

**MEMO# 22363**

March 20, 2008

# **Remarks by Institute President, SEC Commissioner at the 2008 Mutual Funds and Investment Management Conference**

[22363]

March 20, 2008

TO: BOARD OF GOVERNORS No. 3-08

CEOS CLOSED-END INVESTMENT COMPANY MEMBERS No. 7-08

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PRIMARY CONTACTS - MEMBER COMPLEX No. 1-08

SEC RULES MEMBERS No. 25-08

SMALL FUNDS MEMBERS No. 15-08

UNIT INVESTMENT TRUST MEMBERS No. 4-08     RE: REMARKS BY INSTITUTE PRESIDENT,  
SEC COMMISSIONER AT THE 2008 MUTUAL FUNDS AND INVESTMENT MANAGEMENT  
CONFERENCE

Earlier this week, Institute President and CEO Paul Stevens delivered the opening address at the 2008 Mutual Funds and Investment Management Conference in Phoenix, Arizona. Commissioner Paul Atkins of the Securities and Exchange Commission was the keynote speaker. Their remarks are briefly summarized below. [\[1\]](#)

## **Remarks by Mr. Stevens**

Mr. Stevens began his address by commenting that the conference is taking place during a particularly challenging time for the financial markets and that the fund industry is “certainly not immune” to market fluctuations. He reminded attendees, however, that “our kind of fund investing – transparent, highly diversified, with very limited leverage, and

subject to strict pricing disciplines – is designed to weather such storms better than most investment vehicles,” and that “as fiduciaries, our concern first and last should be to assist our shareholders” in achieving their long-term financial goals.

The balance of Mr. Stevens’ remarks focused on the SEC’s pending proposal for fund disclosure reform. Mr. Stevens commended the Commission and its staff for their hard work and dedication in advancing the proposal, which he suggested holds the promise of fashioning a document that both discloses information and informs investors. He described past efforts to resolve this tension between “fully disclosing and effectively informing,” including sweeping amendments in 1998 to the full fund prospectus as well as authorization of a voluntary short-form disclosure document known as the Fund Profile. Mr. Stevens suggested that, for a variety of reasons, the Fund Profile “never lived up to its early promise,” but that the industry nevertheless has remained convinced that a better way of informing fund investors could be found.

Mr. Stevens then talked about the “exciting possibilities the Internet presents for a have-your-cake-and-eat-it-too solution to the disclosure conundrum.” He lauded the Commission for its willingness to “reconceive” its approach to mutual fund disclosure in a way that would give average investors a concise, plain English document containing key information about a fund – a summary prospectus – yet still assure continuous access via the Internet to the full range of information that the fund is required to disclose publicly. He stressed that this approach is clearly supported by investor research, including the results of a new survey released by the Institute at the conference. [\[2\]](#)

On the question of whether funds would opt to use the new voluntary disclosure model, Mr. Stevens stated that funds would make their decisions based on “a variety of very practical considerations.” One such consideration, said Mr. Stevens, is whether the final regulation will require updating of the performance and portfolio holdings data in a summary prospectus one month after the end of each calendar quarter. He noted that such a requirement would pose considerable burdens not just for funds – as amply demonstrated by the results of a survey of Institute members to assess the relative costs and benefits of the proposal – but also for the brokers and other intermediaries selling fund shares. According to Mr. Stevens, Institute members have advised that, among other things, they will feel compelled to review the entire summary prospectus, and not just the performance and holdings data, if quarterly updating is required. In Mr. Stevens’ view, the SEC should move forward with the summary prospectus without a quarterly updating requirement, unless there is a “compelling” reason to conclude that such a requirement is “indispensable.”

In closing, Mr. Stevens noted that he has been involved in the issue of disclosure reform for fifteen years and that he believes strongly in the concept advanced by the SEC. He expressed the hope that, fund firms “will do everything possible to put the summary prospectus in the hands of our shareholders,” provided that the final rule successfully addresses the practical considerations that have been raised about the proposal.

## Remarks by Commissioner Atkins

Like Mr. Stevens, Commissioner Atkins began his remarks by acknowledging the unprecedented market conditions of the past several months. He noted that the President's Working Group on Financial Markets recently issued a policy statement containing recommendations for how to mitigate the current challenges and prevent similar occurrences in the future. He agreed with the Working Group's assessment that many parties – financial institutions, investors, credit rating agencies and regulators – have a part to play in restoring the dynamism of the U.S. capital markets. In particular, Commissioner Atkins remarked on the importance of regulators striking the right balance in times of market uncertainty, stating that they must “not give in to the urge to do something if that something would be harmful.”

Commissioner Atkins then turned his attention to international issues, remarking that “investors are willing and able . . . to send their money across the world in search of diversification, service, innovation and higher returns” and that regulators can – and must – facilitate the internationalization of the financial markets. He commended the work of various groups to identify ways to foster U.S. competitiveness, at the same time cautioning that any changes in regulatory approach must be undertaken with “an appreciation for the international ramifications.” Commissioner Atkins also commented that internationalization can pose challenges for regulators, as well as offer opportunities for greater cooperation among regulators from various jurisdictions. He pointed specifically to current discussions about mutual recognition, observing that “the issue is clearest” for broker-dealers and markets and that “the possibility of allowing foreign investment companies access to the American marketplace has not enjoyed much attention.” Commissioner Atkins pointed to the SEC staff's recommendation in 1992 that Section 7(d) of the Investment Company Act be amended to allow mutual recognition for investment companies through bilateral memoranda of understanding, then queried whether it is “time to take another look at the feasibility of mutual recognition under the current Section 7(d) or seek legislative changes.” He did not, however, suggest an answer to this question.

On the issue of fund disclosure reform and the SEC's current proposal to allow use of a summary prospectus, Commissioner Atkins stated that he was particularly pleased that the Institute and others had responded to the SEC's request for empirical data. Specifically, he remarked that the Institute's “extensive cost-benefit submission [on the SEC's summary prospectus proposal] is part of a broader, commendable push by the ICI to encourage the SEC to accord greater weight to cost-benefit considerations.” He also commented on the value of investor research by the Institute and others, offering that he is most concerned with ensuring that the SEC adopts a summary prospectus that will be used by investors and will be useful to them. “If we do not get it right,” stated Commissioner Atkins bluntly, “funds will not use [the summary prospectus], and investors will not benefit.” In particular, he noted commenters' serious concerns about the cost and feasibility of the proposed quarterly updating requirement, and the Institute's findings that only 30-45% of its members would use the summary prospectus if quarterly updating were required, as opposed to about 80% if such updating were not required. According to Commissioner Atkins, if these predictions are accurate, quarterly updating “could be a real obstacle to

achieving the prospectus reform that we envision” and that simply requiring funds to direct shareholders to their websites for more current information could be a “more practical alternative.” After mentioning some of the other concerns raised by commenters, Commissioner Atkins expressed his commitment to improving fund disclosure and his optimism that this effort can succeed with help from “lessons learned from the profile, the improvements in technology over the last decade, and the insights that commenters offered.”

The balance of Commissioner Atkins’ remarks focused primarily on exchange-traded funds and possible new investment products. He suggested that attendees examine the SEC’s recent ETF proposal and encouraged the submission of comments so that the SEC can ensure that this technical proposal works effectively. Commissioner Atkins noted that ETFs have filled a market need – for mutual funds tradable throughout the day – and then queried whether there are other market needs not being met because of regulatory or statutory obstacles. He pointed to calls – both now and in the past – for greater organizational flexibility for investment companies, including the Institute’s call for a new form of U.S. registered fund that could compete in global markets. Commissioner Atkins commented that investors benefit from variety, and that he supports exploring new options for funds, provided that “we do not attempt to force all funds into any particular form.” He also expressed the need to “eliminate groundless impediments to new products” and suggested the establishment of a “new products czar,” who would be responsible for “product management of new products” and facilitating their review and approval by the SEC and/or other agencies.

In closing, Commissioner Atkins noted the Institute’s recent observation to the Treasury Department that the SEC’s highly prescriptive regulatory regime and aggressive enforcement program has kept the SEC and regulated entities at arm’s length and impaired the flow of information to the SEC. He offered his opinion that a “‘gotcha’ approach by any regulator does not serve anyone well” and that the SEC “would do well to assist regulated entities with improving compliance.” Commissioner Atkins posed the question of whether real change can occur in the SEC’s approach without fundamental change in the agency’s organizational structure, and remarked that attendees “probably can guess my preferences there.”

Rachel H. Graham  
Associate Counsel

#### **endnotes**

[1] Mr. Stevens’ address, Less and More: A Better Approach for Informing Fund Investors, is available on the Institute’s public website at [http://www.ici.org/statements/remarks/08\\_mfim\\_stevens\\_spch.html#TopOfPage](http://www.ici.org/statements/remarks/08_mfim_stevens_spch.html#TopOfPage). Commissioner Atkins’ address is available on the SEC’s website at

<http://www.sec.gov/news/speech/2008/spch031708psa.htm>.

[2] See Investment Company Institute, Investor Views on the U.S. Securities and Exchange Commission's Proposed Summary Prospectus (March 14, 2008), available on the Institute's public website at [http://www.ici.org/pdf/ppr\\_08\\_summary\\_prospectus.pdf](http://www.ici.org/pdf/ppr_08_summary_prospectus.pdf).

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