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Mr. Chairman and members of the committee, thank you for the opportunity to appear before you this morning.

I am an independent mutual fund director and chairman of the Denver-based Oppenheimer Funds. Our 38 funds manage \$75 billion for 5 million shareholder accounts.

During the past few months, my colleagues and I on these fund boards have learned with mounting indignation that some mutual fund industry executives have violated the trust placed in them by shareholders. In my opinion, **we ought to throw the book at those who've done so.**

But let's keep one thing in mind – the wrongdoing has been discovered – and can be readily punished – under existing statutes and regulations. **Nothing has happened which calls for sweeping new legislation.**

The fund industry is already heavily regulated. So I urge Senators to go slow in considering costly and burdensome new requirements and regulations that could end up costing shareholders more than the abuses they are intended to correct. If that were to happen, it would be tantamount to **punishing the victims instead of the violators**, punishing shareholders instead of those who betrayed them.

Does this mean Congress should do nothing?

Absolutely not.

I have reviewed **106 specific proposals** contained in pending legislation and regulations. All are undoubtedly well intended. And some, particularly recommendations for enhanced disclosure, are highly desirable. I recommend such measures for your approval.

But other proposals do not take into account the unique nature of funds and the role of mutual fund directors. In contrast with corporate directors, our role is one of oversight. The adviser created the fund, and investors have chosen to invest in it. Fund investors do not expect or want us to take control of the fund, nor be deeply involved in day-to-day management, as would become inevitable under some of the pending proposals.

Based on my experience as an independent fund director, I believe Congress should evaluate proposed legislation based on the following considerations:

1. More than **54 million American families** own mutual funds in 95 million accounts. These shareholders are invested in eight thousand funds with assets totaling approximately **\$7 trillion**.
2. Mutual funds have been and continue to be a **powerful engine for economic growth and wealth creation for American families**.
3. Mutual funds are the primary investment vehicle for **middle and low-income families**. Wealthy investors have access to many different kinds of investments and a wide range of financial advice. But for most families, mutual funds provide skilled, professional investment management that would not otherwise be readily available to them **or would be available only at a significantly higher cost**.
4. Although instances of misconduct by people managing or dealing with mutual funds have been widely publicized, recent sensational news reports should not obscure the tradition of honorable dealing and high ethical standards for which the industry has long been recognized. Almost all of the **456 thousand men and women who work in the mutual fund industry are decent, hard working and honorable**. They have served shareholders with dedication and expertise.
5. **The mutual fund industry is already heavily regulated.**
6. Proposed reforms should be carefully vetted to **weigh costs against benefits and to avoid unintended consequences**. Although I do not know the extent of investor losses as a result of misconduct by these wrongdoers, various estimates run from tens to hundreds of millions of dollars.

Nor do I know the exact cost to shareholders of pending legislation, but some news articles have estimated that cost at more than \$1 billion in one report, and 5-10 basis points (a basis point is 1/100th of 1 %) of total assets in another article.

I cannot vouch for these numbers, but my experience as Chairman or director of several private and public companies convinces me there is a real risk that proposed “reforms” will prove to be more burdensome and costly to shareholders than the abuses they were intended to correct.

7. Traditionally, U.S. regulation of investments and securities has focused on **disclosure**, leaving actual investment and operational decisions to investors, financial advisors, brokers, fund boards, managers, etc. In general, Congress and the SEC have upheld the idea that sunshine is the best investor protection, and that it is rarely advisable to impose operational requirements on business corporations or mutual funds. The stunning economic record of the American economy strongly validates the wisdom of this approach.

8. **The Securities & Exchange Commission is the appropriate agency to monitor and supervise the mutual fund industry.** My colleagues and I favor additional funding for the SEC so it will have adequate resources to perform this role.
9. Finally, I note that **all good ideas need not be enacted into law.**

Many interesting and worthwhile proposals have been advanced for improving governance and operational reform in the mutual fund industry. Some of these are well suited for some funds, less so for others. Ultimately, consideration of many of these reforms may be better left to the discretion of fund boards and management. Along with proper disclosure, competition among funds is likely to give shareholders a fairer and more efficient outcome than imposing additional unnecessary supervision on an industry that is already heavily regulated.

With these considerations in mind, and with concurrence of many, though not all, of my colleagues in the industry, I offer the following comments and recommendations. I have been asked to particularly discuss issues of governance and director independence. So let me start there.

Governance

In general, we agree with the idea that a super-majority of fund directors should be independent. Most of us, therefore, **favor** the requirement that two-thirds or seventy-five percent of fund boards be independent. (HR 2420, S 1822, S1971, S1958)

It is important to understand, however, that if such a requirement is imposed and, at the same time, the definition of independent (or not “interested”) director is changed, the results could be quite drastic.

Take the example of one particular board with which I am familiar. The board has 11 directors, 10 of whom are independent under existing law. The most extreme proposed definition (calling for a 10 year cooling off period for former adviser employees) would create a Hobson’s Choice for the board. It could discharge several directors and lose the expertise of experienced board members. Or it could reach the new standard by adding 13 new directors and, thereby, creating an unworkably large board.

Neither of these outcomes is good for shareholders.

So Congress should be cautious in amending the definition of an “interested” director. If Congress wishes to increase the cooling-off period, it should also permit a phase-in period of sufficient length to accommodate turnover in a natural manner as present directors retire.

We **favor** the proposal (S1822, S1971, S1958) that fund board nominating committees be composed of independent directors. This issue is already largely addressed by SEC rules

adopted in 2001 that require that, for virtually all funds, the independent directors must nominate and select the independent directors.

There is also some agreement among us that it is usually a good idea for a fund board chairman to be independent. Accordingly, some of us **favor** such a requirement.

But others of us wonder whether this is *always* the best arrangement. Are there not some circumstances in which a chairman who is part of fund management better serves shareholders? And, in any case, why must this be mandated by law? Why cannot this matter, if properly disclosed, be left to the discretion of investors themselves? If they think an independent chairman is a better approach, they will have many funds from which to choose. But if they are indifferent to this issue or, for some reason, think some other arrangement is preferable, why should they not be permitted to invest as they choose?

Financial Expert

We **oppose** the requirement that each board include at least one “financial expert”, a provision that will impose a serious hardship on small funds.

Even for large fund groups, such as ours, this requirement will adversely affect our ability to attract “experts” to serve on our boards because of the implication of additional liability attributed to persons so designated.

Frankly, when someone is designated as such an “expert”, it’s like painting a bull’s-eye on his or her chest. That person will automatically be subject to more scrutiny, more criticism and, potentially, more liability.

I know from first hand experience as a corporate director, and as one who has been responsible for corporate director searches, that this requirement will make it harder to attract and retain highly qualified board members.

We favor instead the current Sarbanes-Oxley standards, which require disclosure of whether a fund has a financial expert on its audit committee.

Other Audit Committee Requirements

We believe that additional audit committee requirements, if needed, should be provided by SEC rule. Many of the Sarbanes-Oxley requirements have already been imposed on fund audit committees by the SEC. If there is remaining doubt about the authority of the SEC to do so, it would be appropriate for Congress to explicitly grant such rule-making power to the Commission.

Chief Compliance Officer

We **favor** requiring the Chief Compliance Officer to report directly to the board, as provided by HR2420 and S1971. I note, however, SEC Rule 38a-1 already substantially requires this.

Director Review of Soft Dollar, Revenue Sharing & Directed Brokerage

Three pending bills establish a fiduciary duty for boards to review soft dollar, revenue sharing and directed brokerage arrangements. We see **no need** for legislation on this matter since, in our view, the law currently imposes the duty on a fund board to carefully monitor the use of fund assets. I should also note that directed brokerage and certain aspects of revenue sharing are the subject of SEC rulemaking.

Certifications by Independent Chairman and/or Independent Director

We are **against** proposals to require various certifications by the fund board chairman and/or independent directors. Such requirements entail too much director involvement in fund management and adversely affect the independence of directors. We believe such certifications should be made **to** the board, not **by** the board itself.

If the most extreme proposed independent director certification requirements were adopted, several things would quickly happen:

First, many independent directors would throw in the towel. They'd just resign.

Second, the remaining directors would have to get so deeply entangled in day-to-day operations of the company that they would no longer, as a practical matter, be independent.

Third, the cost of D & O insurance would skyrocket.

So we believe such certifications should be made **to** the board, not **by** the board. If the board is going to continue its historic role as an independent watchdog, it should receive, not prepare, such certifications.

Ethics Code

Our board has a well-established code of ethics (as required by Rule 17j-1 of the Investment Company Act) and regularly reviews compliance by board members and management company personnel.

But we are skeptical of requiring that ethics violations be posted on fund websites (S1971). Doing so would raise questions of fairness, libel and administrative practicality

and entails so many “due process” issues that the result would be to scuttle an otherwise worthy process.

Disclosures

In general, we **favor** disclosure. Truth is user-friendly for our shareholders, and we support giving the public all the facts needed to make good investment decisions.

In reviewing the numerous proposed disclosure requirements, we note that many of the matters included in pending legislation are already required by current SEC and NASD rules and are likely to be enhanced by proposed rules.

Four pending bills require disclosure of the structure and method for determining portfolio manager compensation and the ownership interest of managers. We have no objection to making such disclosures.

We are troubled, however, by the requirement of S1971 to disclose the exact amount of manager compensation. This unnecessarily intrudes on the privacy of portfolio managers and creates a competitive disadvantage for mutual fund companies in attracting and holding managers.

We have no objection to additional disclosure of share ownership by directors, as already contained in the Statement of Additional Information. But the proposal to report if a director “does not” own shares seems to us awkward. On balance, we prefer affirmative, rather than negative, disclosure.

We also wish to point out that increasingly complex disclosure tends to make various required documents difficult to understand and, if carried too far, the purpose of informing investors is actually undermined, rather than enhanced.

Mutual Fund Oversight Board

There has been some discussion of establishing a new Mutual Fund Oversight Board. We are **against** this idea because the SEC already has invaluable regulatory expertise that any new agency could acquire only over a long period of time.

Moreover, we believe splitting mutual fund regulation from exchange and brokerage regulation will weaken the regulatory framework and result in confusion and fragmentation.

It is our strong view that Congress should instead provide additional funding so that the SEC can properly enforce statutory and regulatory requirements. This seems a more practical and direct approach.

4:00 PM Closing

We **favor** the so-called “soft close” concept (HR 2420, S1971), which requires strict monitoring of intermediaries to assure that all buy/sell orders are received either by the fund or the intermediary prior to the time funds calculate their net asset value (usually 4:00 PM).

The “hard close” alternative (S1958) would require that all transactions be received by the fund itself (or its transfer agent or a registered clearing agency) prior to 4:00 PM. This means orders placed through brokers or other intermediaries would have to be cut off several hours earlier to assure receipt prior to 4:00 PM.

The practical result might be that Pacific Time zone brokers would be forced to put all orders received after 9:00 or 10:00 o’clock into the following day’s business. So, for some investors, order execution would be delayed for more than an entire business day, hardly fair to such investors.

In our funds, a majority of shareholders place their transactions through intermediaries. So the “hard close” concept would be to the disadvantage of millions of our accounts.

In our opinion, the “soft close”, with strict monitoring of intermediaries, assures a level playing field for all investors without implementing the more draconian “hard close.”

Market Timing

We **favor** forthright disclosure by funds of how frequently investors will be permitted to trade in fund shares. And we **favor** disclosure of the penalty to be invoked by the fund on those who violate the guidelines.

But we are **against** mandatory restrictions or a one-size-fits-all prohibition on quick turnaround trading. The overwhelming majority of mutual funds are designed for long-term investors with a time horizon of years, not months and certainly not days or hours. Many funds also permit controlled asset allocation programs. But if a particular fund or complex wishes to offer itself to market timers, we see no reason why this should be prohibited, if properly disclosed.

We also favor full disclosure of any trading restrictions that funds may place on adviser personnel to limit the frequency of their trades. In general, however, we think such personnel should be subject to the same limitations as other investors.

RICO

One pending bill, S1958, proposes to apply RICO to the mutual fund industry. We are **strongly opposed** to this concept and feel that it is completely inappropriate for the mutual fund industry.

Other issues

Mr. Chairman, again let me express my appreciation to you and members of the committee for the opportunity to be here today. I hope you and your staff will call on my colleagues and me for help as you consider legislation regarding the mutual fund industry. Thank you.