions in which the oversight role of fund directors should be clarified. Our preliminary recommendations are summarized in the attached memorandum.

Our recommendations are based on the premise that the appropriate role of fund directors – and the role in which directors are most effective – is to provide oversight, and not to become involved in the day-to-day management of a fund. We strongly suggest that any Commission release in connection with this initiative include a statement recognizing this significant distinction and that this distinction provide the framework for actions by the Commission and the staff regarding board responsibilities going forward.

---

<sup>1</sup> IDC serves the fund independent director community by advancing the education, interaction, communication, and policy positions of fund independent directors. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of \$12.68 trillion and serve almost 90 million shareholders. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

Mr. Andrew J. Donohue

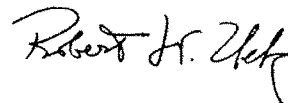
February 26, 2008

Page 2

We note that a number of items included on board meeting agendas are not required by rule, but rather, have become *de facto* requirements as a result of a Commission or staff speech, an enforcement action, examination staff interpretation, or some other informal means. So as not to undermine the results of the Director Outreach Initiative, we urge the Commission and its staff to be mindful to avoid imposing additional responsibilities on fund boards without formal rulemaking, including notice and opportunity for public comment.

We would welcome the opportunity to meet with you and your staff on this important initiative or to provide any requested further assistance. If you have any questions about our preliminary recommendations or would like to meet with us to discuss them, please contact Amy Lancellotta, Managing Director of IDC, at (202) 326-5824.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. Uek". The signature is written in a cursive style with a prominent initial "R".

Robert W. Uek  
Chair, IDC Governing Council

Attachment

cc: Mark Berman, Senior Special Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission

## IDC Preliminary Recommendations for Enhancing Fund Boards' Effectiveness

### Development of Regulatory Responsibilities

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.”<sup>1</sup> They serve as “watchdogs” who “furnish an independent check” upon the management of funds.<sup>2</sup> The Investment Company Act of 1940 and the rules under it impose significant responsibilities on fund directors that are in addition to the duties of loyalty and care to which directors typically are bound under state law.

Fund board responsibilities have increased substantially over time as the industry has grown and evolved. For example, the Commission often supported new innovations and products developed by the industry through the adoption of rules that exempted funds from certain restrictions of the 1940 Act. These exemptions rely extensively on the oversight capabilities of independent directors. While these regulatory enhancements have contributed to the growth of the industry and the broad range of funds available to investors, they also have led to director involvement in a number of routine, nondiscretionary items.

As part of the Division of Investment Management’s 1992 study of Investment Company Act regulation, the Division staff evaluated directors’ regulatory responsibilities and recommended eliminating provisions in certain rules that made independent directors “responsible for detailed findings of fact or for reviews and findings that involve more ritual than substance.”<sup>3</sup> The staff observed that eliminating such provisions would “allow directors to devote their time and attention to truly important matters.”<sup>4</sup> In a subsequent proposal to implement the staff’s recommendations, the Commission noted that certain tasks “perform little useful purpose” and “actually interfere with the ability of boards to operate efficiently.”<sup>5</sup>

---

<sup>1</sup> *Burks v. Lasker*, 441 U.S. 471, 485 (1979).

<sup>2</sup> *Id.* at 484.

<sup>3</sup> Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation (May 1992) at 254.

<sup>4</sup> *Id.* at 266.

<sup>5</sup> See Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Investment Company Act Release No. 19192 (Dec. 30, 1992).

We believe that these same considerations should guide the current review of director responsibilities. Despite the implementation of the recommendations of the 1992 study, the responsibilities of fund boards and the complexity of their agendas have continued to increase. At the same time, the fund compliance programs rule, which requires a fund to have a chief compliance officer (CCO) who administers the fund's compliance program and reports directly to the board, has significantly enhanced the oversight structure of funds.<sup>6</sup> In many instances, the matters are already being well handled by the fund CCO, and board-level review has become an unnecessary and duplicative layer on a well-functioning system. In light of these developments, we agree that it is appropriate and timely to take a comprehensive look at fund board responsibilities and consider modifications that would enhance fund board effectiveness and thereby benefit fund shareholders.

As we discuss below, certain provisions require fund directors to be responsible for routine, nondiscretionary matters that would be more appropriately handled by the adviser or possibly the fund CCO. Relieving fund directors of those types of responsibilities would enable them to provide sharper and more focused oversight through reviews of tailored reports, such as exception reports, by the adviser or fund CCO. In addition, relieving fund directors of responsibilities that fall within the rubric of fund operations would allow them to focus to a greater extent on overseeing such important matters as the fund's performance and the quality and effective delivery of services provided to the fund.

We believe that our recommendations would not only enhance board effectiveness, but also allow fund boards to continue to recruit individuals of the highest caliber to serve fund shareholders as independent directors. Failure to address the growing list of director responsibilities could ultimately deter qualified individuals from serving on fund boards.

### **Specific Recommendations**

#### *Rules 10f-3, 17a-7, and 17e-1*

In general, Rules 10f-3, 17a-7 and 17e-1 under the 1940 Act permit funds to engage in certain affiliated transactions so long as the board, including a majority of the independent directors:

- (i) adopts procedures that are reasonably designed to comply with the conditions of the pertinent rule;
- (ii) makes and approves such changes to those procedures as the board deems necessary; and
- (iii) determines no less frequently than quarterly that all transactions made pursuant to the pertinent rule for the preceding quarter were effected in compliance with the procedures.

---

<sup>6</sup> See Rule 38a-1 under the 1940 Act; Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003).

Consistent with the board's critical role in overseeing potential conflicts, fund boards should continue to approve procedures reasonably designed to comply with the relevant rules and receive reports concerning issues with respect to their implementation as part of the board's general oversight responsibilities. The routine quarterly reports currently required by Rules 10f-3, 17a-7 and 17e-1 should be made to a person designated by the board, however, and not directly to the board. For example, because the quarterly review is, in essence, a compliance determination, the board might appropriately designate the fund CCO or fund compliance personnel as the appropriate reviewers of the transactions addressed by these rules. Pursuant to Rule 38a-1, any material compliance matters involving these reports or their content would have to be reported to the board.

In addition, we recommend that the Commission clarify that the board does not need to approve every change to the procedures. These procedures may need to be modified occasionally to, for example, reflect operational changes by the fund's investment adviser. We believe that a designee of the board (such as the fund CCO) could approve such modifications and report material changes to the board, particularly given the clear, objective standards incorporated into these rules and the fact that the fund CCO reports to the board. Such a clarification would bring the process for amending these procedures in line with that followed for the totality of the fund's compliance policies and procedures and the reporting of such changes to the board pursuant to Rule 38a-1.

#### *Rule 17f-5*

Rule 17f-5 requires the fund's foreign custody manager to provide written reports notifying the board of the placement of foreign assets with a particular custodian and of any material change in the custody arrangements. Effective board oversight of foreign custody arrangements need not include receiving reports concerning the placement of foreign assets; such reports should be provided to a person designated by the board, such as within fund management. Any material changes to custody arrangements should continue to be reported to the board at such times as the board deems reasonable and appropriate.

#### *Rule 12b-1*

The Commission is separately addressing potential reform of Rule 12b-1 and, therefore, Rule 12b-1 may be outside the scope of this initiative. We believe that fund board effectiveness would be enhanced greatly with the modernization of director oversight of Rule 12b-1 plans, and we strongly support reform of Rule 12b-1 to accomplish this objective.<sup>7</sup>

---

<sup>7</sup> See Letter to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission from Robert W. Uek, Chair, IDC Governing Council (July 19, 2007) (commenting on Roundtable Discussion Regarding Rule 12b-1; File No. 4-538) (copy of letter is attached).

### *Rule 2a-7*

Rule 2a-7 imposes detailed responsibilities on fund boards. It also contains a delegation provision that recognizes that the board's primary role is one of oversight. We note that paragraph (c)(4)(E) of the rule permits a money market fund to acquire shares of another money market fund if the board "reasonably believes that the fund in which [the acquiring fund] has invested is in compliance with" Rule 2a-7. We believe that the fund's adviser or fund compliance personnel is in a better position to make this type of finding and recommend that the rule be amended to relieve the board of responsibility for this specific function.

### *Rule 5b-3*

Rule 5b-3 involves fund boards in a level of fund operations that is not consistent with their oversight role. The rule allows funds to "look through" certain repurchase agreements for certain purposes of the 1940 Act so long as the obligation of the seller to repurchase the securities from the fund is "collateralized fully." The rule's definition of "collateralized fully" requires, among other things, that the fund's board or its delegate determine that collateral consisting entirely of unrated securities be of comparable quality to rated securities. While the rule permits a delegate to make the determination, we believe that, because this type of finding falls within the rubric of fund operations, the rule should be amended to relieve the board of this responsibility.

### *Disclosure Regarding Approval of Advisory Contracts*

The advisory contract approval process is a significant component of the independent directors' responsibilities, and they devote considerable time and attention to the annual review and approval of advisory contracts. The process also involves directors in analyses of a number of factors that may not be especially pertinent and, in some cases, may involve more ritual than substance, as discussed below.

In particular, the disclosure rule regarding advisory contract approval requires disclosure concerning whether and, if so, how the board relies on a comparison of the services to be rendered and the amounts to be paid under the contract with those under other advisory contracts (*e.g.*, pension funds and other institutional investors). Prior to the adoption of this requirement, fund boards typically did not use such comparisons as a basis for approving or renewing advisory contracts because of the lack of relevance of any such comparison. More significantly, as early as 1982 and as recently as 2007, courts have determined that fees charged by investment advisers to pension funds or other institutional clients should not be used as a criterion for determining fair advisory fees for mutual funds because the nature and extent of the services required by each type of fund differ sharply.<sup>8</sup>

---

<sup>8</sup> See *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923, 930 n. 3 (2d Cir. 1982), *cert. denied*, 461 U.S. 906 (1983); *Gallus v. Ameriprise Financial, Inc.*, 497 F. Supp. 2d 974, 982 (D. Minn. 2007) (reaffirming *Gartenberg* approach); see also Order Granting Defendants' Motion in Limine, *Baker v. American Century Investment Mgmt., Inc.*, No. 04-4039 (W.D. Mo. July 17, 2006).

While this requirement does not mandate that a board rely on such comparison, many boards do so to avoid providing negative disclosure that the board did not consider the use of such comparisons and to avoid the possibility of being second-guessed by private litigants, regulators, or courts, who may give the disclosure requirement greater weight than is warranted. We recommend eliminating this factor from the list of factors about which disclosure is required.

#### *Time for Computing Net Asset Value*

Rule 22c-1 under the 1940 Act requires that the board determine the time or times for computing the fund's net asset value (NAV), thus involving the board in a business decision that is more appropriately within the purview of the fund's adviser. Although setting the time for computing the NAV is not necessarily a time-consuming responsibility, we recommend that it be included in any Commission effort to address board responsibilities that are more appropriately handled by others. Because setting the time does not raise conflict of interest concerns, we recommend that the responsibility be placed with the fund's adviser.

#### *Fair Valuation and Soft Dollars*

We understand that the staff is developing additional guidance relating to fair valuation and soft dollar arrangements. We encourage the Commission to solicit public comment, particularly regarding the appropriate role of boards, before issuing any final guidance on these important subjects.



INDEPENDENT DIRECTORS COUNCIL

July 19, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: Roundtable Discussion Regarding Rule 12b-1; File No. 4-538

Dear Ms. Morris:

The Independent Directors Council<sup>1</sup> welcomes the opportunity to comment on possible reforms to Rule 12b-1 under the Investment Company Act of 1940. In light of the evolution of fund distribution since Rule 12b-1 was adopted in 1980 and the complex nature of the subject matter, IDC commends the Commission for undertaking a comprehensive review of the rule. IDC also appreciates the approach the Commission has taken in first holding a roundtable on the subject and then encouraging public comment from all interested persons prior to proposing specific changes to the rule.

Over the course of close to three decades, Rule 12b-1 has operated to the significant benefit of funds and their investors. The use of 12b-1 fees has promoted the establishment by financial services firms of numerous programs and services designed to help fund investors navigate among a widening array of fund choices. Investors also now have access to far more funds, as well as options in how they wish to pay for initial and ongoing advice and shareholder servicing. Moreover, in many instances, 12b-1 fees help advisers more effectively manage a fund's portfolio because new sales of fund shares offset redemptions of fund shares. Recognizing these beneficial consequences, IDC supports retaining the framework of Rule 12b-1 and believes that changes to the rule should take the form of enhancements and clarifications to adapt the rule to the modern world of fund distribution. In this regard, IDC strongly opposes the suggestion made at the roundtable to "externalize" 12b-1 fees and

---

<sup>1</sup> IDC serves the fund independent director community and provides a venue to advance the education, communication, and policy positions of fund independent directors. The activities of IDC are led by a Governing Council of independent directors of Investment Company Institute member funds. The Investment Company Institute's members collectively oversee 98 percent of all assets in U.S. mutual funds on behalf of approximately 93.9 million shareholders in more than 53.8 million households. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

charge them at the individual account level because of the adverse tax consequences to shareholders and potential operational costs and other burdens of this approach.<sup>2</sup>

In encouraging public comment, the Commission noted its particular interest in ideas for alternative approaches to the issues raised by Rule 12b-1. In response to this request, IDC's preliminary recommendations focus on two areas of reform that were discussed at the roundtable and on which there appeared to be general agreement: modernizing the oversight role of directors and enhancing investor understanding of 12b-1 fees. Specifically, IDC recommends that the Commission:

- Modify the role of directors in overseeing 12b-1 plans to reflect the activities financed by 12b-1 plans by:
  - Limiting board oversight of 12b-1 fees used for advice and shareholder servicing to initial approval of the 12b-1 plan and general ongoing oversight; and
  - Retaining board oversight of 12b-1 fees used for advertising, marketing and promotion as it is today, with the exception of eliminating the rule's quarterly board reporting requirement;
- Clarify the standard for board approval of 12b-1 plans; and
- Enhance shareholder disclosure about the amount and use of 12b-1 fees.

## **I. Modernization of Board Oversight**

As the Commission and others evaluate potential reforms to Rule 12b-1, it is important that there be a common understanding of the appropriate role of fund directors in overseeing fund distribution arrangements, including those financed by Rule 12b-1 plans.

The current fund distribution system is very different from the one that existed when Rule 12b-1 was adopted.<sup>3</sup> While distribution systems and the uses of 12b-1 fees have evolved significantly

---

<sup>2</sup> See Letter from Mary S. Podesta, Acting General Counsel, Investment Company Institute to Nancy M. Morris, Secretary, Securities and Exchange Commission, dated July 19, 2007 at 7-10; *Report of the Working Group on Rule 12b-1*, Submitted to the Investment Company Institute Board of Governors (May 2007) at 15-16.

<sup>3</sup> Today, the overwhelmingly predominant use (98%) of 12b-1 fees is for professional advice (initial and ongoing) and shareholder servicing. Only a small fraction (2%) of 12b-1 fees are used by funds for promotion, advertising and other miscellaneous expenses. See "How Mutual Funds Use 12b-1 Fees," *Fundamentals*, Vol. 14, No. 2, Investment Company Institute, February 2005, available at <http://www.ici.org/fundamentals/fm-v14n2.pdf>.

over the past 27 years, the process that fund directors must follow under Rule 12b-1 in considering and approving the payment of 12b-1 fees has not. Some fund directors and their counsel read Rule 12b-1 as currently written to require that directors engage in a fairly detailed review of their funds' distribution arrangements. Such a review is at odds with the role of fund directors as general overseers of the interests of shareholders.

IDC believes that the role of directors in overseeing 12b-1 plans should be consistent with the role of directors in overseeing front-end sales loads and fund distribution practices generally. Our strong view is that the appropriate role of fund boards should be one of general oversight, stemming from their fiduciary duties and consistent with their responsibilities to ensure that 12b-1 plans operate in the best interests of shareholders. Specifically, directors should become knowledgeable as to the means through which fund shares are distributed and the principal services offered to fund shareholders. Directors also should monitor for conflicts of interest involving the fund, its adviser and their affiliates that may arise in connection with distribution activities. While directors should periodically inquire generally about the existence of such conflicts, fund advisers and distributors have the principal responsibility for identifying conflicts and bringing them to the attention of directors.

On the other hand, in exercising their general oversight responsibilities, directors should *not* be required to assess the business merits of the distribution channels used by the funds they oversee. Nor should directors be obligated to evaluate the performance of intermediaries through which fund shares are sold or the business practices of those intermediaries, such as how the intermediaries compensate their employees or whether 12b-1 compensation they receive from funds is rebated to their clients or customers.

## **II. Recommendations for Reform**

In an effort to modernize board oversight of 12b-1 plans, IDC recommends that the Commission prescribe the level of board oversight according to the activities financed by a fund's use of 12b-1 fees. Specifically, director oversight of 12b-1 fees used for *advice and shareholder servicing* should be treated differently than director oversight of 12b-1 fees used for *advertising, marketing, and promotion*. This recommendation, in addition to IDC's recommendations that the Commission clarify the standard for board approval of 12b-1 plans and enhance shareholder disclosure about the amount and use of 12b-1 fees, is discussed more fully below.

### **A. Modify the Role of Directors in Overseeing 12b-1 Fees**

#### *1. Director Oversight of 12b-1 Fees Used For Advice and Shareholder Servicing*

IDC recommends that board oversight of 12b-1 fees used for advice and shareholder servicing be limited to initial approval of the plan and general ongoing oversight, which would include the right

of a fund's independent directors to terminate a 12b-1 plan at any time. This right is especially important in egregious circumstances. Boards should not be required to annually renew 12b-1 plans that contemplate payments for advice and shareholder servicing or receive quarterly reports with respect to these 12b-1 payments.

IDC's recommendation that the Commission eliminate the annual board renewal requirement is based on the nature of 12b-1 payments for advice and shareholder servicing. They are payments made to financial intermediaries who are chosen by fund shareholders and with whom the shareholders have ongoing relationships. They are not the types of payments that typically raise potential conflicts of interest between the fund, its adviser, and their affiliates and trigger the need for annual board consideration.

Moreover, the annual renewal requirement suggests that directors have a decision to make with regard to the continuation of a 12b-1 plan. In reality, however, underwriters of funds with Class B and Class C shares typically advance sales commissions to selling investment professionals and, at times, finance this effort by borrowing from financial institutions using future 12b-1 fees as collateral. We are not aware of any board that has failed to renew a 12b-1 plan (or is likely to do so) in light of the need to recoup advanced sales commissions and existing securitizations of 12b-1 financing. On a related note, the need to recoup advanced sales commissions and existing securitizations of 12b-1 financing are reasons why a fund might continue to charge 12b-1 fees after it is closed to new investors. In addition, ongoing 12b-1 fees of all classes of shares of closed funds are used to compensate financial intermediaries for ongoing advice and shareholder servicing.

IDC also recommends the elimination of the rule's quarterly reporting requirement. Such frequent reporting to the board is not necessary to enable the board to carry out its responsibilities and can become a diversion away from board review of more substantive matters. The fund's chief compliance officer or another person designated by the board could provide periodic reports to the board regarding any irregularities or material changes in distribution practices or expenditures.

## 2. *Director Oversight of 12b-1 Fees Used For Marketing*

With respect to 12b-1 fees used for the marketing of a fund, IDC recommends that the Commission retain the procedural requirements under the rule that the board initially approve and annually renew the plan. Unlike 12b-1 fees used to pay financial intermediaries, 12b-1 fees used for marketing generally are paid to the adviser or its affiliates and, therefore, may be perceived by some to raise potential conflicts of interest. For this reason, IDC recommends that Rule 12b-1, when applied to payments for marketing, continue to require initial and annual board approval, as well as the ability of the fund's independent directors to terminate the plan at any time.

IDC recommends that the Commission eliminate the quarterly board reporting requirement for Rule 12b-1 plans used to pay for advertising, marketing and promotion. The basis for this recommendation is the same as discussed above. That is, in IDC's view, such frequent reporting to the board is not necessary to enable the board to carry out its oversight responsibilities and can become a diversion away from board review of more substantive matters. The fund's chief compliance officer or another person designated by the board could update the board on 12b-1 matters on an "as-needed" basis.

## **B. Clarify Standard for Board Approval**

In any potential reform or discussion of the oversight role of boards, IDC recommends that the Commission clarify that boards, whether approving or renewing a 12b-1 plan, may make their determinations based on factors relevant to the facts and circumstances of the funds they oversee. Specifically, IDC recommends that the Commission clarify that directors do not have to apply the nine factors that the Commission suggested in its release adopting Rule 12b-1.<sup>4</sup> Many of these factors are no longer germane to the business realities surrounding today's uses of 12b-1 fees. For example, factors that are associated with resolving a temporary distribution "problem" faced by funds generally are not relevant to the oversight of ongoing advice and other services provided to fund shareholders and financed by 12b-1 fees.

IDC recommends that, rather than revise these factors as some have suggested, the Commission eliminate the suggestion that boards should consider any specifically enumerated factors when considering a 12b-1 plan that contemplates the use of 12b-1 fees either for advice and shareholder servicing, or marketing. The considerations that may be relevant to one board may not be relevant to another. Specifying factors raises the risk that they, too, will become obsolete over time or that they will be irrelevant for some boards or under some circumstances.

IDC also recommends a technical clarification to the language contained in Rule 12b-1. Specifically, the rule requires boards, when initially approving or annually renewing a 12b-1 plan, to determine that "there is a reasonable likelihood that the *plan* will benefit the [fund] and its shareholders" (emphasis added). This language should be revised to more explicitly and accurately state the standard that the *activities financed by the plan* have a reasonable likelihood of benefiting the fund and its shareholders. IDC's recommendation to clarify the language contained in the rule would more accurately reflect the current uses of 12b-1 fees. The clarification would more effectively enable boards to make findings that the monies paid under a 12b-1 plan are for purposes that benefit shareholders, rather than findings that relate to the quality of the services (*e.g.*, professional advice) provided to shareholders, which is not readily ascertainable by fund directors. This clarification should apply to

---

<sup>4</sup> See Bearing of Distribution Expenses by Mutual Funds, SEC Release No. IC-11414 (Nov. 7, 1980).

board consideration of 12b-1 fees used both for advice and shareholder servicing, and for advertising, marketing and promotion.

### **C. Enhance Shareholder Disclosure of 12b-1 Fees**

There was general agreement among the participants in the Commission's roundtable that more effective disclosure to shareholders regarding the use of 12b-1 fees is needed. IDC agrees and believes that improvements in the disclosure provided to investors would enhance their understanding of the fees and the services that they receive for the fees. Rather than referring to 12b-1 fees by the number of the rule under the Investment Company Act, IDC recommends that the Commission prescribe descriptive terminology for the fees being paid. This would ensure consistency across the fund industry and help promote investor awareness and understanding of the use of the fees. IDC recognizes that one term may not be sufficient given the wide variety of usage of 12b-1 fees, but some suggestions to consider may include, "sales and service charge," "third-party advice," or "marketing."

In addition to mandating a descriptive and consistent nomenclature for the use of 12b-1 fees, the Commission should require that effective disclosure about the amount and use of 12b-1 fees be provided to potential investors at the "point of sale." This disclosure would promote investor understanding of the use of 12b-1 fees and would help them make informed decisions regarding the investment options available to them and how they will pay for advice and services. As a general matter, IDC recommends that the Commission make any point of sale disclosure requirements applicable to all investments that brokers and other financial intermediaries sell. IDC believes that such disclosure requirements would benefit all investors, not just mutual fund investors. Moreover, a point of sale disclosure requirement applicable to the sale of mutual funds, but not other investments, such as separately managed accounts or hedge funds, could discourage brokers from selling funds. This outcome would be detrimental to both investors and the fund industry.

### **III. Conclusion**

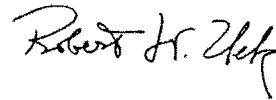
IDC commends the Commission's efforts to review Rule 12b-1 and to consider appropriate reforms. Fees paid pursuant to Rule 12b-1 are an integral part of the fabric of fund distribution. The rule benefits shareholders by giving them access to a broad array of fund options and choices in how they wish to pay for initial and ongoing advice and services. Fund directors are significant participants in the operation of 12b-1 plans, and IDC welcomes the opportunity to offer its views as the Commission undertakes its review of the rule.

\* \* \* \* \*

Ms. Nancy M. Morris  
July 19, 2007  
Page 7 of 7

IDC appreciates the opportunity to comment on possible reforms to Rule 12b-1. We look forward to commenting on the Commission's specific reform proposal when it is published for comment. If you have any questions about our preliminary recommendations or would like to meet with us to discuss them, please contact Amy B.R. Lancellotta at 202-326-5824.

Sincerely,



Robert W. Uek  
Chair, IDC Governing Council

cc: The Honorable Christopher Cox, Chairman  
The Honorable Paul S. Atkins  
The Honorable Roel C. Campos  
The Honorable Annette L. Nazareth  
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director  
Robert E. Plaze, Associate Director  
Division of Investment Management  
U.S. Securities and Exchange Commission