

**Fund Democracy  
Consumer Federation of America**

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**Consumer Groups Seek Dismissal of Challenge to Fund Governance Rules**

In an amicus brief filed today with the U.S. Court of Appeals, Fund Democracy and the Consumer Federation of America called on the Court to dismiss the Chamber of Commerce's belated and ill-founded attempt to overturn rules designed to strengthen the independence of mutual fund boards.

"More than 90 million Americans have trusted their financial security to mutual funds – a trust that was betrayed in recent years as dozens of fund managers permitted market timing and late trading that cost fund shareholders billions of dollars," said Mercer Bullard, founder and president of Fund Democracy and securities law professor at the University of Mississippi School of Law. "These abuses can be traced directly to a failure of fund governance and, in many cases, to fund boards dominated by executives of the fund's manager."

"The Commission rules to strengthen the independence of fund oversight are an appropriate response to evidence of a systemic failure among fund managers to fulfill their fiduciary obligations to fund shareholders," added Barbara Roper, director of investor protection for the Consumer Federation of America. "These rules are necessary not only to address specific abuses revealed in the trading scandals and prevent additional abuses where similar conflicts of interest exist in the operation of mutual funds, but also to restore badly shaken investor confidence in the integrity of the mutual fund industry."

In what it openly acknowledged was a "shot across the bows" of the SEC designed to discourage the agency from further such rulemaking, the Chamber of Commerce sued the Commission, claiming that it lacked the authority to adopt the rules and that the rationale behind the rules was inadequate. The Court of Appeals twice rejected the Chamber's claims: first in its initial order and again in denying the Chamber's request for a rehearing. While affirming both the agency's authority and rationale in this area, the Court issued a limited order requiring only that the Commission consider further the costs of the governance conditions and the alternative of merely requiring disclosure of a fund board's makeup.

"The Commission, to its credit, expeditiously heeded the Court's request, producing a thorough and extensive analysis of both issues just one week after the Court's decision," Bullard said. "In a self-serving role reversal, the Chamber now complains that the bureaucratic machinery has moved too quickly for its taste and should instead revert to its traditional, glacier-like pace."

Instead of arguing the only substantive issue remaining before the court – whether the

Commission gave adequate consideration to the costs of the governance conditions and to the disclosure alternative – the Chamber in its brief again attacked the Commission’s authority and the rationale behind the rule. The Chamber’s position is especially suspect in light of the one-page, boilerplate letter it submitted during the rules’ comment period (available at <http://www.sec.gov/rules/proposed/s70304/uscc031004.htm>). That letter nowhere even mentions the costs of compliance with the governance rules or the alternative of disclosure.

“The Chamber is trying to use the court proceedings to do what it should have done during the rulemaking process – debate the merits of the proposed rule and various alternatives to the rule,” Roper said. “The arguments it belatedly raises now are simply not relevant to the issues before the court. On the question of whether the Commission has adequately analyzed the costs of and alternatives to this rule, the answer is clearly, ‘yes.’”

“The Chamber’s petition is nothing more than a regulatory sandbagging by a group that, having failed to achieve its goals through the regulatory process, now hopes for an activist Court that will supplant the Commission’s authority and overturn the Commission’s exhaustively considered rules,” Bullard said. “This is a transparent attempt to delay the inevitable. The Chamber hopes for a third bite at the apple. The Court’s answer should be ‘three strikes and you’re out.’”

The briefs and other documents related to the proceeding are available at [www.funddemocracy.com](http://www.funddemocracy.com).