

MEMO# 20698

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SEC Seeks Comment on Staff Economic Papers Relating to Fund Governance

©2006 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. [20698] December 18, 2006 TO: BOARD OF GOVERNORS No. 32-06 CLOSED-END INVESTMENT COMPANY MEMBERS No. 62-06 SEC RULES MEMBERS No. 108-06 SMALL FUNDS MEMBERS No. 86-06 RE: SEC SEEKS COMMENT ON STAFF ECONOMIC PAPERS RELATING TO FUND GOVERNANCE The Securities and Exchange Commission is reopening the comment period on its June 2006 request for additional comment regarding amendments to fund governance provisions.* The provisions require that a fund relying on certain exemptive rules have (1) a board with no less than 75% independent directors, and (2) an independent chair. In its Release, the Commission stated that it received many comments in response to the June 2006 request, some of which provided information on the costs of the provisions. The Release asserts that few comments "directly addressed in a meaningful way the economic implications of the provisions." According to the Release, the Commission "wishes to develop a more comprehensive record and a more thorough understanding of the economic consequences of the provisions," before it considers further rulemaking on this matter. To that end, the purpose of the additional comment period is to permit public comment on two papers prepared by the Office of Economic Analysis (OEA) that the Commission will publish shortly. The papers are the result of (1) a review of existing relevant economic literature related to conflicts of interest that advisers have with regard to mutual funds they advise, and literature related to mutual fund governance, independent chairs and board independence, and (2) an analysis of the statistical properties of mutual fund returns and potential limitations inherent in any empirical analysis designed to identify a relationship between those returns and governance. * Investment Company Act Release No. 27600 (December 15, 2006) ("Release"). The Release is available on the SEC's website at <http://www.sec.gov/rules/proposed/2006/ic-27600.pdf>. See also Memorandum to Board of Governors No. 18-06, Closed-End Investment Company Members No. 23-06, SEC Rules Members No. 51-06, Small Funds Members No. 43-06 [20110] (June 15, 2006); and Memorandum to Board of Governors No. 24-06, Closed-End Investment Company Members No. 36-06, SEC Rules Members No. 72-06, Small Funds Members No. 58-06 [20305] (August 21, 2006). 2 The OEA's papers are not available yet. They will be included in the public comment file when they are completed, and there will be a 60-day comment period following publication of the second of the two papers. The Commission also seeks comment on any other extant analyses, and requests that commenters provide their best assessment of these. Frances M. Stadler Deputy Senior Counsel

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