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FUND TRACK

# SEC Remains Divided On Fund-Board Rule

## Atkins, Campos Each See Merit in Their Arguments On Independent Chairman

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As the debate over the benefits of having an independent chairman for mutual funds enters what could be its last leg, commissioners at the Securities and Exchange Commission remain divided on the issue.

On Tuesday, SEC commissioner Paul Atkins said in a speech in Washington that there was "tenuous" justification for asking all fund companies to have an independent chairman. However, commissioner Roel Campos said in late February, at a conference for fund directors, that "the economic studies and current rulemaking record would fully support a 75% independent board and independent chair requirement."


Paul S. Atkins

The SEC had in 2004 passed a rule that all funds appoint independent chairmen and a 75% independent board, but the rule has since been rejected twice by a federal appeals court, which faulted the SEC's administrative process.

"The commission is left with the policy issue of whether this [rule] is a good idea or not," says Susan Wyderko, of fund director's association, the Mutual Fund Directors Forum.

In December, the SEC released to the public two reports prepared by the Office of Economic Analysis, which looked at the costs and benefits of having a chairman and 75% of the directors on a mutual fund's board to be independent from the investment adviser.

Both opponents and proponents of the governance rules responded to these reports filing more than a dozen comments, picking pieces of the report that supported their views. The comment period ended on March 2.

Fund firm Fidelity Management & Research Co. engaged a professor from Harvard Law School to review the studies and submitted his 100-page report as part of the comments. Fidelity said that the research by the Office of Economic Analysis noted that "optimal governance structures are likely to vary from fund to fund," and also that it didn't provide evidence that an independent chairman would provide any benefit to funds.

The Independent Directors Council, formed under the aegis of fund industry trade group Investment Company Institute, said in a comment that the recent reports "do not provide economic support" to adopt the independent chairman rule. It added that directors should be left to choose whether they want an independent chairman or not.

However, the Mutual Fund Directors Forum said that the studies strengthened the case for independent directors, by recognizing that there are numerous conflicts between the interests of a fund manager and that of fund shareholders. "Independent fund boards are ... ideally positioned to oversee and, if necessary, manage the resolution of these conflicts," said the MFDF letter.


Roel C. Campos

In the same vein, fund data firm Morningstar Inc. said in its comment that the "effectiveness of many boards is compromised" because of the conflicts of interest between interested fund directors and fund's investment advisers. "As long as those conflicts exist, shareholders are not being served as well as possible," says Laura Lutton, an analyst at Morningstar, who wrote the letter.

Some proponents of the governance rules, including investor activist groups Fund Democracy and Consumer Federation of America, also pointed out that the study doesn't find that instituting independent board members is very costly for fund firms.

The SEC hasn't officially announced when it is likely to pass a final rule on this issue, but commissioner Campos said in his February speech that he intended to push the commission to provide some "finality on the fund governance rules."

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