

COMMENT LETTER

March 13, 2008

IDC Letter to Senate Republican Capital Markets Task Force (pdf)

March 12, 2008 The Honorable Mike Crapo Chairman Senate Republican Capital Markets Task Force 239 Dirksen Senate Office Building Washington, DC 20510 Re: Examination of the Competitiveness of U.S. Financial Markets Dear Senator Crapo: The Independent Directors Council (IDC)¹ appreciates the opportunity to provide its views and offer its assistance to the Senate Republican Capital Markets Task Force as it explores ways to improve the competitiveness of the U.S. financial markets. We are writing with respect to ICI's recommendation to the Task Force that Congress and the Administration – in consultation with the SEC, all elements of the fund industry (including fund directors), and other interested parties – should develop legislation to authorize an additional form of U.S. registered fund that would be a competitive, attractive investment option for the global marketplace.² There are many complicated issues associated with the development of an additional fund model that must be carefully studied before any formal action is taken. It is particularly important that care be taken to avoid any adverse, unintended consequences to the current U.S. mutual fund model. ¹ IDC serves the fund independent director community by advancing the education, interaction, communication, and policy positions of fund independent directors. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute (ICI) member funds. ICI is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts. Members of ICI manage total assets of \$12.33 trillion and serve almost 90 million shareholders. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors. ² ICI Submission to the Senate Republican Capital Markets Task Force, Review of the U.S. Financial Markets and Global Markets Competitiveness (February 25, 2008). ICI's Submission recommends that some of the features that should be considered as part of such a model include: (1) a tax "roll-up" of the fund's income and gains; (2) a straightforward fee structure, such as a single, or unitary, fee from which the fund sponsor would pay virtually all fund expenses and earn a profit; (3) a more streamlined, market-based structure; and (4) strong regulatory protections for investors, including independent review and monitoring of the fund and its sponsor. The Honorable Mike Crapo March 12, 2008 Page 2 In order to explore these issues thoroughly and comprehensively, it is important that the Task Force seek input from all components of the fund industry. One of the central issues is the tax treatment of U.S. registered funds. In its Submission to the Task Force, ICI cites the following 1992 statement by the SEC's Division of Investment Management: "Without amendments to United States tax laws, securing greater access for United States funds overseas most probably will not meaningfully increase sales to foreign investors." IDC strongly supports ICI's recommendation that the tax structure be reformed not only to enhance the

competitiveness of U.S. registered funds but also to eliminate a significant tax burden on U.S. fund investors. Under our tax laws, U.S. registered funds are required to make annual distributions to all shareholders of the funds' income and gains. A number of foreign countries do not have similar distribution requirements. Thus, in contrast to shareholders in these foreign countries, U.S. fund shareholders must pay taxes on the annual fund distributions made to them, even though they do not sell their fund shares. In addition, U.S. fund shareholders may buy shares of a fund with an unrealized gain, which could increase their tax liability. IDC strongly supports changing the U.S. tax laws to rectify this unfair treatment of fund shareholders. Moreover, implementation of a different fund structure to increase foreign competitiveness may well be meaningless if corresponding tax changes are not made. Another significant issue is the governance structure under an additional fund model. Strong investor protection is vital to any new type of fund structure. U.S. investors have relied upon their fund investments for decades to finance the education of their children, their retirements, and other important financial goals. The indisputable success of the \$12 trillion U.S. fund industry is based, in large part, on the significant investor protections provided under the Investment Company Act of 1940 and a governance structure that relies heavily on independent directors to protect the interests of fund shareholders. Among their many important responsibilities, independent directors oversee potential conflicts of interest between the fund's adviser and its shareholders, fund performance, fund fees and expenses, and the quality and cost of services provided to the fund and its shareholders. The Task Force's consideration of ways to increase the foreign competitiveness of U.S. funds must include a focus on retaining the high level of investor protection currently provided in the U.S. by fund boards. Independent directors can offer valuable insights and perspectives to the Task Force regarding the important investor protections that independent oversight provides. IDC offers its assistance to the Task Force in its work and looks forward to participating in the continuing dialogue regarding these important subjects. The Honorable Mike Crapo March 12, 2008 Page 3 If you have any questions or would like to meet with us, please contact Amy Lancellotta, Managing Director of IDC, at (202) 326-5824. Sincerely, Robert W. Uek Chair, IDC Governing Council