

Fund Democracy, Inc.

July 22, 2003

BY FACSIMILE

The Honorable Richard H. Baker  
Chairman, Subcommittee on Capital  
Markets, Insurance and Government  
Sponsored Enterprises  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Paul E. Kanjorski  
Ranking Member, Subcommittee on  
Capital Markets, Insurance and  
Government Sponsored Enterprises  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Baker and Ranking Member Kanjorski,

I am writing, on behalf of Fund Democracy,<sup>1</sup> to express my support for an amendment to H.R.2420, the Mutual Funds Integrity and Fee Transparency Act of 2003, that is expected to be offered by Congressman Christopher Shays. I strongly recommend that H.R. 2420 be amended to require the Commission to take steps to ensure that investors are not misled by fund names that do not accurately reflect a fund's investments.

As you may be aware, the Securities and Exchange Commission adopted a rule in January 2001 that requires that at least 80% of a fund's assets be invested in securities suggested by the fund's name.<sup>2</sup> The rule was adopted in response to rulemaking petitions submitted by 15 public interest groups.<sup>3</sup>

It appears, however, that some funds continue to use misleading names. A journalist recently found that a number of "funds loaded with Freddie or Fannie debt frequently have secure-sounding words such as 'government' or 'federal' as part of their formal names."<sup>4</sup> For example, a Fidelity "Government" fund had more than "58% of its assets

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<sup>1</sup> Fund Democracy, a 501(c)(3), nonprofit membership organization, provides a voice for mutual fund shareholders by publishing articles that target mutual fund practices, policies and rules that are harmful to fund shareholders and by lobbying legislators and regulators on mutual fund reform issues. Fund Democracy also has led a number of legal challenges to practices that harm shareholders' interests. Fund Democracy was founded in January 2000 by Mercer Bullard, a law professor at the University of Mississippi and a former Assistant Chief Counsel in the Commission's Division of Investment Management.

<sup>2</sup> Investment Company Act Rule 35d-1.

<sup>3</sup> See Rulemaking Petitions submitted by Fund Democracy, Consumer Federation of America, AFL-CIO, Consumers Union, International Brotherhood of Teamsters, Consumer Action, Financial Planning Association, National Association of Investors Corporation, Arizona Consumers Council, Consumer Federation of California, Consumer Fraud Watch, Democratic Processes Center, North Carolina Consumers Council, Pennsylvania Citizens Consumer Council, and Virginia Citizens Consumer Council (June 28, 2000); see also Fund Democracy, Memorandum in Support of Rulemaking at 13-15 (June 28, 2000). These documents are available at: [http://www.funddemocracy.com/truth\\_in\\_mutual\\_funds.htm](http://www.funddemocracy.com/truth_in_mutual_funds.htm).

<sup>4</sup> Aaron Lucchetti, *Bond Surprise: Say Hi to Fannie and Freddie*, Wall Street Journal (July 11, 2003).

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invested in mortgages and government agencies such as Freddie, Fannie and government-backed GNMA's."

Securities issued by Fannie Mae and Freddie Mac are not issued or guaranteed by the government, yet the Commission, remarkably, considers Fannie Mae and Freddie Mac debt to be "government securities, on the theory that they are government sponsored." No fund with the term "treasury" or "government" in its name should be allowed to invest more than 20% of its assets in non-government-issued instruments, as required by the names rule.

I note that, notwithstanding industry suggestions to the contrary, the names rule in no way affects a fund manager's freedom to invest consistent with a fund's investment objectives and policies. Rather, the names rule only prevents the manager from using a name that is misleading because it does not accurately reflect the fund's investments.

Thank you for your attention to these concerns.

Respectfully submitted,

Mercer Bullard  
Founder and President