

MEMORANDUM

February 17, 2010

TO: File No. S7-10-09

FROM: Kieran G. Brown
Office of Disclosure Regulation
Division of Investment Management

SUBJECT: Facilitating Shareholder Director Nominations

On February 4, 2010, members of the SEC staff met with the following representatives of the Investment Company Institute (“ICI”): Paul Stevens, President, ICI; Karrie McMillan, General Counsel, ICI; Annette Capretta, Deputy Managing Director, Independent Directors Council; Dorothy Donohue, Senior Associate Counsel, ICI; Heidi Stam, Managing Director and General Counsel, The Vanguard Group, Inc.; Robert Bremner, Independent Chair, Nuveen Family of Mutual Funds; and Michael Scofield, Chairman, Independent Directors Council and Independent Chair of the Board of Evergreen Mutual Funds.

Members of the SEC staff in attendance were: from the Division of Corporation Finance, Meredith Cross, Director; Brian Breheny, Deputy Director; Tamara Brightwell, Senior Special Counsel; and Lillian Brown, Senior Special Counsel; from the Division of Risk, Strategy, and Financial Innovation, Henry Hu, Director, and Josh White, acting Assistant Director; and from the Division of Investment Management, Andrew Donohue, Director; Susan Nash, Associate Director; Mark Uyeda, Assistant Director; and Kieran Brown, Senior Counsel. The topic discussed was the Commission’s June 10, 2009 proposals concerning shareholder nominations to company boards of directors.

A copy of handouts provided by the representatives of the ICI is attached to this memorandum.

Information Regarding Registered Investment Companies Related
to the SEC's Proxy Access Proposal

February 4, 2010



Five Smallest Registered Investment Companies by Type of Fund

Long-Term Mutual Funds ¹		Money Market Funds ²		Closed-End Funds ³	
Total Net Assets	5% Threshold	Total Net Assets	5% Threshold	Total Net Assets	5% Threshold
\$51,000	\$2,550	\$1,216,000	\$60,8000	\$3,993,000	\$199,515
\$147,000	\$7,350	\$1,801,000	\$90,050	\$4,900,000	\$245,000
\$321,000	\$16,050	\$7,179,000	\$358,950	\$17,935,000	\$896,750
\$446,000	\$22,300	\$7,673,000	\$383,650	\$19,756,000	\$987,800
\$452,000	\$22,600	\$8,003,000	\$400,150	\$20,282,000	\$1,014,100

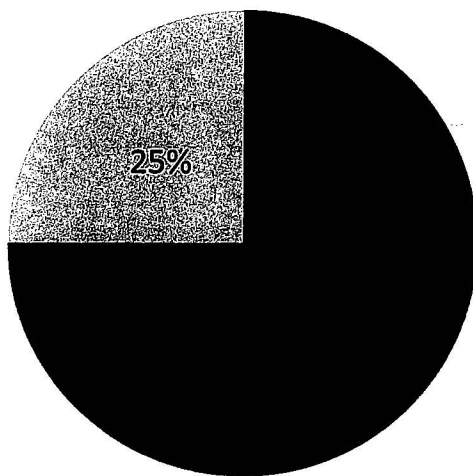
1. Data as of November 2009 for long-term mutual funds open at least one year.

2. Data as of November 2009.

3. Data as of September 2009.

Distribution of Long-Term Mutual Funds by Total Net Asset Size Percentage of number of long-term funds, November 2009

Total Net Assets < \$75 million



\$75 million ≤ Total Net Assets < \$700 million

Total Net Assets ≥ \$700 million

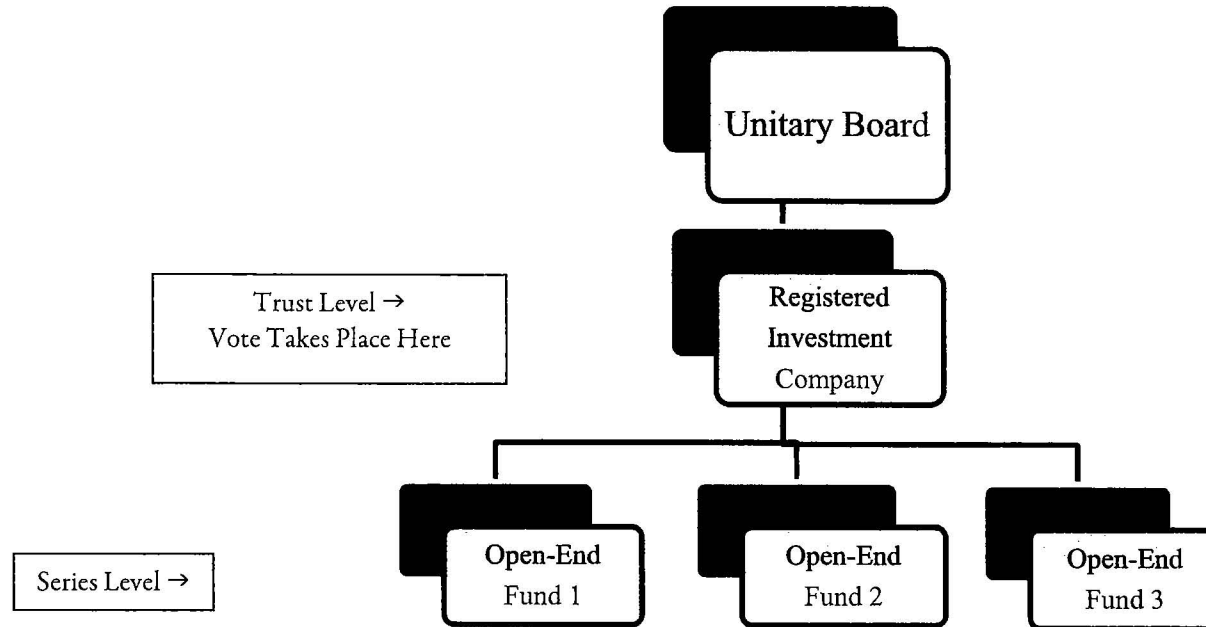
Data Regarding Fund Complexes with Multiple Registered Investment Companies

According to ICI research, fund complexes that are ICI members, on average, have five registered investment companies (although there may be multiple series/funds within each registered investment company). The maximum number of registered investment companies is 178. Both the median and the minimum is one registered investment company per complex. Members pointed out that it is typical for older fund groups, which have gone through mergers to have multiple registered investment companies. In addition, because closed-end funds are not permitted to be organized as series under the Investment Company Act, each will be a separately registered investment company.

Data Regarding Board Structure of Registered Investment Companies

- Most funds today are part of complexes comprised of multiple funds that share the same investment adviser and other key service providers. Boards of these funds generally are organized according to one of two models -- a “unitary” board consisting of one group of directors who serve on the board of every fund in the complex, or “cluster” boards consisting of two or more separate boards of directors within the complex that each oversees a different group of funds.
- A recent joint ICI and Independent Directors Council survey, covering approximately 93% of investment company assets under management, showed that of the complexes responding to the survey, 83% had a unitary board structure, and 17% had a cluster structure.
- ICI data shows that thirty-seven fund complexes that are ICI members have both closed-end and open-end funds.
- Thirty-one of these complexes responded to our most recent ICI/IDC Directors survey.
- Of the thirty-one respondents, seventeen have unitary boards and fourteen have cluster boards.
- Of the fourteen complexes with cluster boards, six have a board that oversees only closed-end funds.
- Of those six, two also have a different board that oversees both open-end and closed-end funds.
- Of the fourteen fund complexes with cluster boards, ten have boards that oversee both open-end and closed-end funds.

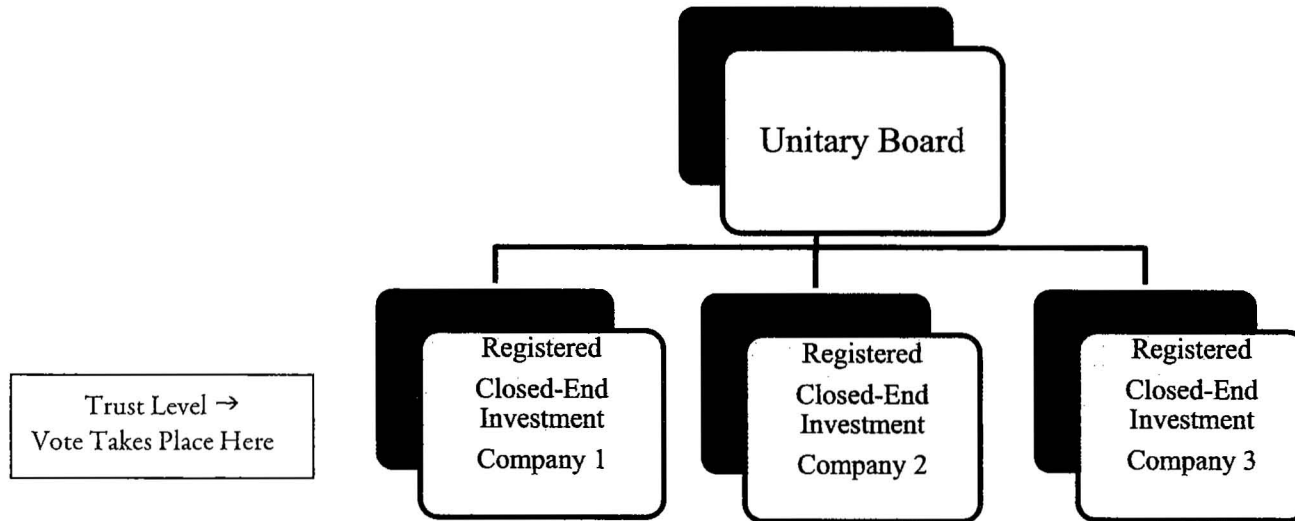
FUND COMPLEX A



Notes: This complex has one investment adviser. It has all retail funds with various investment objectives. The funds include a domestic equity fund, an asset allocation fund, and a socially responsible fund.

Since this complex consists of a single registered investment company, Rule 14a-11's net asset thresholds would apply to the complex as a whole (not on a series-by-series basis). A shareholder in any *one* of these series could nominate a director who then would be voted on by shareholders of all the series. If elected, that director then would be on the board overseeing *all* of the funds. If that director pursues an agenda that favors, for example, socially responsible investing over investing for economic return, this may lead to undesirable changes to non-fundamental investment policies to the detriment of, and contrary to the expectations of, the shareholders in the other series. The Commission should not facilitate the use of mutual funds as lightning rods for special interest shareholders seeking to effect change indirectly. Under current law, a shareholder-nominated director could be elected to the board through a proxy contest, which is much more expensive and less likely to occur, and even if it does occur, is less likely to succeed.

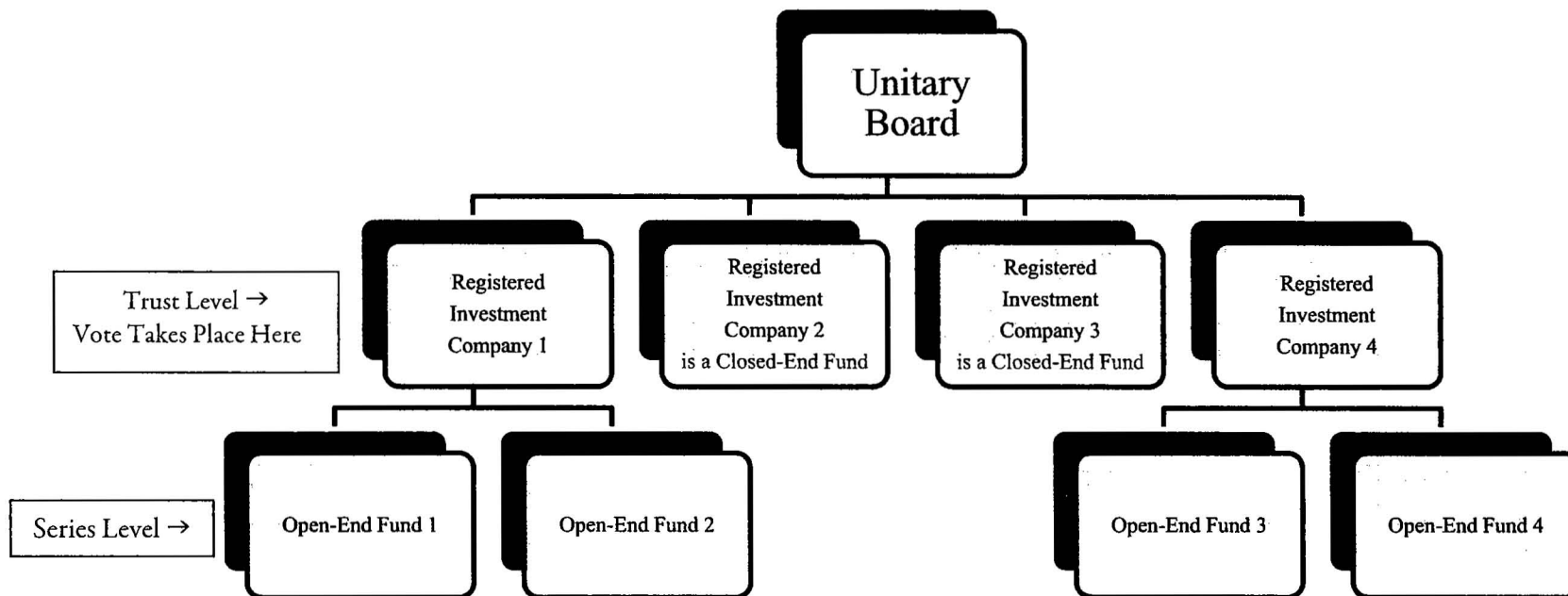
FUND COMPLEX B



Notes: This complex has two different investment advisers. The registered investment companies have various investment objectives. There is an international equity fund, a venture capital fund, and a municipal security fund.

Today, each of these registrants conducts a proxy for the election of directors simultaneously and sets forth the same slate of directors for each. It is possible today for a dissident to mount a proxy contest with respect to one of the registrants and get a director elected for only that registrant. This occurs infrequently presumably because of the time and expense involved. Under proposed Rule 14a-11, it would be easier and less expensive for a shareholder to nominate a director because that nominee would appear on the registrant's proxy. If that nominee is elected, the complex will no longer be able to have a unitary board. They will have one board overseeing all the funds in the complex except the one with the new director, which will cause the fund to incur additional costs (at shareholder expense) and experience administrative difficulties. For example, arrangements would have to be made for that director to leave during any discussions that only pertain to other funds in the trust. Further, board materials would have to be customized for that director.

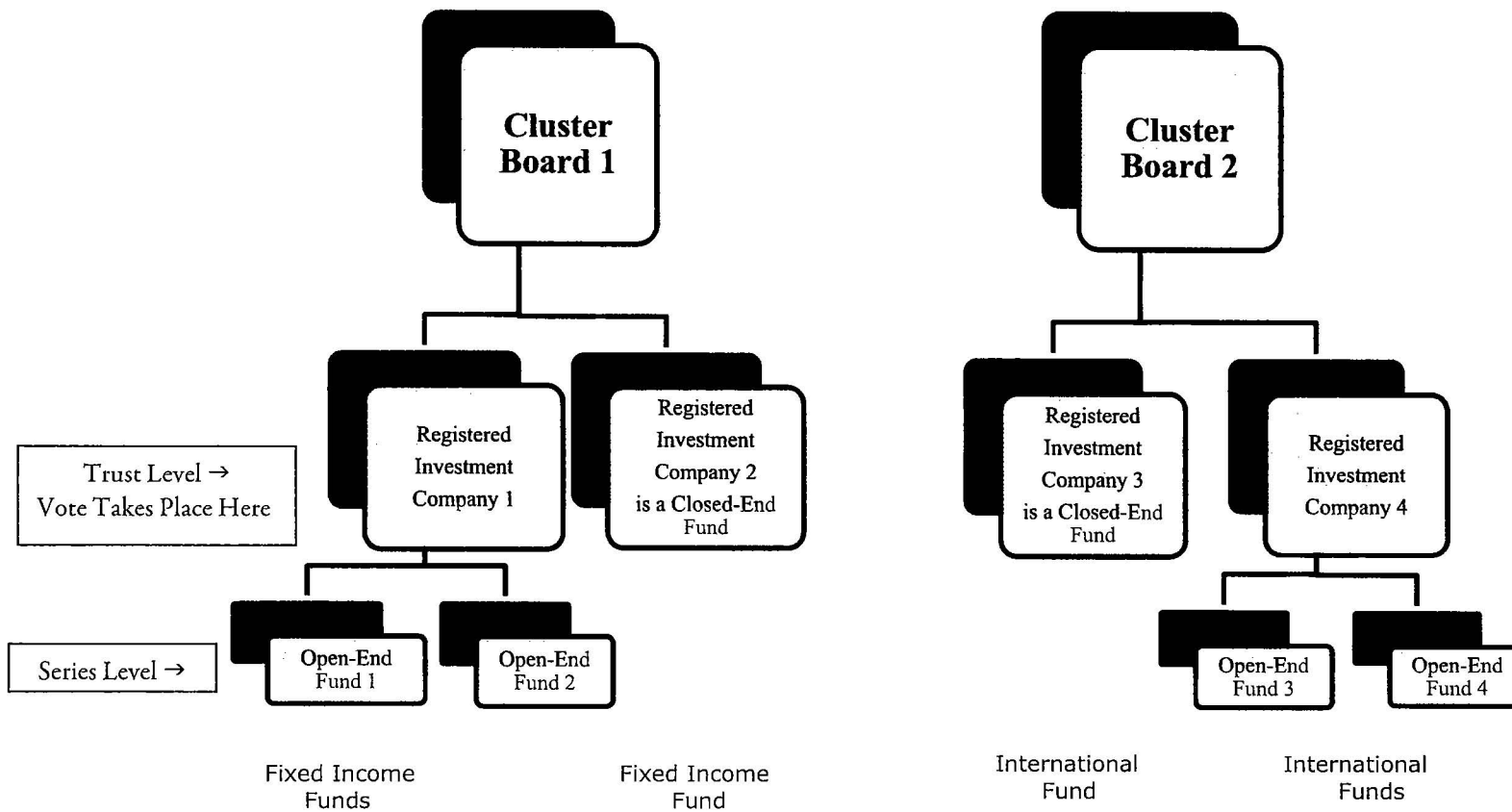
FUND COMPLEX C



Notes:

This complex has one investment adviser. It has retail equity funds and funds offered as variable annuity products. It also has single state municipal security funds organized as closed-end funds.

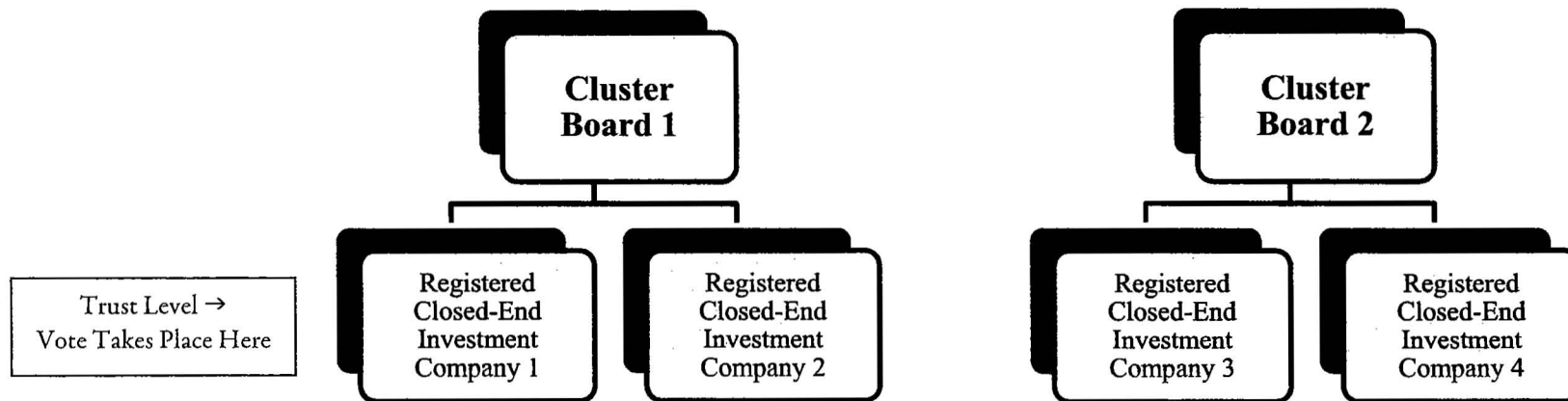
FUND COMPLEX D



Notes:

This complex resulted from a merger of two complexes. Cluster Board 1 oversees all fixed income funds, some of which are organized as closed-end funds and some of which are organized as open-end funds. Cluster Board 2 oversees all of the international funds, some of which are organized as open-end funds and others as closed-end funds.

FUND COMPLEX E



Notes: This complex resulted from a merger of two other complexes. Cluster Board 1 oversees all retail funds, all of which are organized as closed-end funds. Cluster Board 2 oversees all of the funds offered through private wealth management services.

The Commission first should establish that there is a need for proxy access requirements regarding director nominations or related bylaw provisions in the investment company context. Only if it so determines, should it then develop a tailored proposal that is designed specifically for investment companies and weigh its anticipated benefits against any resulting costs. This analysis must include considering the impact of the application of proxy access to the multitude of fund board structures. The examples below, drawn from information provided by Institute members, demonstrate a myriad of fund board structures.

I. Complexes with Cluster Boards that Oversee Both Open-End and Closed-End Funds

1. Fund Complex 1 has two boards. It has separate boards for retail funds and funds offered through private wealth management services, largely because these funds existed as part of two fund complexes that merged. It has common directors for their closed-end and open-end funds.
2. Fund Complex 2 has seven boards. Four closed-end funds are dispersed among three of those boards. General historical reasons account for which boards oversee which funds (*i.e.*, boards were added as new funds were launched).
3. Fund Complex 3 has two boards. One board oversees all of its open-end funds and all but three of its closed-end funds. A second board oversees the other closed-end funds.
4. Fund Complex 4 has two boards. Board A oversees the 101 open-end and two closed-end funds Adviser A advises; these are all fixed-income funds. Board B oversees the 18 open-end and five closed-end funds Adviser B advises; these are all equity and international funds.
5. Fund Complex 5 has two boards. Board A oversees nine closed-end funds and approximately 60 open-end funds. Board B oversees open-end funds. This complex splits its clusters based on the nature of their customers; one board oversees funds with retail customers and the other oversees a fund of funds and variable annuity funds.
6. Fund Complex 6 has five boards. One oversees only closed-end funds, two different boards each oversee a distinct group of open-end equity funds, a fourth oversees open-end fixed income funds, and a fifth oversees open-end institutional fixed income funds and two retail closed-end funds.
7. Fund Complex 7 has one board for all of its open-end and closed-end funds except that a second board oversees its variable annuity funds.
8. Fund Complex 8 has two boards. One board oversees the approximately 110 open-end funds and 26 closed-end funds advised by Adviser A. A second board oversees approximately 80 open-end funds and 18 closed-end funds advised by Adviser B.
9. Fund Complex 9 has two boards. This complex has a number of open-end funds and three closed-end funds; one board oversees one closed-end fund and a group of the open-end funds and the other oversees two closed-end funds and the remaining open-end funds.

10. Fund Complex 10 has two boards. Both boards oversee both closed-end funds and open-end funds. Which fund is in which cluster is determined by the fund's investment objective.

II. Complexes with Cluster Boards that Oversee Solely Closed-End Funds

1. Fund Complex 1 has two boards. One board oversees two closed-end funds (because they are their only retail funds) and the other oversees their 14 open-end variable annuity funds.
2. Fund Complex 2 has two boards. One oversees three closed-end funds, and the other oversees all of its open-end funds and some additional closed-end funds.
3. Fund Complex 3 has five boards, one of which oversees only closed-end funds and another which oversees both open-end and closed-end funds.
4. Fund Complex 4 has two boards. One oversees one privately offered closed-end fund of funds. The other oversees all of its open-end funds.
5. Fund Complex 5 has four boards. One oversees all of its insurance funds and a second oversees its retail funds. Until recently, the retail funds included two closed-end funds, which since have been merged into an open-end fund. The adviser of the complex also administers, but does not advise, two international closed-end funds, each of which has its own board for reasons related to the fund's investment objective.
6. Fund Complex 6 has several boards. One board oversees two closed-end funds (because they are their only retail funds) and several other boards oversee their variable annuity funds.

Shareholder Rights Under the Investment Company Act

- The Investment Company supplements state law in a number of key respects by regulating shareholder participation in key decisions, unlike shareholders of operating companies.
- Registered investment companies are prohibited from engaging in a variety of transactions and activities unless they first obtain shareholder approval. These transactions and activities include changing from an open-end, closed-end, or a diversified company; borrowing money, issuing senior securities, underwriting securities issued by other persons, purchasing or selling real estate or commodities or making loans to other persons, except in accordance with the policy in its registration statement; or deviating from a stated policy with respect to concentration of investments in an industry or industries, from any investment policy which is changeable only by shareholder vote, from any stated fundamental policy, or changing the nature of its business so as to cease to be an investment company.
- In addition, a registered investment company's contract with its investment adviser and distributor (and any material amendments to those contracts) must be approved by a majority of outstanding voting securities; and any shareholder of a registered investment company may bring an action against the company's investment adviser for breach of fiduciary duty with respect to receipt of compensation for services or payments of a material nature paid by such company.

Board Oversight of Funds

Registered investment companies are overseen by a board of directors who have a fiduciary duty to represent the interests of fund shareholders. The Investment Company Act of 1940 and the rules under it impose significant responsibilities on fund directors in addition to the duties of loyalty and care to which directors are typically bound under state law.

One of the independent directors' most important statutory responsibilities is to annually evaluate and approve the contract between the fund and its investment adviser, including the adviser's fees. The 1940 Act imposes on the adviser a "fiduciary duty with respect to the receipt of compensation" for services paid by the fund and requires that a majority of the independent directors approve the contract. Directors participate in numerous meetings and consider and review hundreds if not thousands of pages of detailed information before approving the contract each year. Through a disclosure rule, the SEC has required boards to consider several factors when evaluating advisory contracts for approval, including the nature, extent, and quality of the services to be provided by the adviser, the investment performance of the fund, and the costs of the services to be provided. The SEC regularly examines fund boards' discharge of their statutory obligations, including the approval of advisory fees.

Another important responsibility of independent directors is to monitor potential conflicts of interest between the fund and the adviser or its affiliates. Conflicts may arise in arrangements or transactions between the fund and fund affiliates, such as in the use of affiliated broker-dealers or cross trades with affiliated funds. In some cases, SEC rules impose specific responsibilities on independent directors. For example, rules providing exemptions from 1940 Act prohibitions on affiliated transactions rely on directors to adopt appropriate procedures for these transactions and oversee compliance with them.

Among other responsibilities, fund directors also:

- Approve certain distribution plans (e.g., 12b-1 plans);
- Make fair value determinations for certain securities held by the fund;
- Approve the codes of ethics of the fund and the adviser;
- Oversee the compliance function, including approving the written compliance policies and procedures and approving the hiring and compensation of the fund's chief compliance officer; and
- Oversee the process by which fund disclosure (including prospectuses) is prepared, reviewed, revised, and updated.

These myriad responsibilities required by federal law are discharged within the framework of fiduciary duties established for directors under state corporate law. Directors must perform their duties in an informed and deliberate manner, and, to do so, they devote substantial time and consider large amounts of information related to various aspects of fund operations and management.