



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

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MUTUAL FUND DIRECTORS FORUM FILES AMICUS BRIEF IN JONES V. HARRIS ASSOCIATES CASE

Upcoming Supreme Court case ultimately will decide the standard that courts use to review fund boards' decisions on the advisor's compensation in the contract renewal process.

WASHINGTON, D.C., September 3, 2009 -- The Mutual Fund Directors Forum today announced that, through its counsel, Dechert LLP, it has filed an amicus, or “Friend of the Court,” brief in the Supreme Court case Jones v. Harris Associates. The Forum’s brief argues that in reviewing any claim challenging an adviser’s fees, a court should ordinarily defer to a fund board’s decision to approve the advisory contract.

Section 36(b) of the Investment Company Act states that an adviser has a fiduciary duty with respect to the receipt of compensation for the services it provides to the fund. Section 36(b) also states that the decision of a fund’s board of directors in approving the contract governing such compensation should be given **“such consideration by the court as is deemed appropriate under all the circumstances.”** The Forum’s brief reviews the statutory underpinnings behind Section 36(b)’s direction to give the board’s decision “such consideration” as is “deemed appropriate,” and outlines the central role given to directors in the regulatory scheme governing investment companies.

The brief initially explains how Congress intended to interpose independent directors to protect shareholders against excessive advisory fees. The 1970 amendments, which added Section 36(b) to the Act, only strengthened this important role. The brief also details how, over the past 10-15 years, the Securities and Exchange Commission (SEC) has focused on strengthening boards, emphasizing their independence and giving them the tools necessary to more effectively represent the interests of fund shareholders.

The purpose of explaining the legislative history is to support the conclusion that the statutory regime relies upon an independent, engaged and able board. The discussion of the SEC’s actions shows how boards have been supported and empowered to properly fill that role. Boards effectively use a *Gartenberg*-like approach to determine whether a contract is appropriate from the shareholder’s perspective, and courts should ordinarily give deference to the conclusions reached by an informed, engaged board. Failing to give deference to a responsible board determination would, in effect, undermine the existing regulatory regime.

About the Mutual Fund Directors Forum

The Mutual Fund Directors Forum is an independent, nonprofit membership organization for investment company independent directors dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. For more information about the Forum, please visit www.mfdf.com.

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