

**MEMO# 11024**

May 28, 1999

## **DIRECTORS ISSUES FEATURED IN SPEECHES AT INSTITUTE'S 1999 GENERAL MEMBERSHIP MEETING**

[11024] May 28, 1999 TO: DIRECTOR SERVICES COMMITTEE No. 15-99 INVESTMENT COMPANY DIRECTORS No. 6-99 RE: DIRECTORS ISSUES FEATURED IN SPEECHES AT INSTITUTE'S 1999 GENERAL MEMBERSHIP MEETING

\_\_\_\_\_ In their speeches during the Institute's General Membership meeting last week, Paul Roye, Director of the Securities and Exchange Commission's Division of Investment Management, Institute Chairman John J. Brennan and Institute President Matthew P. Fink all highlighted the issues of mutual fund governance and the role of independent directors. Copies of these speeches are attached and those portions of particular interest to investment company directors are summarized below. Paul Roye's Speech Mr. Roye discussed the success of the Investment Company Act and noted its specific requirement that funds have independent directors. He commented on the Commission's broad initiative to determine what problems independent directors are encountering and how their effectiveness can be enhanced. He mentioned the Commission's roundtable on the role of independent directors held in February and highlighted the Commission's plans to propose rules this summer to strengthen fund boards and the corporate governance provisions of the Act. He acknowledged the Institute's response to SEC Chairman Levitt's call for action by the industry in this area, noting the creation of a special committee to develop best practices regarding investment company governance. Roye urged the committee to "take a hard look at recommendations which would significantly improve the governance structure and go beyond what we could properly propose as regulators." He also stated his belief that, "[t]ogether, through these initiatives, we can make sure that independent directors have the tools needed to fulfill their role as representatives and guardians of the shareholders' interest." Mr. Roye also complimented ICI Mutual for acting recently to modify the co-insured exclusion in its joint liability insurance policies. Previously, such policies would exclude coverage for claims brought by co-insureds, which could result in independent directors in litigation with management finding themselves without coverage. Roye commented that independent directors "cannot be effective representatives of shareholders if they're worried about funding costly litigation out of their own pockets." The Chairman's Report Mr. Brennan's report focused on the industry's accomplishments, challenges, and opportunities during the past year. One of the specific challenges during 1998 was scrutiny from regulators and legislators. In particular, Brennan noted that "[w]ith respect to our governance structure and practices, the past 12 months saw the most scrutiny in years on the role of boards of directors in the mutual fund industry." Brennan applauded the challenge laid out by SEC Chairman Levitt's inquiry into the role of independent directors as a great "complacency

check” for the industry. Although the industry has been “essentially scandal-free” for 60 years, Brennan warned against assuming that its unique system of governance cannot be improved, and stated that the industry has the burden “to constantly review and improve the stewardship of our shareholders’ assets.” The President’s Report Mr. Fink’s report emphasized that the continued success of the mutual fund industry is dependent upon continuing its tradition of integrity, and highlighted several things that the industry must do to ensure that it maintains this integrity. Of particular interest to directors, Mr. Fink stressed that the industry must “remain unwavering in [its] support for the core fiduciary provisions of the Investment Company Act...” In noting that this support requires periodic reexamination of the core protections, Fink reported that the Institute formed an Advisory Group to consider best practices for fund directors. He stated that “[i]t makes sense to examine current best practices to see if they can be made even better, and we are pleased to be part of Chairman Levitt’s initiative for a careful and thorough review of this central element of our regulatory system.” Marguerite C. Bateman Associate Counsel Attachments

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.