



INDEPENDENT DIRECTORS COUNCIL™

The voice of mutual fund directors at the Investment Company Institute

Implementing the Independent Chairperson Requirement

Independent Directors Council
Task Force Report
January 2005



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IMPLEMENTING THE INDEPENDENT CHAIRPERSON REQUIREMENT

The U.S. Securities and Exchange Commission (SEC) recently adopted rule amendments that would require, among other things, that boards of registered investment companies appoint an independent director as the chairman of the board.¹ The SEC believes that “a fund board is in a better position to protect the interests of the fund and to fulfill the board’s obligations under the [Investment Company] Act and the Exemptive Rules, when its chairman does not have the conflicts of interest inherent in the role of an executive of the fund adviser.”² The Task Force agrees that an independent chairperson (hereinafter referred to as the “Chair” or “he” regardless of gender) can play an important role “in establishing a boardroom culture that can foster the type of meaningful dialogue between fund management and independent directors that is crucial for healthy fund governance.”³

For some investment companies the requirement for a Chair does not represent a departure from current practice. In particular, boards that are affiliated with banks have had independent chairpersons for some time because of historical reasons.⁴ Others have been required to do so as a consequence of regulatory settlements. For many boards, however, the appointment of a Chair will require a change from the way they currently conduct business.

The Independent Directors Council convened a Task Force of 17 independent directors to study the new requirement for a Chair and to identify issues that implementation of the rule amendment may raise.⁵ A list of the Task Force members is attached as Appendix A. The Task Force prepared this report, which presents considerations and recommendations for boards implementing the new requirement for a Chair. While the Task Force is aware of the pending lawsuit by the Chamber of Commerce challenging the requirement of a Chair⁶ and a Congressional mandate that the SEC study the issue,⁷ it is the belief of its members that many fund groups are not waiting for the outcome of these initiatives and are currently preparing to implement the new requirement. The Task Force intends the guidance offered in this report to provide assistance in this effort.

While the Task Force is confident that all boards are united in their efforts to implement the Chair requirement in a manner that advances the interests of shareholders, the Task Force recognizes that board practices vary greatly. As a result, a single set of practices is not

¹ Investment Company Governance, 69 Fed. Reg. 46,378 (Aug. 2, 2004) (“Adopting Release”)[available at <http://www.sec.gov/rules/final/ic-26520.pdf>]. The SEC adopted this and other rule amendments with the intention of enhancing the independence and effectiveness of fund boards. The rule amendments require funds to adhere to heightened fund governance standards if they are relying on certain exemptive rules under the Investment Company Act of 1940 (the “Investment Company Act”), including Rules 10f-3, 12b-1, 15a-4(b)(2), 17a-7, 17a-8, 17d-1(d)(7), 17e-1, 17g-1(j), 18f-3 and 23c-3 (the “Exemptive Rules”). Because most funds rely on at least one of these rules, the governance standards apply to almost all boards.

² See Adopting Release at 7.

³ *Id.*

⁴ The Glass–Steagall Act, which was repealed in relevant part by the Gramm–Leach–Bliley Act of 1999, required that funds sponsored by banks have independent board chairmen.

⁵ For purposes of this report, the term “director” includes “trustee” and the term “independent director” refers to directors who are not “interested persons” of the fund as that term is defined in Section 2(a)(19) of the Investment Company Act.

⁶ *Chamber of Commerce v. U.S. Securities and Exchange Commission*, No. 04-1300 (D.C. Cir.).

⁷ Consolidated Appropriations Act, 2005, Pub. L. No. §108-447 (H.R. 4818) at p. 102.

appropriate for all boards nor will all boards respond alike to the considerations presented here. Much depends on current board culture and the relationship each board shares with the management company that serves as the investment adviser to the funds that the board oversees. Responses to the Chair requirement also may depend upon the size and structure of a particular fund complex. To the extent practices are in place that already accomplish the objectives of the Task Force recommendations, modifications may not be necessary or desirable.

A. An Independent Director As Chair

The Task Force considered the real-world implications of designating an independent member of the board as the Chair. This requirement is intended to strengthen the board so that it will be in a position to better serve shareholders.⁸ The SEC has not, however, specifically indicated those activities the Chair is expected to engage in, nor has it delineated those activities that should be reserved to an executive at the management company.⁹ The wording of the regulation simply specifies that a disinterested director who serves as Chair "... presides over meetings of the board of directors and has substantially the same responsibilities as would a chairman of a board of directors."¹⁰

The Task Force began its work by examining the role of the Chair. The Task Force concurred with statements by the staff of the SEC that the Chair position contemplated is a non-executive position; it does not involve managerial responsibility.¹¹ The role of the Chair is one of leadership and, like that of all directors, is one of oversight. That being said, the position must have a sufficient amount of authority to accomplish its responsibilities. Thus, implementation efforts should be undertaken with an eye to imbuing the Chair with the authority needed to perform all responsibilities assigned to him. Any job description of the Chair should reflect the overriding principle of director independence and acknowledge that the Chair's responsibilities are not operational in nature. Furthermore, any effort to describe the position of Chair should not diminish the responsibilities of the other independent directors. The directors each retain equal voting power and responsibility to the fund and its shareholders.

As part of its analysis, the Task Force evaluated the Chair position as compared to the existing "lead director" position employed by many funds.¹² It then assessed the duties and responsibilities of a Chair and considered how a Chair might perform them to advance the

⁸ See Adopting Release at 4.

⁹ In this report the terms "adviser," "investment adviser" and "management company" are used interchangeably. In all instances, the term shall include the management company where the portfolio management is performed internally, and any affiliated or unaffiliated advisory firms providing external portfolio management to the fund.

¹⁰ Rule 0-1(a)(7)(iv) under the Investment Company Act.

¹¹ See "The Role of Independent Fund Directors," Remarks of Paul F. Roye, Director, Division of Investment Management, U.S. Securities and Exchange Commission, before the Fund Governance Program presented by the Mutual Fund Directors Forum and Fund Directions (Dec. 9, 2004).

¹² An Investment Company Institute Advisory Group report entitled, "*Enhancing a Culture of Independence and Effectiveness: Report of the Advisory Group on Best Practices for Fund Directors*" (June 24, 1999), defined the role of a lead independent director as one that would coordinate the activities of the independent directors, such as by chairing separate meetings of the independent directors and by raising and discussing issues with counsel. The lead director also would act as a spokesperson for the independent directors between meetings of the board. This person would be the point of contact among the independent directors with whom management could discuss ideas informally. Since the release of the Advisory Group report, fund boards that have appointed a lead director have assigned him a variety of responsibilities based upon the particular needs of each board.

interests of shareholders. The members agreed that it would be advantageous to have all board members concur on these duties and responsibilities at the time the Chair is named or, in the case of a current Chair, as part of the annual self-assessment process. It also may be advisable to include a general description of the Chair's role in the fund's by-laws, while reserving any more detailed discussion of specific duties and responsibilities to an internal board charter, if there is one, or to the minutes or a document attached to the minutes.¹³

It is worth noting that the Task Force considered the duties of Chairs of fund boards of various sizes and determined that the functions served by the Chair are approximately the same for all, but that the time commitment required to perform the Chair responsibilities may differ depending on the complexity of the particular fund(s) involved. Similarly, the complexity of the fund group may dictate the need for auxiliary resources for the Chair, such as the assistance of staff (either of the adviser or of the board) or independent counsel. As all boards gain experience with the Chair position, it is possible that the list of responsibilities undertaken by the Chair, as well as any practical considerations relating to how those responsibilities are performed, will need to be revisited. Appendix B to this report contains a Summary of the Considerations in Implementing the Independent Chairperson Requirement, which may assist in this effort.

1. Transition from a Lead Independent Director Model

Some industry participants have questioned the impact the requirement for a Chair will have on fund boards that currently have a lead independent director. As a preliminary matter, while a board could conceivably retain the position of a lead independent director in addition to the Chair, the consensus of the Task Force was that the lead director position will disappear once a Chair is appointed. Other models have been proposed that are consistent with the appointment of a Chair, for example, the naming of a vice-chair (who is also independent) or the development of a succession plan that would allow an independent successor to share in the responsibilities of the Chair. The SEC has indicated informally that both of these models may be acceptable under the new governance rule amendments.

The Task Force agreed that the power of a Chair is, in fact, distinct from that of a lead director. It identified several differences between the two positions. First, from a perception standpoint, the use of the term "Chair" conveys to shareholders a clear message that their interests are being represented. It also eliminates the perception of diminished influence as compared to that of a member of the management company who holds the Chair position, and may, as Chair, have the final authority in setting the agenda, controlling debate and responding to information requests.

This structural change, in turn, may affect the dynamics of the meeting. The SEC has said that the ". . . chairman is in a unique position to set the tone of meetings, and to encourage open dialogue and healthy skepticism."¹⁴

¹³ Any description of the Chair in these documents, including, of course, the by-laws, must make clear that he serves as an officer of the board and not as an officer of the fund. References to "all officers" without this clarification may suggest that he serves as an officer of the fund and, as the SEC pointed out in the Adopting Release, a fund officer is, by the terms of the Investment Company Act, an interested person of the fund. See footnote 58 to the Adopting Release.

¹⁴ Adopting Release at 8.

The Chair will typically have the power to control the meeting, including the number of meetings and their length. In the view of some, if prior board meetings had “show and tell” presentations, now they are more likely to have agendas that are more aligned with directors’ and investors’ concerns. The extent to which this change in board leadership will require altering the operations of the board will depend in large part on the comfort level of the board with the effectiveness of existing practices. It may also depend on the extent to which an independent director, as the lead director or otherwise, has been previously actively engaged with the management company in setting the agenda for meetings and serving as a point-person for information flowing to and from the other independent directors.

2. Duties and Responsibilities of an Independent Chair

The naming of an independent director as Chair does not generate a host of new responsibilities to be performed by that person. Rather, the fact of a Chair is intended to further empower independent directors to perform the role of oversight in the best interests of shareholders. By mandating that the Chair be an independent director, the SEC seeks to encourage independent directors to bring to the boardroom “a high degree of rigor and skeptical objectivity to the evaluation of management and its plans and proposals,” particularly when evaluating conflicts of interest.¹⁵

a. Manage the Meeting and Set the Agenda

One of the Chair’s primary responsibilities is to provide leadership to the board and to advance the principle that all decisions made by directors are in the best interests of shareholders. He will lead both the full board meetings and, in most cases, executive sessions of the board.

The SEC suggests that a Chair typically will play an important role in setting the agenda of the board and determining the information provided to the board.¹⁶ The Task Force interpreted this to include not only a review of the specific agenda items for each meeting, but also the process of advancing the agenda in a manner that ensures that the independent directors are equipped to make informed decisions. As part of this process, the Chair should help establish or critically review an existing regulatory calendar, which includes items requiring quarterly and annual review/approval, with an eye to insuring that regulatory requirements are spread among the scheduled meetings and that sufficient time is provided to review these and all other agenda items. This may be done with the assistance of counsel to ensure that all required approvals are obtained in a timely manner.

In this regard, the Chair should consider the time allotted to each agenda item, the materials provided to directors and any planned presentations to facilitate discussion and critical examination by the directors. The way in which the Chair goes about these tasks may vary among fund complexes and, to the extent the existing process is effective, changes may not be

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 8.

necessary or desirable. The SEC has acknowledged that the Chair may consult with management in carrying out these functions, as well as leading the board through its various tasks.¹⁷ But the Task Force agreed that the goal of the new requirement is to ensure that the final decision in setting the agenda, and the process by which the work of the board will be accomplished at the meeting, will be made by someone independent of management.

The Task Force identified several actions by the Chair, listed below, that will positively contribute to the agenda process and, coincidentally, the efficiency of board meetings:

- Seek the input of fellow independent directors and members of the management company as to agenda items that go beyond the regulatory calendar and address emerging trends, issues and concerns.
- Estimate the amount of time that will be devoted to issues on the agenda, ensuring that adequate time is devoted to issues of significance.
- Reserve adequate time at each meeting to address unanticipated matters and current industry developments of importance to the board.
- Preview the materials for the meeting sufficiently in advance to allow for meaningful input to ensure that they contribute to the decision-making and oversight process of the board.
- Encourage open dialogue and healthy skepticism at every meeting.
- Ensure that there is a process in place and a person chosen (independent counsel or management staff) to identify open issues at the conclusion of each meeting so that the proper follow-up can be conducted.

b. Coordinate Communication with Management and Others

The Task Force members anticipated that the Chair would serve as the primary contact for management executives or other members of the adviser's staff wishing to communicate with the board and/or for the board to communicate with third parties, unless such responsibility has been delegated to another independent committee or board member. The Chair, as a result, ordinarily will become responsible for ensuring that all members of the board are kept informed of relevant developments and that messages delivered to management and others on behalf of the board are consistent and representative of the views of the independent directors. This could include informal communications between meetings or formal requests for information, such as during the contract renewal process.

To the extent a board does not have an effective process in place for identifying and communicating with other providers of services to the board, the Task Force's view was that the Chair is the logical person to communicate with these parties.¹⁸ The Task Force identified several categories of persons with whom the Chair might interact – chief compliance officer (CCO), independent counsel, consultants and third party administrators, as appropriate. The Chair may take on this responsibility personally or delegate it to another director, a committee of

¹⁷ *Id.*

¹⁸ Directors seeking to identify companies and/or individuals providing services to fund boards should reference the Investment Company Service Directory, available through the Independent Directors Council website at www.idc1.org.

the board or the CCO. In the event the need arises for communication between the board and regulators, it is likely that the Chair, with the assistance of counsel, would take the lead to facilitate this.

c. Manage Board Operations

An important role of the Chair, in consultation with the full board, is to determine how best to accomplish the work of the board. The Chair may assign certain tasks to individual board members. To the extent a decision is made by the board to conduct its business through use of committees,¹⁹ the Chair should communicate regularly with the committee chairmen to ensure that the work of the committee is progressing at a pace consistent with the expectations of the rest of the board. In some cases the Chair will delegate certain tasks or projects identified by the Chair to these committees. The Chair may be involved in the selection or rotation of committee chairmen. He also may be responsible for recommending board members for the various committees or this role may already exist in the nominating or governance committee charters.

Some boards may wish the Chair to play a leadership role in developing an effective board. This may be accomplished through actions such as encouraging continuing education for existing board members and leading board self-assessments.

d. Guide Contract Renewal Process

The advisory contract must be approved annually by a majority of the independent directors on the board.²⁰ In connection with this approval and the negotiation of the advisory fee, the Investment Company Act provides that it is the duty of the directors to request and evaluate and the duty of the adviser to furnish information that may be reasonably necessary to evaluate the terms of the advisory contract.²¹ The Task Force agrees with the SEC position that the Chair “can play an important role in providing a check on the adviser, in negotiating the best deal for shareholders when considering the advisory contract, and in providing leadership to the board that focuses on the long term interests of investors.”²² As the person who is in contact with the management company most frequently, the Chair may be in a position to coordinate formal or informal requests for information relating to the review or approval of the advisory contract after consultation with counsel and management representatives.

If a contracts committee or other board committee has responsibility for coordinating the contract renewal effort, the involvement of the Chair in the day-to-day aspects of the process may be more limited. However, the Chair may make more subtle contributions to the process. For example, the fact that the Chair is conducting the board meeting may change the dynamics of the fee negotiations to one that is focused more on the interests of shareholders.

¹⁹ Some boards actively employ committees to facilitate the work of the board. Others choose to have all of the independent directors act as a committee of the whole. While most board have audit and nominating committees, the Task Force did not take a position with respect to whether the use of committees is the most effective management structure.

²⁰ Section 15(c) of the Investment Company Act.

²¹ *Id.*

²² Adopting Release at 7.

e. Manage Board Self-Assessment Process

The new governance rule amendments include a requirement that boards conduct an annual assessment of their effectiveness.²³ Some boards have been performing evaluations for some time and have developed a process that is successful for their particular circumstance.²⁴ To the extent a board is embarking on this exercise for the first time, the Task Force believes that the leadership of the Chair is important to its success. The Chair should encourage participation of his fellow directors in the development of the evaluation tool. He also should embrace the value of evaluations to the effective working of the board and, by doing so, promote serious and candid responses to the questions presented. The Chair may be the person designated to present a cumulative report of the evaluation results to the board or this may be reserved to another person, such as counsel. If the board has a governance committee, it may be that this committee and its chairman will have responsibility for managing the assessment process.

B. Considerations Important in the Selection Process -- Qualifications of the Chair

Serving as Chair will necessarily require an additional time commitment. Before naming a Chair, the Task Force encourages each board to spell out the scope of the Chair's responsibilities and to then identify the characteristics that it views important for a person in this position to have. In order to function effectively, it is important that the Chair and the board are clear as to the assignments. Some of the qualifications of a Chair identified by the Task Force as generally required include:

1. Time Commitment

An individual selected to serve as Chair should be willing and able to devote the time and energy that this job will entail. The number and complexity of funds the board oversees (*e.g.*, those using multiple managers, covering a range of asset classes or investing in complex financial instruments) could impact this consideration, depending upon the board's structure and practices.²⁵ The Task Force noted that persons with business and/or professional experience are desirable as directors, however, their obligations as Chair may conflict with time commitments to other activities or professional obligations. Care should be taken to evaluate these relationships before a final selection is made. In some cases it may be necessary for the Chair to step down from other boards on which he serves.

Another factor that is relevant to the selection of the Chair is how long the individual may be available to serve in this capacity. While there is no set term for a Chair, The Task Force believes that it is desirable to have the same Chair for a number of years, so an individual who is nearing the retirement age adopted by the particular board may not be the best choice for this position. A final consideration that may be relevant to the time commitment expected of the

²³ Rule 0-1(a)(7)(v) under the Investment Company Act.

²⁴ Another Independent Directors Council Task Force is preparing a report on self-assessments and expects to release its findings in the next few months.

²⁵ A third Independent Directors Council Task Force is preparing a report on board oversight of multiple funds and expects to release its findings in the next few months.

Chair is his willingness to be readily available for fund business. The Task Force did not believe that the Chair must necessarily live in close proximity to the management company. Rather, the Chair should be available by phone or otherwise on short notice.

2. Leadership Skills

An individual being considered as the Chair should be able to work well with others and have exhibited the ability to act in a leadership capacity. Experience as a board or committee chairman or lead director would be a plus. The ultimate responsibility of the Chair is not to do all of the work personally but to exercise his leadership to see that it gets done in the best interest of shareholders, so the Chair must be a good manager. He must have a good working relationship with all members of the board. He must also work well with management company executives and staff to ensure that tasks important to the fund are being done. Both good communication and organizational skills are desirable attributes in a Chair.

The board may ask the Chair to exercise his leadership in an effort to strengthen the board, such as assessing the competencies of current board members and working with the nominating committee to identify candidates who may fill a need, *e.g.*, financial expertise or relevant industry knowledge. The Chair also may be in a position to encourage more gender and age diversity on the board. The Task Force recognized age diversity as a way to facilitate succession planning on the board.

3. Knowledge of the Industry

The Task Force concluded that a working knowledge of the investment management industry would be helpful to a person serving as a Chair so that he can effectively communicate with the management company and other industry participants. For this reason, persons with significant industry experience often are considered desirable as directors and, more specifically, as Chairs.²⁶ Persons from outside the industry may gain such knowledge by seniority as a fund director, active participation in fund director activities or industry continuing education. To the extent no one on the board currently has this background, the Task Force believed this may be a relevant consideration when evaluating future candidates for board seats and preparing a succession plan for the Chair.

4. Communications Proficiency

The Task Force considered communication among board members to be essential. The Chair should promote communication through various means and encourage directors to stay abreast of industry developments. Access to industry news services, many of which are free, will increase the effectiveness of the board. Furthermore, to the extent the board is able to communicate electronically between meetings concerning key issues or concerns, the board will be more productive and focused and its work likely will be completed in a timely manner.

²⁶ See Adopting Release, Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins, at fn. 35.

C. Relevant Factors in Evaluating Compensation for a Chairman

The Task Force considered the appropriate factors to evaluate in setting additional compensation, if any, for a Chair. As with other independent directors' compensation, any premium to the Chair's compensation should be set by the independent directors and each board must make this determination individually. The Task Force agreed that, in most cases, the increased time commitment and responsibility demanded by the position warranted a compensation premium over and above the retainer received by the independent directors on the board.²⁷ The Task Force also noted that it is likely that any preliminary estimates of the time required to perform the Chair role will be refined over time based on actual experience. For this reason, a board should revisit the subject of the Chair's compensation annually.

Factors a board may consider in setting compensation include:

1. Time Commitment

If the individual selected as the Chair is devoting a considerable number of hours annually to his or her position as the Chair, additional compensation may be appropriate.

2. Opportunity Cost

If, because of his activities as the Chair, the individual is not able to pursue business or professional opportunities, these foregone activities may justify additional compensation.

3. Involvement with One or More Local or National Directors' Organizations, Associations or Initiatives

To the extent the Chair is involved in organizations or activities that enhance his ability to serve as the Chair, this may be taken into account by the board in setting compensation. Not only do those activities take additional time, they demonstrate leadership and benefit the board and fund shareholders.

D. Removal of the Chair

As noted above, the Task Force believes that it is desirable for a Chair to serve in the position for several years. This argues against establishing term limits for the Chair. However, there may be a circumstance that warrants the removal of the Chair. The Task Force identified several ways in which a board may address this contingency. First, any removal approach adopted could be included in the fund's by-laws along with the selection criteria or set forth in a separate document and attached to the minutes of the meeting at which the removal procedure and selection criteria of the Chair are adopted. Second, the by-laws could provide for the annual election of all officers, including officers of the fund and the board. The Chair would be

²⁷ A small number of boards have reported that additional compensation will not be paid because the Chair position will rotate among the independent directors with each serving, for example, a three-year term. Over time, each will devote the additional time and assume the additional responsibilities required by the job.

appointed with the understanding that he will be reelected for several years, but the annual election process could provide for a tactful manner to replace a Chair who is not meeting expectations. Third, boards could decide to include a provision in the annual self-assessment specifically addressing the performance of the Chair. To the extent the Chair has lost the confidence of the board, this exercise should bring that fact to light.

E. D&O Insurance Notification

The Task Force considered whether there was any need to notify a board's D&O insurance carrier of the appointment of a Chair and whether this raises any insurance issues, such as the need for additional coverage (including separate policies or reserved limits within existing joint policies). None of the members of the Task Force reported this as an issue with their particular insurance provider but recommended that directors be alert to this possibility and to inquire at the time of renewal.²⁸

F. Review and Amendment of By-Laws

The Task Force suggests that all boards or their governance committees take the appointment of a Chair as an opportunity to review by-law provisions relating to the role of all officers.²⁹ To the extent that existing by-laws assign to the Chair responsibilities that are inconsistent with this position being filled by an independent director, *i.e.*, executive or managerial responsibilities, amendments may be necessary. It may be preferable to limit the express duties of the Chair to procedural matters, such as those the SEC set forth in the new rule requirement, *i.e.*, to serve as chairman of the board and to preside over meetings.³⁰ Additional responsibilities, which will vary from fund group to fund group, could be spelled out in a board charter or a board resolution that becomes a part of the minutes. This would permit the board and the Chair to revisit exactly what the Chair will do from time to time and to easily make adjustments with respect to a particular Chair and experience with this new process.

As noted earlier in this report, the fund by-laws also may need to be reviewed for considerations relevant to the appointment and removal of the Chair, or to provide for the annual election of all officers.³¹ Also, the Chair should be described as an officer of the board and not of the fund; to do otherwise would be inconsistent with his status as "independent."³² Finally, the by-laws may be amended to clarify that the vote of the Chair on any given issue is no more significant than that of other board members – it is still one person, one vote. A sample set of by-law provisions is attached to this report as Appendix C.

²⁸ There is nothing to suggest that designation as Chair will result in increased liability for a director who serves as such. If an event, such as a court case or enforcement proceeding were to suggest that such liability exists, the insurance industry would likely evaluate the need for additional coverage.

²⁹ It is very common for by-laws to establish the titles and roles of officers. Most funds are created as corporations or trusts under the laws of Maryland, Delaware or Massachusetts. Boards should seek the advice of counsel to ensure that by-laws are amended in accordance with the relevant state law of incorporation.

³⁰ Rule 0-1(a)(7)(iv) under the Investment Company Act.

³¹ See discussion at Section D.

³² See footnote 13, *supra*.

G. Other Issues

1. Staffing

The Task Force felt that Chairs would not necessarily require their own staff. The CCO and independent counsel were viewed as the logical persons to interface regularly with the Chair and their involvement may alleviate the need for permanent staff to the board or Chair. The management company typically provides the bulk of secretarial and clerical support for most boards. To determine if staffing is needed, the Task Force recommended that each board evaluate the responsibilities that are being assigned to the Chair, the resources currently available to the Chair and the board, and the cost to shareholders of securing staff.

2. Industry Activism

The Task Force recommended that boards consider the extent to which they want the Chair to be involved in public activities or broader industry issues (*e.g.*, visits to Capitol Hill or participation in industry programs). This also would include the extent to which there is an expectation that the Chair may comment to the media on behalf of the board. A determination early on this issue will avoid confusion later. Any board policies with respect to communications should be reviewed with independent counsel.



INDEPENDENT CHAIRPERSON TASK FORCE

William Altman	FPA Funds
John Benning	Liberty All-Star Funds
Kathy Cuocolo	Select Sector SPDR Trust
Dawn-Marie Driscoll	Scudder Funds
William Foulk	AllianceBernstein Funds
Gary Gerst	Harris Insight Funds
Rainer Greeven	Smith Barney Funds
Cynthia Hargadon, Chairperson	Wilshire Funds Allmerica Securities Trust
Sidney Koch	ING Funds
John Murphy	Smith Barney Funds
Frank Nesvet	StreetTRACKS Series Trust
Jock Patton	ING Funds
Michael Scofield	Evergreen Funds
Ed Smeds	Thrivent Funds
Robert Smith	Guardian Group of Funds
Susan Sterne	Sentinel Funds
Frederick Vogel	Waddell & Reed Funds

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SUMMARY OF CONSIDERATIONS FOR TRANSITION TO INDEPENDENT CHAIRPERSON

- **Existing Lead Independent Director**
 - Logical candidate for Chair?
 - Required leadership and communications skills?
 - Commands trust and respect of other board members?

- **Duties and Responsibilities – Manage the Meeting and Set the Agenda**
 - Ensure all activities of board promote interests of shareholders
 - Lead board meetings and executive sessions
 - Compile, with counsel, the regulatory calendar and schedule those requirements across the periodic board meeting agendas
 - Set meeting agendas
 - Solicit input from other directors, management and counsel
 - Review materials in advance to ensure productive discussion and content appropriate for decision-making
 - Allow adequate time for unanticipated matters and current industry developments
 - Conduct and manage meetings
 - Allocate time to each agenda item
 - Assure sufficient time for significant issues
 - Encourage and solicit participation from all board members, management and counsel
 - Keep close track of open issues from meeting to meeting to assure appropriate follow-up and resolution

- **Coordinate Communications with Management and Others**
 - Serve as primary contact for communications among directors and with management executives and other staff members
 - Ensure all board members are informed of relevant developments
 - Assure directives to management and other service providers are consistent and representative of the views of the independent directors
 - Serve as lead communicant with additional providers of services to the board – independent counsel, consultants, Chief Compliance Officer, and third party service providers, as appropriate
 - Delegate duties to standing committees or board members as deemed by committee charter or as appropriate

- **Manage Board Operations**
 - Oversee the delegation of duties and projects to standing committees or other board members as appropriate and efficient
 - Lead the building and maintenance of a strong and effective board
 - Lead board self-assessment process, if determined by the board

- Involve other board members
 - Stress importance of process and need for candor
- **Guide Contract Renewal Process**
 - Coordinate communication with management company as appropriate
 - Ensure negotiations focus on best interests of shareholders
- **Self Assessment Process**
 - Encourage candid and serious responses
- **Qualifications of the Chair**
 - Time Commitment
 - Ability to devote the time requirements and perform the agreed upon responsibilities
 - Commitment and ability to serve for a certain time period
 - Willingness to forego other board, professional or charitable commitments to devote the required time and energy to this position
 - Leadership Skills
 - Prior positions in leadership positions considered a plus
 - Good working relationship with management and other directors
 - Develop a coalition among the board members to gain consensus on important issues and elicit dissenting viewpoints to foster important discussion among the independent board members
 - Work with nominating committee to strengthen board
 - Knowledge of the Industry
 - Working knowledge of the mutual fund or investment industry is a plus
 - Continuing education through participation in a variety of industry and association activities is encouraged
 - Communications Proficiency
 - Promote effective and efficient communications among board members through written, electronic and telephonic means
- **Considerations for Compensation for the Chair**
 - Estimated Time Commitment
 - Additional hours to perform the communication, coordination and board agenda development duties
 - Opportunity Cost
 - Other activities, both paid and unpaid, relating to business or charitable organizations that are abdicated or foregone due to fulfillment of Chair duties
 - Continued Educational Efforts
 - Involvement with director organizations, associations and initiatives

- **D&O Insurance**
 - No indications that appointment of a Chair affects insurance coverage provisions or premium rates

- **Review and Amendment of By-Laws**
 - Changes should emphasize the communications, coordination and procedural aspects of the duties of the Chair
 - Emphasis on the Chair being an officer of the board, not the fund(s)
 - Strengthen text relative to one-person-one-vote, which includes the Chair

APPENDIX C

**IDC Task Force Report
SAMPLE BY-LAW PROVISIONS**

**Article []]
Officers of the Board**

Section 1. Chairman of the Board. The Board of Directors shall elect from among its members a Chairman of the Board who shall at all times be a director who is not an interested person of the Fund as that term is defined by the Investment Company Act of 1940. The Chairman of the Board shall be an officer of the Board but not of the Fund and, as such shall preside over all meetings of the Board of Directors and shall have such other responsibilities in furthering the Board's functions as may be prescribed from time to time by resolution of the Board. It shall be understood that each Director, including the Chairman of the Board, shall have equal responsibility to act in good faith, in a manner which he reasonably believes to be in the interest of the Fund and with the care that an ordinarily prudent person in a like position as a director would use under similar circumstances¹. The Chairman shall be elected by the Board of Directors annually to hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned, or have been removed, as herein provided in these by-laws. Each Director, including the Chairman of the Board, shall have one vote.

Section 2. Resignation. The Chairman of the Board may resign at any time by giving written notice of resignation to the Board of Directors. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3. Removal of the Chairman. The Chairman of the Board may be removed by the Board of Directors with or without cause at any time.

Section 4. Vacancy. A vacancy in the office of Chairman of the Board, either arising from death, resignation, removal or any other cause, may be filled for the unexpired portion of the term of the office which shall be vacant, by the vote of the Board of Directors.

[The sample language above is not intended to serve as legal advice. Each fund board should tailor the language to fit its particular circumstances and should consult with counsel before adopting or amending fund by-laws.]

¹ This is the Maryland General Corporation Law standard governing the responsibilities of a director. The language should be appropriately modified to conform to the similar articulations of a director's duties to the entity under the laws of other jurisdictions.