board a passenger vessel, and for other purposes.

S. 1603

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1603, a bill the amend title 18 of the United States Code, to prohibit the unauthorized use of military certificates, and for other purposes.

S. 1793

At the request of Mr. KENNEDY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1793, a bill to provide for college quality, affordability, and diversity, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 1843

At the request of Ms. SNOWE, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Louisiana (Mr. BREAUX) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 1843, a bill to amend titles XIX and XXI of the Social Security Act to provide for FamilyCare coverage for parents of enrolled children, and for other purposes.

S. 1890

At the request of Mrs. FEINSTEIN, her name was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 1925

At the request of Mr. KENNEDY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 1998

At the request of Mr. BINGAMAN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1998, a bill to amend title 49, United States Code, to preserve the essential air service program.

S. 2056

At the request of Mr. BROWNBACK, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. 2056, a bill to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

S. CON. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as ''National Visiting Nurse Association Week.''

S. CON. RES. 81

At the request of Mr. BUNNING, his name was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. BOXER:

S. 2058. A bill to direct the Secretary of the Interior to cancel certain Bureau of Land Management leases that authorize extraction of sand and gravel from the Federal mineral estate in land in Soledad Canyon, California, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am introducing a bill today that would terminate two Bureau of Land Management mining leases in Soledad Canyon, an area that is adjacent to the city of Santa Clarita in Los Angeles County, CA.

The bill would also prohibit the issuance of any future mining leases for sand and gravel in the Soledad Canyon area that exceed the historical level of mining, which is estimated to be 285,000 tons of sand and gravel per year. Before issuing any future leases in this area, the Secretary of the Interior would be required to consult with the city of Santa Clarita and take into consideration the environmental and traffic impacts of mining. Congressman BUCK MCKEON introduced this legislation in the House of Representatives in November 2003.

Here is the problem. These two leases in Soledad Canyon would allow mining of approximately 56 million tons of sand and gravel over the next 20 years. That will mean more dust and air pollution, as well as more traffic congestion.

The residents of the city of Santa Clarita suffer from some of the worst air quality in the Nation. The mining in Soledad Canyon would occur in an area where State standards for particulate matter are already exceeded. Development of these mining leases will worsen air pollution by increasing dust and particulate matter emissions. This will lead to more respiratory problems, increased doctor and emergency room visits, more hospitalizations for cardiac and pulmonary disease, and premature deaths for area residents.

Increased traffic congestion will also result from these mining leases. Interstate 5 and State Route 14 are located in the vicinity of the mining leases, and State Route 14 is already plagued with serious traffic problems. Development of these leases would tremendously increase truck traffic in the area, causing further congestion. It is estimated that the proposed expansion of mining in Soledad Canyon would result in 347 trucks making round trips to and from the site each day in the first 10 years, increasing to 582 trucks in the second 10 years of operation.

Due to these serious concerns over impacts on air quality and traffic congestion, there is very strong opposition to the two leases by the people of Santa Clarita and over 80 organizations in California. We need this legislation.

I believe that local health and safety concerns should not be overridden by the Federal Government. Development of these leases should not occur to the detriment of the people of Santa Clarita. I share Congressman BUCK MCKEON's interest in working with TMC/Cemex—the company that currently holds the leases—the city of Santa Clarita, and the Bureau of Land Management to find a resolution that is acceptable to all parties and that protects the health and safety of the city and its residents.

By Mr. FITZGERALD (for himself, Mr. LEVIN, and Ms. COLLINS):

S. 2059. A bill to improve the governance and regulation of mutual funds under the securities laws, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. FITZGERALD. Mr. President, today I rise to introduce the Mutual Fund Reform Act of 2004. This legislation would make fund governance truly accountable, require genuinely transparent total fund costs, enhance comprehension and comparison of fund fees, confront trading abuses, create a culture of compliance, eliminate hidden transactions that mislead investors and drive up costs, and save billions of dollars for the 95 million Americans who invest in mutual funds. Above all, the Mutual Fund Reform Act strives to preserve the attraction of mutual funds as a flexible and investor-friendly vehicle for long-term, diversified investment.

I am pleased to be joined today by my distinguished colleagues on the Committee on Governmental Affairs, Senator CARL LEVIN and Senator SUSAN COLLINS, the committee's chairman, who are original cosponsors of this legislation. I am grateful for the extensive and important input both Senators provided in the drafting of this bill, and appreciate the invaluable perspective Senator COLLINS provided based on her first-hand experience as Maine's Commissioner of Professional and Financial Regulation.

I would like to take this opportunity to recognize the work of a number of our colleagues in this area. Last year, I was pleased to cosponsor S. 1822, introduced by Senator DANIEL AKAKA, the Ranking Member of the Senate Governmental Affairs Subcommittee on Financial Management, the Budget, and International Security, which I chair, to address mutual fund trading abuses. Senators CORZINE, DODD, and KERRY also have sponsored mutual fund bills from which I drew, as well as legislation introduced by Congressman RICHARD BAKER last summer and overwhelmingly passed by the House of Representatives at the end of the last session.

I also would like to acknowledge the ongoing work of the Senate Committee on Banking, Housing and Urban Affairs, the authorizing committee which will ultimately decide questions of mutual fund industry reform. The committee is conducting a series of legislative hearings to examine the mutual fund scandal and the merits of various reform proposals. I commend the leadership of Chairman RICHARD SHELBY and Ranking Member PAUL SARBANES, and look forward to continuing to work with them and the other members of the Banking Committee on this issue in the coming months.

The bill I am introducing today reflects extensive testimony that was presented during oversight hearings of the Financial Management Subcommittee that I chaired on November 3, 2003, and January 27, 2004. The general consensus of the panelists at the November hearing was that illegal late trading and illicit market timing were indeed very serious threats to investors but that excessive fees and inadequate disclosure of those fees were an even more serious threat to American investors. Witnesses at our hearing last month testified regarding the propriety and the adequacy of the disclosure of mutual fund fees, specifically hidden fees such as revenue sharing, directed brokerage, soft money arrangements, and hidden loads such as 12b-1 fees. The subcommittee also heard from two whistleblowers who were responsible for the initial revelations regarding Putnam Investments and Canary Capital Partners, LLC.

The bill also reflects the constructive input from a number of key organizations and leaders of mutual fund reform. I especially appreciate the extensive contributions of Mr. John Bogle, the founder and former CEO of the Vanguard Group, who has been a champion of reforms in the mutual fund industry for many years.

I ask unanimous consent that letters from Mr. Bogle, Massachusetts Secretary of State William Galvin, and organizations representing investors and consumers endorsing this bill be printed in the RECORD.

In 1980 only a small percentage of Americans invested in mutual funds and the assets of the industry were only $115 billion. Today, roughly 95 million Americans own shares in mutual funds and the assets of all the funds combined are now more than $7 trillion. Mutual funds have grown in popularity in part because Congress has sanctioned or expanded a variety of tax-sheltered savings vehicles such as 401(k)s, Keoghs, traditional IRAs, Roth IRAs, Rollover IRAs, and college savings plans. Given that mutual funds are now the repository of such a large share of so many Americans' savings, few issues we confront are as important as protecting the money invested in mutual funds.

I want to commend the many recent regulatory initiatives from the Securities and Exchange Commission (SEC). They are collectively a step in the right direction and a demonstration of our seriousness in Washington about putting the interests of America's mutual investors first. But the SEC does not have the statutory authority to take all of the needed steps to restore integrity and health to the mutual fund industry. The current scandals demand that Congress take a comprehensive look at an industry still governed by a 64-year old law.

Therefore, the Mutual Fund Reform Act of 2004 puts the interests of investors first by: ensuring independent and empowered boards of directors, clarifying and making specific fund directors' foremost fiduciary duty to shareholders; strengthening the fund advisers' fiduciary duty regarding negotiating fees and providing fund information, and instituting Sarbanes-Oxley-style provisions for independent accounting and auditing, codes of ethics, chief compliance officers, compliance certifications, and whistleblower protections.

The Mutual Reform Act of 2004 empowers both investors and free markets with clear, comprehensible fund transaction information by: standardizing computation and disclosure of (i) fund expenses and (ii) transaction costs, which yield a total investment cost ratio, and tell investors actual dollar costs; providing disclosure and definitions of all types of costs and requiring that the SEC approve imposition of any new types of costs; disclosing portfolio managers' compensation and stake in fund; disclosing broker compensation at the point of sale; disclosing and explaining portfolio turnover ratios to investors, and disclosing proxy voting policies and record.

The Mutual Fund Reform Act of 2004 vastly simplifies the disclosure regime by: eliminating asset-based distribution fees (Rule 12b-1 fees), the original purpose of which has been lost and the current use of which is confusing and misleading—and amending the Investment Company Act of 1940 to permit the use of the adviser's fee for distribution expenses, which locates the incentive to keep distribution expenses reasonable exactly where it belongs—with the fund adviser; prohibiting shadow transactions—such as revenue sharing, directed brokerage, and soft-dollar arrangements—that are riddled with conflicts of interest, serve no reasonable business purpose, and drive up costs; ''Unbundling'' commissions, such that research and other services, heretofore covered by hidden soft-dollar arrangements, will be the subject of separate negotiation and a freer and fairer market; requiring enforceable market timing policies and mandatory redemption fees—as well as provision by omnibus account intermediaries of basic customer information to funds to enable funds to enforce their market timing, redemption fee, and breakpoint discount policies; and requiring fair value pricing and strengthening late trading rules.

The Mutual Fund Reform Act also would perpetuate the dialogue and preserve the wisdom gathered from hard experience. The Act directs the SEC and the General Accounting Office to conduct several studies, including a study of ways to minimize conflicts of interest and incentivize internal management of mutual funds; a study on coordination of enforcement efforts between SEC headquarters, SEC regional offices, and state regulatory and law enforcement entities; and a study to enhance the role of the internet in educating investors and providing timely information about laws, regulations, enforcement proceedings and individual funds, possibly by mandating disclosures on websites.

Enactment of the Mutual Fund Reform Act would help restore the integrity of the mutual fund industry and would dramatically enhance the amount of retirement savings for many long term investors. Shareholders would be the big winners under this legislation, and the losers would be high cost mutual funds. I therefore urge my colleagues to support passage of this legislation.

I ask unanimous consent that the text of the bill, as well as a one-page summary and white paper describing the legislation, be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

THE VANGUARD GROUP,
Valley Forge, PA, February 6, 2004.

I salute Senator Fitzgerald for the bill he has drafted to improve the governance and regulation of mutual funds. I've spent the greater part of my career speaking out on nearly all of the important legislative issues that Senator Fitzgerald's Mutual Fund Reform Act of 2004 addresses. While nothing can solve the industry's problems overnight, I view of the bill as the gold standard in putting mutual fund shareholders back in the driver's seat, and endorse it in its entirety.

JOHN C. BOGLE,
Founder.

SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS,
Boston, MA, January 23, 2004.

Re Mutual Fund Reform act of 2004.

Hon. PETER FITZGERALD,
Chairman, Subcommittee of Financial Management, the Budget, and International Security, Senate Committee of Governmental Affairs, Hart Senate Building, Washington, DC.

DEAR SENATOR FITZGERALD: As the chief securities regulator in Massachusetts, I write in support of the Mutual Fund Reform Act of 2004. The recently-exposed abuses relating to mutual funds show the need for this legislation. Small investors are particularly vulnerable to these abusive practices, since nearly half of U.S. households own mutual funds—often through their retirement plans.

The bill increases the independence of fund directors and obliges them to act as fiduciaries on behalf of shareholders; it makes the costs of mutual funds more transparent; and it curtails many abusive mutual fund sales practices.

We particularly support the provisions to prohibit directed brokerage and soft dollar arrangements by mutual funds. These practices, at best, mask the true costs of fund operations; at worst, they are kick back-type payments in the securities industry.

I also encourage you to add a provision that will give investors the ability to choose the forum where they may arbitrate disputes with their brokers. Under the current system, investors are forced to arbitrate their claims in a forum chosen by the brokerage.

Please contact me if I can assist you in working for the adoption of this important legislation.

Sincerely,

WILLIAM F. GALVIN,
Secretary of the Commonwealth.

FEBRUARY 5, 2004.

Hon. PETER G. FITZGERALD,
Dirksen Building, U.S. Senate,
Washington, DC.

DEAR SENATOR FITZGERALD: We are writing to express our enthusiastic support for your draft ''Mutual Fund Reform Act.'' More than any other legislation that has yet to be introduced since the mutual fund scandals erupted last year, this bill recognizes the need to fundamentally transform the way in which mutual funds are governed, operated, and sold to ensure that they live up to their statutory obligation to operate in their shareholders' best interests.

This legislation offers a thoughtful and far-reaching agenda for reform. It addresses significant gaps in the SEC's proposals to improve fund governance, dramatically enhances the quality of mutual fund cost disclosures, and prohibits distribution practices that create unacceptable and poorly understood conflicts of interest. It also takes the necessary step of banning hidden ''soft dollar'' arrangements that boost shareholder costs and create additional conflicts of interest. We look forward to working with you to win passage of these essential reforms.

Our support for this bill is based on the firm belief that mutual funds have been and will continue to be the best way for average, middle-income investors to participate in our nation's securities markets. Individuals with only modest amounts to invest have benefited greatly from the opportunity mutual funds offer to achieve broad diversification. While wealthy investors have other options that provide similar benefits, average, middle-class investors do not. The resulting influx of money into mutual funds has in turn produced generous profits for fund companies.

This long record or mutual success had caused some in the industry and among its regulators to become complacent, taking for granted that all was well. By revealing the extent to which some fund managers had abandoned their obligation to operate in fund shareholders' best interests, the trading scandals uncovered last fall provided sudden and compelling evidence that such complacency was ill-founded. The closer scrutiny of fund operations that resulted quickly uncovered evidence of other similar failings: Management fees that had failed to drop significantly, or in some cases at all, despite a massive growth in assets; use of portfolio transaction commissions, which are not incorporated in the fund expense ratio, to pay for services whose costs would otherwise have to be disclosed; use of portfolio transaction commissions borne by shareholders to pay for services whose benefits flowed in part or in whole to the fund manager; use of poorly disclosed or misunderstood compensation methods, including 12b-1 fees, directed brokerage, and payments for shelf space to induce brokers to recommend particular funds; and broker recommendation of mutual funds based on the financial incentives received rather than on which funds offer the best quality at the most reasonable price.

By driving up costs to investors and undermining competition based on cost and quality, these practices inflict far greater financial harm on their victims than the trading scandals appear to have done.

Since it became clear that mutual fund sales and trading abuses were widespread throughout the industry, the Securities and Exchange Commission has responded with an ambitious enforcement, investigation, and rule-making agenda. In addition to developing reforms targeted specifically at excessive and late trading, the Commission has issued proposals to strengthen mutual fund governance, sought suggestions on how to improve disclosure of portfolio transaction costs, and proposed rules to improve disclosure of distribution-related costs and conflicts of interest.

Despite this important progress, there are serious gaps in the SEC's regulatory agenda. Some result from the agency's lack of authority to effect change. Others result from the SEC's lack of a vision of how mutual fund regulation must be transformed. This legislation fills those gaps. If it is adopted, it will dramatically improve fund governance, eliminate practices that create unacceptable conflicts of interest, and save mutual fund investors potentially tens of billions of dollars a year by wringing out excess costs.

Our specific comments in support of some of the bill's most important pro-investor provisions follow.

1. The legislation's fund governance reforms address significant gaps in the SEC's rule proposal.

The Securities and Exchange Commission has made a promising start on the issue of fund governance. In January, it issued a rule proposal that would require that three-quarters of mutual fund board members, including the chairman, be independent. It would further require that independent members meet at least quarterly without any interested parties present. It authorizes the board to hire staff to help it fulfill its responsibilities. And it requires boards to retain copies of the written documents considered as part of the board's annual review of the advisory contract.

Although the Commission certainly deserves credit for this important first step, there is more that must be done to achieve the goal of improved fund governance. First and foremost, the Commission lacks the authority to strengthen the definition of independent director. So, even if it adopts its independent governance requirements without weakening amendments over the already announced objections of two commissioners, non-immediate family members, individuals associated with significant service providers of the fund, and recently retired fund company employees would all be eligible to serve as ''independent'' directors. Furthermore, the SEC proposal does not require that independent directors have sole authority to nominate new directors and set director compensation, potentially leaving significant issues in the hands of fund managers.

This bill addresses all those concerns. It includes an excellent definition of independence, which both specifically addresses the issue of significant service providers and authorizes the SEC to exclude from the definition of independent director any set of individuals who for business, family, or other reasons are unlikely to demonstrate the appropriate degree of independence. It requires both that independent directors determine director compensation and that a committee of independent directors nominate new directors. And it directs the SEC to study whether any limit should be placed on the aggregate amount of director compensation an individual could receive from a single fund family and still be considered independent.

The bill further recognizes that lack if independence is not the only concern about mutual fund governance. Also problematic is the failure of many mutual fund boards to act as fiduciaries, with a broad responsibility to protect shareholder interests. The bill attacks this problem by broadening the scope of directors' fiduciary duty. As defined in the legislation, that duty would include, among other things, a responsibility to: take quality of management as well as actual costs and economies of scale into account when negotiating management contracts; evaluate the quality, comprehensiveness, and clarity of disclosures to fund shareholders regarding costs; assess any distribution and marketing plan with regard to its costs and benefits; and monitor enforcement of policies and procedures to ensure compliance with applicable securities laws. The SEC would be responsible for detailing how the board's fiduciary duty applies in each instance.

By shoring up the independence of fund boards and expanding and clarifying their fiduciary duty to shareholders, this bill would increase the likelihood that fund boards would serve their intended function as the first line of defense against a variety of abusive practices.

One element missing from the bill, however, is any consideration of creating an independent board to oversee mutual funds. In testimony late last year, SEC Chairman William Donaldson suggested that the Commission was exploring ways in which funds could ''assume greater responsibilities for compliance with the federal securities laws, including whether funds and advisers should periodically undergo an independent third-party compliance audit.'' ''These compliance audits could be a useful supplement to our own examination program and could ensure more frequent examination of funds and advisers,'' he said.

Recent accounting scandals should have taught us the risks of relying on audits that are paid for by the entity being audited. If the SEC needs a supplement to its own examination program, a far better approach would be to create an independent board, subject to SEC oversight, to conduct such audits. The board could be modeled on the Public Company Accounting Oversight Board, with similar authority to set standards, conduct inspections, and bring enforcement actions and similar (or, better yet, stronger) requirements for board member independence. Your bill would require a GAO study of the SEC's current organizational structure with respect to mutual fund regulation. We urge you, at a minimum, to include an assessment of the benefits of establishing an independent oversight board as part of that study.

2. The legislation would dramatically enhance the quality of mutual fund cost disclosures.

A major shortcoming in the SEC's regulation of mutual funds have been its failure to take effective action to bring down excessive costs. Not only has the agency not used its own enforcement authority to bring cases against fund managers who charge and fund boards who approve unreasonable fees, it has criticized the New York Attorney General for negotiating fee reduction agreements as part of his settlement with fund companies that engaged in abusive trading. In criticizing those fee reduction agreements, Commission officials have suggested that they prefer to rely on independent fund boards and the market to discipline costs.

While the Commission can show some progress on the issue of fund governance, its proposals on cost disclosure are extremely disappointing. They fall far short of the bare minimum needed to introduce meaningful cost competition in the mutual fund marketplace. This legislation attacks to excessive costs both through strengthened governance requirements that do beyond those in the SEC rule proposal and through improved disclosures that will be more effective in raising investor awareness of costs than those proposed so far by the SEC.

One important area where the bill improves on SEC proposals is in disclosure of portfolio transaction costs. These costs vary greatly from fund to fund, may be the highest cost for an actively managed stock fund, and in some cases exceed all others costs combined. A recent study found that, on average, funds spend $0.43 on portfolio transactions for every $1.00 of expenses that are disclosed in the current expense ratio, and that in some cases fund transaction costs can exceed three or four times the current expense ratio. (Jason Karceski, Miles Livingston, Edward O'Neal, Mutual Fund Brokerage Commissions, Jan. 2004, available at http://www.zeroalphagroup. com/headlines/ZAG__mutual__fund__true__cost__study.pdf.)

Yet, the SEC has long resisted incorporating these costs in the expense ratio. In response to congressional pressure, the agency has recently issued a concept release seeking suggestions for improving transaction cost disclosure, but it is not at all clear that the agency will come out in support of an approach that goes much beyond its previously stated preference for giving greater prominence to disclosure of the portfolio turnover rate. Such an approach makes not distinction between those funds that get good execution for their trades and those that do not. Furthermore, it continues to make it possible for funds to hide costs that would otherwise have to be disclosed by paying for them through soft dollar arrangements.

The bill would bring these costs out into the open where they belong. It would do so by requiring a separate computation of portfolio transaction costs that includes, at a minimum, brokerage commissions and bid-ask spread costs. And it would require this transaction cost ratio to be disclosed both separately and as part of a total investment cost ratio in the prospectus fee table and wherever else the expense ratio is disclosed. Because the bill would retain the current expense ratio, while also creating a new total expense ratio that includes portfolio transaction costs, it would allow the markets to decide which measure of fund costs is most appropriate and useful. Once this information is brought out into the open, these costs are more likely to be subject to competitive pressures, helping to drive down expenses for shareholders.

The bill would supplement this disclosure by requiring individualized disclosure in annual reports of the projected actual dollar amount of each investor's total annual costs based upon the investor's assets at the time of the disclosure. We strongly support individualized dollar cost disclosures, but believe that, to be workable, this information must be provided in the quarterly or annual account statements that show the shareholder's account balance and transaction activity. Putting cost information in dollar amounts side-by-side with information on the fund's gains or losses for the year is key to helping investors to put those costs into perspective. We urge you to adopt this clarification.

In addition, the draft version of the legislation that we have reviewed does not require pre-sale disclosure of mutual fund costs, as opposed to distribution costs. If we are to promote effective cost competition in the mutual fund industry, investors must receive cost information in advance of the sale. Post-sale disclosure, while useful in raising investor awareness of costs, comes too late to influence the purchase decision. We believe investors would be best served by pre-sale cost disclosures that are comparative in nature, showing how the fund's cost compare to category averages and minimums, and how this is likely to affect performance over the long-term. The provision in the bill that allows for point-of-sale disclosure provides an easy mechanism for offering this information. We urge you to add a provision to this effect to your bill.

With these changes, the cost disclosure provisions in this bill will go a long way toward bringing meaningful cost competition to an industry that has too long escaped its disciplining effects.

3. The bill would prohibit a variety of distribution practices that create unacceptable conflicts of interest.

Growing investor reluctance to pay the front loads that were common in the 1980s has driven mutual fund distribution costs underground. Funds substituted a variety of distribution practices—e.g., 12b-1 fees, directed brokerage, and payments for shelf space—that were less visible to shareholders. These practices encouraged the impression that the funds were load-free when in fact they imposed significant distribution costs. The practices adopted also posed significant new conflicts of interest.

Although 12b-1 fees are disclosed as a separate line item on prospectus fee tables, evidence suggests that investors are less aware of the cost implications of annual expenses than they are of front loads and do not necessarily understand that 12b-1 fees are used to compensate brokers. Because they are included in the expense ratio, 12b-1 fees appear to be a cost the shareholder pays for the fund, not a cost they pay for the services the broker provides. Problems with 12b-1 fees abound, including the fact that investors in funds that charge substantial 12b-1 fees may be stuck paying distribution costs whose benefits flow partially, or even primarily, to the fund company. Shareholders are forced to pay the fees even when they do not use the services the fees are designed to provide. With fund manager compensation based on a percentage of assets under management, fund managers reap significant benefits from the asset growth the fees promote, without having to risk their own money in the process.

Because it also uses shareholder assets to promote distribution, directed brokerage creates many of the same conflicts as 12b-1 fees and more. Not only are shareholders forced to pay higher costs for benefits that flow in part or in full to the fund manager, in some cases costs paid by one set of shareholders may be used in part to promote sale of other funds in the same fund family. Furthermore, these arrangements may encourage fund managers to decide where to conduct their portfolio transactions based not on where they can get the best execution, but on where they get the best distribution. They may even encourage fund managers to trade more than necessary simply to fulfill their directed brokerage agreements. This, in turn, drives up costs to shareholders. While 12b-1 fees are disclosed to investors, distribution costs paid through directed brokerage are not. Instead, they are hidden in undisclosed portfolio transaction costs.

Payments for shelf space are similar to directed brokerage agreements. Instead of being paid indirectly through portfolio transaction costs, however, these financial incentives are made in the form of cash payments by the fund manager to the broker. At best, by eating into the manager's bottom line, the payments may reduce the likelihood that the management fee will be reduced in response to economies of scale. At worst, fund managers will pass along those costs to shareholders in a form that is even less transparent than directed brokerage payments.

All these practices are designed to encourage brokers to recommend funds based not on which offer the best quality at the most reasonable price, but instead on which offer the most generous compensation to the broker. As such, they stand in sharp contrast to the image brokers promote of themselves as objective advisers. To its great credit, the legislation recognizes that simply disclosing these conflicts will not solve the problem. The best disclosure in the world is unlikely to counteract multi-million dollar advertising campaigns intent on convincing investors to place their trust in the objectivity and professionalism of their ''financial consultant.''

Instead, the legislation deals with these conflicts in the cleanest, most sensible way possible. It eliminates them. In doing so, it takes an enormous and much needed step toward forcing brokers to act like the objective advisers they claim to be. Furthermore, reforming the distribution system in this way is one of the most important things Congress can do to promote competition in the mutual fund industry based on cost and quality. That is because these practices allow mediocre, high-cost funds to survive and even thrive simply by offering generous compensation to the brokers that sell them. And, by making it harder for brokers to hide the compensation they receive for selling particular funds, this legislation should make it easier for shareholders to assess whether the services they receive from their broker justify the costs.

4. The bill would prohibit soft dollar arrangements that boost shareholder costs and create unacceptable conflicts of interest.

Soft dollar arrangements allow fund managers to pay for services through portfolio transaction costs that they would otherwise have to bill for directly—primarily research, but a variety of other services as well. And, because these costs are hidden, they create a strong incentive for fund managers to pay for services in this fashion. The conflicts they create are substantial. As with directed brokerage agreements, they encourage fund managers to direct their portfolio transactions based on the services they receive and not on who offers the best execution for those trades. Soft dollar arrangements also may encourage excessive trading with no purpose except to fulfill soft dollar agreements. This, in turn, requires shareholders to pay those unnecessary trading costs. Soft dollar arrangements may also encourage fund managers to choose service providers based not on who offers the best service at the best price, but on what services can be paid for through soft dollars, where the costs will be hidden.

As with the distribution practices discussed above, the legislation would deal with these conflicts by eliminating them. We strongly support this approach, which would reduce shareholder costs by requiring funds to seek best execution on all their trades. Some in the independent research community have raised concerns about this approach, suggesting that it will harm independent research. Nothing could be further from the truth. As long as funds can pay for research through soft dollars, they will have an incentive to choose the research whose cost can be hidden in this fashion. If soft dollar arrangements are banned, however, funds will have no reason to choose research based on any consideration but which is of the highest quality. If independent research can compete on quality, its competitive position should be improved under a soft dollar ban.

CONCLUSION

Mutual funds have been largely responsible for making it possible for average, middle-income investors to participate in our Nation's securities markets. As such, they have done much to promote both the financial well-being of those investors and the financial health of our capital markets. Regulatory oversight, however, has not kept pace with mutual funds' growing and changing role in our financial markets. The recent trading and sales abuse scandals have offered a painful reminder of just how far some fund companies have strayed from their obligation to operate in shareholders' best interests.

Fundamental reform is needed to get the fund industry back on track. The SEC has gotten us part of the way there with its recent enforcement actions and rule proposals. But partway there is simply not good enough. Important gaps exist in the SEC's agenda that will keep it from delivering the comprehensive reform that the current situation demands. This legislation fills those gaps. It offers a far-reaching and thoughtful approach that, if enacted, will go a long way toward getting the mutual fund industry back to operating in shareholders' best interests once again. Please let us know what we can do to help win passage of these essential, pro-investor reforms.

Respectfully submitted,

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.

TRAVIS PLUNKETT,
Legislative Director, Consumer Federation of America.

MERCER BULLARD,
Founder and President, Fund Democracy, Inc.

ED MIERZWINSKI,
Consumer Program Director, U.S. Public Interest Research Group.

SALLY GREENBERG,
Senior Counsel, Consumers Union.

KENNETH MCELDOWNEY,
Executive Director, Consumer Action.

COALITION OF MUTUAL FUND INVESTORS,
Washington, DC, January 26, 2004.

Hon. PETER FITZGERALD,
Chairman, Subcommittee on Financial Management, The Budget and International Security, Committee on Governmental Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FITZGERALD: The Coalition of Mutual Fund Investors (''CMFI'' or ''Coalition'') has reviewed your legislative proposals to reform the mutual fund industry. Without a doubt, your legislative initiative is the most comprehensive mutual fund bill yet to be introduced in either the House or the Senate.

The Coalition strongly supports your efforts to improve the mutual fund regulatory framework in a manner which benefits all individual investors. As the mutual fund reform debate begins this year in the Senate, your bill is likely to serve as the gold standard by which other legislative proposals are evaluated for their effectiveness in protecting the interests of individual investors.

CMFI supports the provisions contained in the mutual fund reform bill which recently passed the House of Representatives (H.R. 2420), however, the Coalition has been advocating additional regulatory measures to protect the interests of individual investors. These additional measures include: (1) better shareholder disclosure of mutual fund operating and transaction costs, (2) improved oversight of ''omnibus'' accounts operated by financial intermediaries, and (3) enhanced disclosure of the Statement of Additional Information.

You have included many of these reform proposals in your bill and so the Coalition is very pleased to offer its support to your legislation. The Coalition is particularly pleased that your legislation includes a CMFI proposal to require financial intermediaries operating ''omnibus'' accounts to disclose basic shareholder identity and transaction information to mutual funds so that the funds can ensure uniform application of their policies, procedures, fees, and charges across all shareholder classes. The interests of long-term shareholders are being harmed by a lack of oversight regarding the trading activities occurring in these ''omnibus accounts'' and your legislation addresses this structural problem with an effective solution.

The Coalition looks forward to working with you and your staff to enact the many thoughtful provisions contained in your bill.

Sincerely,

NIELS HOLCH,
Executive Director.

S. 2059

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Mutual Fund Reform Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(2) INVESTMENT ADVISER.—The term ''investment adviser'' has the same meaning as in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)).

(3) INVESTMENT COMPANY—The term ''investment company'' has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80–3).

(4) REGISTERED INVESTMENT COMPANY.—The term ''registered investment company'' means an investment company that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 3. RULEMAKING.

(a) TIMING.—Unless otherwise specified in this Act or the amendments made by this Act, the Commission shall issue, in final form, all rules and regulations required by this Act and the amendments made by this Act not later than 180 days after the date of enactment of this Act.

(b) AUTHORITY TO DEFINE TERMS.—The Commission may, in issuing rules and regulations under this Act or the amendments made by this Act, define any term used in this Act or such amendments that is not otherwise defined for purposes of this Act or such amendment, as the Commission determines necessary and appropriate.

(c) EXEMPTION AUTHORITY.—The Commission may, in issuing rules and regulations under this Act or the amendments made by this Act, exempt any investment company or other person from the application of such rules, as the Commission determines is necessary and appropriate, in the public interest or for the protection of investors.

TITLE I—FUND GOVERNANCE

SEC. 110. INDEPENDENT DIRECTORS.

(a) INDEPENDENT FUND BOARDS.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(1) by striking ''shall have'' and inserting the following: ''shall—

''(1) have'';

(2) by striking ''60 per centum'' and inserting ''25 percent'';

(3) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(2) have as chairman of its board of directors an interested person of such registered company; or

''(3) have as a member of its board of directors any person that is not an interested person of such registered investment company—

''(A) who has served without being approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(B) unless such director has been found, on an annual basis, by a majority of the directors who are not interested persons, after reasonable inquiry by such directors, not to have any material business or familial relationship with the registered investment company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that is likely to impair the independence of the director.''.

(b) ACTION BY INDEPENDENT DIRECTORS.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors;

''(B) adopting qualification standards for the nomination of directors; and

''(C) determining the compensation to be paid to directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider;

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission.'';

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason as determined by the Commission.''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 is amended by adding at the end the following:

''(53) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Mutual Fund Reform Act of 2004, the Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

SEC. 111. STUDY OF DIRECTOR COMPENSATION AND INDEPENDENCE.

(a) IN GENERAL.—The Commission shall conduct a study of—

(1) whether any limits should be placed upon the amount of compensation paid by a registered investment company or any affiliate of such company to a director thereof; and

(2) whether a director of a registered investment company who is otherwise not an interested person of a registered investment company, as defined in section 2(a)(19) of the Investment Company Act of 1940, as amended by this Act, but serves as a director of multiple registered investment companies, or receives substantial compensation from the investment adviser of any such company, should be considered an ''interested person'' for purposes of section 2 of the Investment Company Act of 1940.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report regarding the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 112. FIDUCIARY DUTIES OF DIRECTORS.

Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10), as amended by this Act, is amended by adding at the end the following:

''(j) FIDUCIARY DUTY OF DIRECTORS.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company shall have a fiduciary duty to act with loyalty and care, in the best interests of the shareholders.

''(2) RULEMAKING.—The Commission shall promulgate rules to clarify the scope of the fiduciary duty under paragraph (1), which rules shall, at a minimum, require the directors of a registered investment company to—

''(A) determine the extent to which independent and reliable sources of information are sufficient to discharge director responsibilities;

''(B) negotiate management and advisory fees with due regard for the actual cost of such services, including economies of scale;

''(C) evaluate the totality of fees with reference to the interests of shareholders;

''(D) evaluate the quality of the management of the company and potentially superior alternatives;

''(E) evaluate the quality, comprehensiveness, and clarity of disclosures to shareholders regarding costs;

''(F) evaluate any distribution or marketing plan of the company, including its costs and benefits;

''(G) evaluate the size of the portfolio of the company and its suitability to the interests of shareholders;

''(H) implement and monitor policies to ensure compliance with applicable securities laws; and

''(I) implement and monitor policies with respect to predatory trading practices.''.

SEC. 113. FIDUCIARY DUTY OF INVESTMENT ADVISER.

Section 36 of the Investment Company Act of 1940 (15 U.S.C. 80a–35(b)) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) DUTIES WITH RESPECT TO COMPENSATION AND PROVISION OF INFORMATION.—For purposes of subsections (a) and (b), the fiduciary duty of an investment adviser—

''(1) with respect to any compensation received, may require reasonable reference to the actual costs of the adviser and economies of scale; and

''(2) shall include a duty to supply such material information as is necessary for the independent directors of a registered investment company with whom the adviser is employed to review and govern such company.''.

SEC. 114. TERMINATION OF FUND ADVISER.

The Commission shall promulgate such rules as it determines necessary in the public interest or for the protection of investors to facilitate the process through which the independent directors of a registered investment company may terminate the services of the investment adviser of such company in the good faith exercise of their fiduciary duties, without undue exposure to financial or litigation risk.

SEC. 115. INDEPENDENT ACCOUNTING AND AUDITING.

(a) AMENDMENTS.—Section 32 of the Investment Company Act of 1940 (15 U.S.C. 80a–31) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

''(1) such accountant shall have been selected at a meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of the members of the audit committee of such registered investment company;

''(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of the members of the audit committee of such registered company, cast in person at a meeting called for the purpose of voting on such action;''; and

(B) by adding at the end the following: ''The Commission, by rule, regulation, or order, may exempt a registered management company or registered face-amount certificate company otherwise subject to this subsection from the requirement in paragraph (1) that the votes by the members of the audit committee be cast at a meeting in person, when such a requirement is impracticable, subject to such conditions as the Commission may require.''; and

(2) by adding at the end the following:

''(d) AUDIT COMMITTEE REQUIREMENTS.—

''(1) REQUIREMENTS AS PREREQUISITE TO FILING FINANCIAL STATEMENTS.—Any registered management company or registered face-amount certificate company that files with the Commission any financial statement signed or certified by an independent public accountant shall comply with the requirements of paragraphs (2) through (6) of this subsection and any rule or regulation of the Commission issued thereunder.

''(2) RESPONSIBILITY RELATING TO INDEPENDENT PUBLIC ACCOUNTANTS.—The audit committee of the registered investment company, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any independent public accountant employed by the registered investment company (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing the audit report or related work, and each such independent public accountant shall report directly to the audit committee.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the audit committee of the registered investment company shall be a member of the board of directors of the company, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of a registered investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the registered investment company or the investment adviser or principal underwriter of the registered investment company; or

''(ii) be an interested person of the registered investment company.

''(4) COMPLAINTS.—The audit committee of the registered investment company shall establish procedures for—

''(A) the receipt, retention, and treatment of complaints received by the registered investment company regarding accounting, internal accounting controls, or auditing matters; and

''(B) the confidential, anonymous submission by employees of the registered investment company and its investment adviser or principal underwriter of concerns regarding questionable accounting or auditing matters.

''(5) AUTHORITY TO ENGAGE ADVISERS.—The audit committee of the registered investment company shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

''(6) FUNDING.—The registered investment company shall provide appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(A) to the independent public accountant employed by the registered investment company for the purpose of rendering or issuing the audit report; and

''(B) to any advisers employed by the audit committee under paragraph (5).

''(7) AUDIT COMMITTEE.—For purposes of this subsection, the term 'audit committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of a registered investment company for the purpose of overseeing the accounting and financial reporting processes of the company and audits of the financial statements of the company; and

''(B) if no such committee exists with respect to a registered investment company, the entire board of directors of the company.''.

(b) CONFORMING AMENDMENT.—Section 10A(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(m)) is amended by adding at the end the following:

''(7) EXEMPTION FOR INVESTMENT COMPANIES.—Effective one year after the date of enactment of the Mutual Fund Reform Act of 2004, for purposes of this subsection, the term 'issuer' shall not include any investment company that is registered under section 8 of the Investment Company Act of 1940.''.

(c) IMPLEMENTATION.—The Commission shall issue final regulations to carry out section 32(d) of the Investment Company Act of 1940, as added by subsection (a) of this section.

SEC. 116. PREVENTION OF FRAUD; INTERNAL COMPLIANCE AND CONTROL PROCEDURES.

(a) DETECTION AND PREVENTION OF FRAUD.—Section 17(j) of the Investment Company Act of 1940 (15 U.S.C. 80a–17(j)) is amended to read as follows:

''(j) DETECTION AND PREVENTION OF FRAUD.—

''(1) COMMISSION RULES TO PROHIBIT FRAUD, DECEPTION, AND MANIPULATION.—It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company, or any security issued by such registered investment company or by an affiliated registered investment company, in contravention of such rules as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative.

''(2) CODES OF ETHICS.—The rules adopted under paragraph (1) shall include requirements for the adoption of codes of ethics by a registered investment company and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business. Such rules and regulations shall require each such registered investment company to disclose such codes of ethics (and any changes therein) in the periodic report to shareholders of such company, and to disclose such code of ethics and any waivers and material violations thereof on a readily accessible electronic public information facility of such company and in such additional form and manner as the Commission shall require by rule or regulation.

''(3) ADDITIONAL COMPLIANCE PROCEDURES.—The rules adopted under paragraph (1) shall—

''(A) require each registered investment company and investment adviser to adopt and implement general policies and procedures reasonably designed to prevent violations of this title, the Securities Act of 1933 (15 U.S.C. 78a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) and amendments made by that Act, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), subchapter II of chapter 53 of title 31, United States Code, chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951 et seq.), or section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b);

''(B) require each registered investment company and registered investment adviser to review such policies and procedures annually for their adequacy and the effectiveness of their implementation; and

''(C) require each registered investment company to appoint a chief compliance officer to be responsible for overseeing such policies and procedures—

''(i) whose compensation shall be approved by the members of the board of directors of the company who are not interested persons of the company;

''(ii) who shall report directly to the members of the board of directors of the company who are not interested persons of such company, privately as such members request, but not less frequently than annually; and

''(iii) whose report to such members shall include any violations or waivers of, and any other significant issues arising under, such policies and procedures.

''(4) CERTIFICATIONS.—The rules adopted under paragraph (1) shall require each senior executive officer, or such officers designated by the Commission, of an investment adviser of a registered investment company to certify in each periodic report to shareholders, or other appropriate disclosure document, that—

''(A) procedures are in place for verifying that the determination of current net asset value of any redeemable security issued by the company used in computing periodically the current price for the purpose of purchase, redemption, and sale complies with the requirements of this title and the rules and regulations issued under this title, and the company is in compliance with such procedures;

''(B) procedures are in place to ensure that, if the shares of the company are offered as different classes of shares, such classes are designed in the interests of shareholders, and could reasonably be an appropriate investment option for a shareholder;

''(C) procedures are in place to ensure that information about the portfolio securities of the company is not disclosed in violation of the securities laws or the code of ethics of the company;

''(D) the members of the board of directors who are not interested persons of the company have reviewed and approved the compensation of the portfolio manager of the company in connection with their consideration of the investment advisory contract under section 15(c); and

''(E) the company has established and enforces a code of ethics, as required by paragraph (2).''.

(b) WHISTLEBLOWER PROTECTION.—Section 1514A(a) of title 18, United States Code, is amended by striking the matter preceding paragraph (1) and inserting the following:

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES AND REGISTERED INVESTMENT COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(d)), or that is an investment adviser, principal underwriter, or significant service provider (as such terms are defined under section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) of an investment company which is registered under section 8 of the Investment Company Act of 1940, or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—''.

TITLE II—FUND TRANSPARENCY

SEC. 210. COST CONSOLIDATION AND CLARITY.

(a) EXPENSE RATIO COMPUTATION.—

(1) IN GENERAL.—The Commission shall, by rule, develop a standardized method of calculating the expense ratio of a registered investment company that accounts for as many operating costs to shareholders of such companies as is practicable.

(2) SEPARATE DISCLOSURES.—In developing the method of calculation required under paragraph (1), if the Commission determines that the inclusion of certain costs in such calculation will lead to a significant risk of confusing or misleading shareholders, the Commission shall develop separate standardized methods for the calculation and disclosure of such costs.

(b) TRANSACTION COST RATIO.—The Commission shall, by rule, develop a standardized method of computing the transaction cost ratio of a registered investment company that practicably and fairly accounts for actual transaction costs to shareholders, including, at a minimum, brokerage commissions and bid-ask spread costs. Such computation, if necessary for ease of administration, may be based upon a fair method of estimation or a standardized derivation from easily ascertainable information.

(c) DISCLOSURE OF EXPENSE RATIO AND TRANSACTION COST RATIO.—The Commission shall, by rule, require the prominent disclosure of the expense ratio and the transaction cost ratio of a registered company, both separately and as a total investment cost ratio, in—

(1) each annual report of the registered investment company;

(2) any prospectus of the registered investment company, as part of a fee table; and

(3) such other filings with the Commission as the Commission determines appropriate.

(d) ACTUAL COST DISCLOSURE.—The Commission shall, by rule, require, on at least an annual basis, the prominent disclosure in the shareholder account statement of a registered investment company of the actual dollar amount of the projected annual costs of each shareholder of the company, based upon the asset value of the shareholder at the time of the disclosure.

(e) DEFINITION OF FEES AND EXPENSES.—

(1) IN GENERAL.—The Commission shall, by rule, define all specific allowable types or categories of fees and expenses that may be borne by the shareholders of a registered investment company.

(2) NEW FEES AND EXPENSES.—No new fee or expense, other than any defined under paragraph (1), shall be borne by the shareholders of a registered investment company, unless the Commission finds that such new fee or expense fairly reflects the services provided to, or is in the best interests of the shareholders of—

(A) a particular registered investment company;

(B) specific types or categories of registered investment companies; or

(C) registered investment companies in general.

(f) COST STRUCTURES.—The Commission shall promulgate such rules or regulations as are necessary—

(1) to promote the standardization and simplification of the disclosure of the cost structures of registered investment companies; and

(2) to ensure that the shareholders of such registered investment companies receive all material information regarding such costs—

(A) in a nonmisleading manner; and

(B) in such form and prominence as to facilitate, to the extent practicable, ease of comprehension and comparison of such costs.

(g) DESCRIPTIONS OF FEES, EXPENSES, AND COSTS.—The Commission shall, by rule, require—

(1) the disclosure, in any annual or periodic report filed with the Commission or any prospectus delivered to the shareholders of a registered investment company, of all types of fees, expenses, or costs borne by shareholders;

(2) a clear definition of each such fee, expense, or cost; and

(3) information as to where shareholders may find out more information concerning such fees, expenses, or costs.

SEC. 211. ADVISOR COMPENSATION AND OWNERSHIP OF FUND SHARES.

(a) COMPENSATION OF INVESTMENT ADVISER.—The Commission shall, by rule, require—

(1) the disclosure to the shareholders of a registered investment company of—

(A) the amount and structure of, or the method used to determine, the compensation paid by the registered investment company to the portfolio manager or portfolio management team of the investment adviser; and

(B) the ownership interest in such company of the portfolio manager or portfolio management team; and

(2) the disclosure to the board of directors of the registered investment company of all transactions in the securities of the company by the portfolio manager or management team of the investment adviser of such company.

(b) FORM OF DISCLOSURE.—The disclosures required under subparagraphs (A) and (B) of subsection (a)(1) shall be made by a registered investment company in—

(1) the registration statement of the company; and

(2) any other filings with the Commission that the Commission determines appropriate.

SEC. 212. POINT OF SALE AND ADDITIONAL DISCLOSURE OF BROKER COMPENSATION.

Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(11) BROKER DISCLOSURES IN MUTUAL FUND TRANSACTIONS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to each person that purchases the shares of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)—

''(i) the source and amount of any compensation received or to be received by the broker in connection with such transaction; and

''(ii) such other information as the Commission determines appropriate.

''(B) TIMING OF DISCLOSURE.—The disclosures required under subparagraph (A) shall be made at or before the time of the purchase transaction.

''(C) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of the registered investment company; or

''(ii) any other filing of a registered investment company with the Commission.''.

SEC. 213. BREAKPOINT DISCOUNTS.

The Commission, by rule, shall require the disclosure by any registered investment company, in any quarterly or other periodic report filed with the Commission, information concerning discounts on front-end sales loads for which shareholders may be eligible, including the minimum purchase amounts required for such discounts.

SEC. 214. PORTFOLIO TURNOVER RATIO.

The Commission, by rule, shall require the disclosure, by any registered investment company, in any quarterly or periodic report filed with the Commission, and in any prospectus delivered to the shareholders of such company, of the portfolio turnover ratio of the company, and an explanation of its meaning and implications for cost and performance. Such rules shall require the disclosures to be prominently displayed within the appropriate document.

SEC. 215. PROXY VOTING POLICIES AND RECORD.

Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following:

''(k) PROXY VOTING DISCLOSURE.—

''(1) IN GENERAL.—Each registered investment company, other than a small business investment company, shall file with the Commission, not later than August 31 of each year, an annual report, on a form prescribed by the Commission by rule, containing the proxy voting record of the registrant and policies of the company with respect to the voting of such proxies for the most recent 12-month period ending on June 30.

''(2) NOTICE IN FINANCIAL STATEMENTS.—The financial statements of each registered investment company shall state that information regarding how the company voted proxies and proxy voting policies relating to portfolio securities during the most recent 12-month period ending on June 30 is available—

''(A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the company's website at a specified Internet address, or both; and

''(B) on the website of the Commission.''.

SEC. 216. CUSTOMER INFORMATION FROM ACCOUNT INTERMEDIARIES.

(a) IN GENERAL.—The Commission shall, by rule, require that each account intermediary of a registered investment company provide to such company, with respect to each account serviced by the intermediary, such information as is necessary for the company to enforce its investment, trading, and fee policies.

(b) REQUIREMENTS.—The information provided by a registered investment company under subsection (a) shall include, at a minimum—

(1) the name under which the account is opened with the intermediary;

(2) the taxpayer identification number of such person;

(3) the mailing address of such person; and

(4) individual transaction data for all purchases, redemptions, transfers, and exchanges by or on behalf of such person.

(c) PRIVACY OF INFORMATION.—The information provided under subsection (a), and the use thereof, shall be subject to all Federal and State laws with regard to privacy and proprietary information.

SEC. 217. ADVERTISING.

(a) PERFORMANCE ADVERTISING.—The Commission shall promulgate such rules as the Commission determines necessary with respect to the advertising of a registered investment company regarding—

(1) unrepresentative short-term performance;

(2) performance based upon an undisclosed or improbable event; and

(3) performance based upon incomplete or misleading data.

(b) DOLLAR AND TIME-WEIGHTED RETURNS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission shall, by rule, require each registered investment company to disclose, in its annual report and any prospectus delivered to shareholders, dollar-weighted returns and time-weighted returns for each of—

(A) the preceding fiscal year;

(B) the preceding 5 fiscal years;

(C) the preceding 10 fiscal years; and

(D) the life of the company.

(2) EXCEPTION.—The Commission may omit or require additional disclosures required under paragraph (1) for such time periods as the Commission determines necessary.

(3) COMMISSION USE OF BENCHMARKS.—The Commission may require, in the interest of facilitating non-misleading disclosures, that any performance-related advertising by a registered investment company be accompanied by such benchmarks as the Commission may deem appropriate.

(c) SUBSIDIZED YIELDS.—The Commission shall, by rule, require that any registered investment company that discloses in any publication a subsidized yield to disclose in the same publication the amount and duration of such subsidy.

TITLE III—FUND REGULATION AND OVERSIGHT

SEC. 310. PROHIBITION OF ASSET-BASED DISTRIBUTION EXPENSES.

(a) REPEAL OF RULE 12b–1.—

(1) IN GENERAL.—Beginning 180 days after the date of enactment of this Act (or such earlier time as the Commission may elect), as in effect on the date of enactment of this Act, section 270.12b–1 of chapter II of title 17 of the Code of Federal Regulations, promulgated under section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a–12), is repealed, and shall have no force or effect.

(2) PRESERVATION OF ACTIONS.—Paragraph (1) shall have no effect on any case pending or penalty imposed under section 270.12b–1 of the Code of Federal Regulations prior to the date of repeal under paragraph (1).

(b) PAYMENT OF DISTRIBUTION EXPENSES FROM MANAGEMENT FEE.—Section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a–12) is amended by adding at the end the following:

''(h) PAYMENT OF DISTRIBUTION EXPENSES.—Notwithstanding any provision of subsection (b), or any rule or regulation promulgated thereunder, distribution expenses incurred by an investment adviser may be paid out of the management fee received by the investment adviser.''.

(c) SUMS EXPENDED PROMOTING SALE OF SECURITIES.—The Commission shall, by rule—

(1) require that any sums expended by the investment adviser of a registered investment company to promote or facilitate the sale of the securities of such company be disclosed to the board of directors of the company;

(2) require that such sums be accounted for and identified in the expense ratio of any such company; and

(3) authorize the board of directors of any such company to prohibit its investment adviser from using any compensation received from the company for distribution expenses that the board determines not to be in the best interest of the shareholders of the company.

(d) PROHIBITION OF ASSET-BASED FEES.—Section 12 of the Investment Company Act of 1940 (15 U.S.C. 80a–12), as amended by subsection (a), is amended by adding at the end the following:

''(i) ASSET-BASED FEES.—

''(1) IN GENERAL.—It shall be unlawful for any registered investment company to pay asset-based fees to any broker or dealer in connection with the offer or sale of the securities of such investment company.

''(2) DEFINITION OF ASSET-BASED FEES.—The Commission shall, by rule, define the term 'asset-based fees' for purposes of this subsection.''.

SEC. 311. PROHIBITION ON REVENUE SHARING, DIRECTED BROKERAGE, AND SOFT DOLLAR ARRANGEMENTS.

(a) IN GENERAL.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended by inserting after section 12 the following:

''SEC. 12A. PROHIBITION ON REVENUE SHARING, DIRECTED BROKERAGE, AND SOFT DOLLAR ARRANGEMENTS.

''(a) REVENUE SHARING ARRANGEMENTS.—It shall be unlawful for any investment adviser to enter into a revenue sharing arrangement with any broker or dealer with respect to the securities of a registered investment company.

''(b) DIRECTED BROKERAGE ARRANGEMENTS.—It shall be unlawful for any registered investment company, or any affiliate of such company, to enter into a directed brokerage arrangement with a broker or dealer.

''(c) SOFT-DOLLAR ARRANGEMENTS.—It shall be unlawful for any registered investment company or registered investment adviser to enter into a soft-dollar arrangement with any broker or dealer.

''(d) REGULATIONS RESPECTING SECTION 28(E) OF THE SECURITIES EXCHANGE ACT OF 1934.—The Commission shall, by rule, narrow the soft-dollar safe harbor under section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)) to promote such parity as the Commission determines appropriate, and in the best interests of shareholders of a registered investment company, between registered investment companies governed by section 12A, and companies not covered by section 12A.

''(e) DEFINITIONS.—

''(1) IN GENERAL.—In this section—

''(A) the term 'directed brokerage arrangement' means the direction of discretionary brokerage by an investment company or an affiliate of that company, to a broker or dealer in exchange for services other than trade executions;

''(B) the term 'revenue sharing arrangement' means any direct or indirect payment made by an investment adviser (or any affiliate of an investment adviser) to a broker or dealer for the purpose of promoting the sales of securities of a registered investment company, other than any payment made directly by a shareholder as a commission for the purchase of such securities;

''(C) the term 'soft-dollar arrangement' means payments to a broker or dealer for best trade executions in exchange for, or which generate credits for, services or products other than trade executions; and

''(D) the term 'trade executions' has the meaning given that term by the Commission, by rule;

''(2) REGULATIONS.—The Commission may, by rule, refine the definitions under paragraph (1), define such other terms as the Commission determines necessary, and otherwise tailor the proscriptions set forth under this section to achieve the purposes of—

''(A) protecting the best interests of shareholders of a registered investment company;

''(B) minimizing or eliminating conflicts with the best interests of shareholders of a registered investment company;

''(C) enhancing market negotiation for and price competition in trade execution services, and products and services previously obtained under arrangements prohibited by this section;

''(D) ensuring the transparency of transactions for trade executions, and products and services previously obtained under arrangements prohibited by this section, and disclosure to shareholders of costs associated with trade executions, and products and services previously obtained under arrangements prohibited by this section, that is simplified, clear, and comprehensible; and

''(E) providing reasonable safe harbors for conduct otherwise consistent with such purposes.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 28(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)) is amended by striking ''This section is exclusive'' and inserting ''Except as provided under section 12A of the Investment Company Act of 1940, this section is exclusive''.

SEC. 312. MARKET TIMING.

(a) IN GENERAL.—The Commission shall, by rule, require—

(1) the disclosure in any registration statement filed with the Commission by a registered investment company of the market timing policies of that company and the procedures adopted to enforce such policies; and

(2) that any registered investment company that declines to adopt restrictions on market timing disclose such fact in the registration statement of the company, and in any advertising or other publicly available documents, as the Commission determines necessary.

(b) FUNDAMENTAL INVESTMENT POLICY.—The policies required to be disclosed under paragraph (1) shall be deemed ''fundamental investment policies'' for purposes of sections 8(b)(3) and 13(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)(3) and 80a–13(a)(3)).

SEC. 313. ELIMINATION OF STALE PRICES.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Commission shall prescribe, by rule or regulation, standards concerning the obligation of registered investment companies under the Investment Company Act of 1940, to apply and use fair value methods of determination of net asset value when market quotations are unavailable or do not accurately reflect the fair market value of the portfolio securities of such a company, in order to prevent dilution of the interests of long-term shareholders or as necessary in the public interest or for the protection of shareholders.

(b) CONTENT.—The rule or regulation prescribed under subsection (a) shall identify, in addition to significant events, the conditions or circumstances from which such an obligation will arise, such as the need to value securities traded on foreign exchanges, and the methods by which fair value methods shall be applied in such events, conditions, and circumstances.

SEC. 314. PROHIBITION OF SHORT TERM TRADING; MANDATORY REDEMPTION FEES.

(a) SHORT-TERM TRADING PROHIBITED.—Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17) is amended by adding at the end the following:

''(k) SHORT-TERM TRADING PROHIBITED.—

''(1) PROHIBITION.—It shall be unlawful for any officer, director, partner, or employee of a registered investment company, any affiliated person, investment adviser, or principal underwriter of such company, or any officer, director, partner, or employee of such an affiliated person, investment adviser, or principal underwriter, to engage in any short-term transaction, in any securities issued by such company, or any affiliate of such company.

''(2) LIMITATION.—This subsection does not prohibit any transaction in a money market fund, or in funds, the investment policy of which expressly permits short-term transactions, or such other category of registered investment company as the Commission shall specify, by rule.

''(3) DEFINITION.—For purposes of this subsection, the term 'short-term transaction' has the meaning given that term by the Commission, by rule.''.

(b) MANDATORY REDEMPTION FEES.—The Commission shall, by rule, require any registered investment company that does not allow for market timing practices to charge a redemption fee upon the short-term redemption of any securities of such company. In determining the application of mandatory redemption fees, shares shall be considered in the reverse order of their purchase.

(c) INCREASED REDEMPTION FEES PERMITTED FOR SHORT-TERM TRADING.—Not later than 90 days after the date of enactment of this Act, the Commission shall permit a registered investment company to charge redemption fees in excess of 2 percent upon the redemption of any securities of such company that are redeemed within such period after their purchase as the Commission specifies in such rule to deter short term trading that is unfair to the shareholders of such company.

(d) DEADLINE FOR RULES.—The Commission shall prescribe rules to implement section 17(k) of the Investment Company Act of 1940, as added by subsection (a) of this section, not later than 90 days after the date of enactment of this Act.

SEC. 315. PREVENTION OF AFTER-HOURS TRADING.

(a) ADDITIONAL RULES REQUIRED.—The Commission shall issue rules to prevent transactions in the securities of any registered investment company in violation of section 22 of the Investment Company Act of 1940 (15 U.S.C. 80a–22), including after-hours trades that are executed at a price based on a net asset value that was determined as of a time prior to the actual execution of the transaction.

(b) TRADES COLLECTED BY INTERMEDIARIES.—The Commission shall determine the circumstances under which to permit, subject to rules of the Commission and an annual independent audit of such trades, the execution of after-hours trades that are provided to a registered investment company by a broker, dealer, retirement plan administrator, insurance company, or other intermediary, after the time as of which the net asset value was determined.

SEC. 316. BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.

(a) AMENDMENT.—Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is amended by adding at the end the following:

''(h) BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.—

''(1) PROHIBITION OF JOINT MANAGEMENT.—It shall be unlawful for any individual to serve or act as the portfolio manager or investment adviser of a registered open-end investment company if such individual also serves or acts as the portfolio manager or investment adviser of an investment company that is not registered or of such other categories of companies as the Commission shall prescribe by rule in order to prohibit conflicts of interest, such as conflicts in the selection of the portfolio securities.

''(2) EXCEPTIONS.—Notwithstanding paragraph (1), the Commission may, by rule, regulation, or order, permit joint management by a portfolio manager in exceptional circumstances when necessary to protect the interest of shareholders, provided that such rule, regulation, or order requires—

''(A) enhanced disclosure by the registered open-end investment company to shareholders of any conflicts of interest raised by such joint management; and

''(B) fair and equitable policies and procedures for the allocation of securities to the portfolios of the jointly managed companies, and certification by the members of the board of directors who are not interested persons of such registered open-end investment company, in the periodic report to shareholders, or other appropriate disclosure document, that such policies and procedures of such company are fair and equitable.

''(3) DEFINITION.—For purposes of this subsection, the term 'portfolio manager' means the individual or individuals who are designated as responsible for decision-making in connection with the securities purchased and sold on behalf of a registered open-end investment company, but shall not include individuals who participate only in making research recommendations or executing transactions on behalf of such company.''.

(b) DEADLINE FOR RULES.—The Commission shall prescribe rules to implement section 15(h) of the Investment Company Act of 1940, as added by subsection (a) of this section, not later than 90 days after the date of enactment of this Act.

SEC. 317. SELECTIVE DISCLOSURES.

(a) IN GENERAL.—The Commission shall promulgate such rules as the Commission determines necessary to prevent the selective disclosure by a registered investment company of material information relating to the portfolio of securities held by such company.

(b) REQUIREMENTS.—The rules promulgated under subsection (a) shall treat selective disclosures of material information by a registered investment company in substantially the same manner as selective disclosures by issuers of securities registered under section 12 of the Securities Exchange Act of 1934 under the rules of the Commission.

TITLE IV—STUDIES

SEC. 410. STUDY OF ADVISER CONFLICT OF INTEREST.

(a) IN GENERAL.—The Commission shall conduct a study of—

(1) the consequences of the inherent conflicts of interest confronting investment advisers employed by registered investment companies;

(2) the extent to which legislative or regulatory measures could minimize such conflicts of interest; and

(3) the extent to which legislative or regulatory measures could incentivize internal management of a registered investment company.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 411. STUDY OF COORDINATION OF ENFORCEMENT EFFORTS.

(a) IN GENERAL.—The Comptroller General of the United States, with the cooperation of the Commission, shall conduct a study of the coordination of enforcement efforts between—

(1) the headquarters of the Commission;

(2) the regional offices of the Commission; and

(3) State regulatory and law enforcement agencies.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 412. STUDY OF COMMISSION ORGANIZATIONAL STRUCTURE.

(a) IN GENERAL.—The Comptroller General of the United States, with the cooperation of the Commission, shall conduct a study of—

(1) the current organizational structure of the Commission with respect to the regulation of investment companies;

(2) whether the organizational structure and resources of the Commission sufficiently credit the importance of oversight of investment companies to the 95 million investors in such companies within the United States;

(3) whether certain organizational features of that structure, such as the separation of regulatory and enforcement functions, are sufficient to promote the optimal understanding of the current practices of investment companies; and

(4) whether a separate regulatory entity would improve or impair effective oversight.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 413. TRENDS IN ARBITRATION CLAUSES.

(a) IN GENERAL.—The Commission shall conduct a study on the trends in arbitration clauses between brokers, dealers, and investors since December 31, 1995, and alternative means to avert the filing of claims in Federal or State courts.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 414. HEDGE FUND REGULATION.

(a) IN GENERAL.—The Commission shall conduct a study of whether additional regulation of alternative investment vehicles, such as hedge funds, is appropriate to deter the recurrence of trading abuses, manipulation of registered investment companies by unregistered investment companies, or other distortions that may harm investors in registered investment companies.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 415. INVESTOR EDUCATION AND THE INTERNET.

(a) IN GENERAL.—The Commission shall conduct a study of—

(1) the means of enhancing the role of the Internet in educating investors and providing timely information regarding laws, regulations, enforcement proceedings, and individual registered investment companies;

(2) the feasibility of mandating that each registered investment company maintain a website on which shall be posted filings of the registered investment company with the Commission and any other material information related to the registered investment company; and

(3) the means of ensuring that the EDGAR database maintained by the Commission is user-friendly and contains a search engine that facilitates the expeditious location of material information.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

S. 2059

SUMMARY OF KEY PROVISIONS OF THE MUTUAL FUND REFORM ACT OF 2004

The Mutual Fund Reform Act of 2004 makes fund governance truly accountable, requires genuinely transparent total fund costs, enhances comprehension and comparison of fund fees, confronts trading abuses, creates a culture of compliance, eliminates hidden transactions that mislead investors and drive up costs—and saves billions of dollars for the 95 million Americans who invest in mutual funds. MFRA strives above all to preserve the attractiveness of mutual funds as a flexible and investor-friendly vehicle for long-term, diversified investment.

TITLE 1: TRULY FIDUCIARY FUND GOVERNANCE

The Mutual Fund Reform Act of 2004 puts the interests of investors first by:

Ensuring independent and empowered boards of directors;

Clarifying and making specific fund directors' foremost fiduciary duty to shareholders;

Strengthening the fund advisers' fiduciary duty regarding negotiating fees and providing fund information; and

Instituting Sarbanes-Oxley-style provisions for independent accounting and auditing, codes of ethics, chief compliance officers, compliance certifications, and whistleblower protections.

TITLE 2: MEANINGFUL FUND TRANSPARENCY

The Mutual Reform Act of 2004 empowers both investors and free markets with clear, comprehensible fund transaction information by:

Standardizing computation and disclosure of (i) fund expenses and (ii) transaction costs, which yield a total investment cost ratio, and tell investors actual dollar costs;

Providing disclosure and definitions of all types of costs and requiring that the SEC approve imposition of any new types of costs;

Disclosing portfolio managers' compensation and stake in fund;

Disclosing broker compensation at the point of sale;

Disclosing and explaining portfolio turnover ratios to investors; and

Disclosing proxy voting policies and record.

TITLE 3: STRAIGHTFORWARD FUND TRANSACTIONS

The Mutual Fund Reform Act of 2004 vastly simplifies disclosure regime by:

Eliminating asset-based distribution fees (Rule 12b–1 fees), the original purpose of which has been lost and the current use of which is confusing and misleading—and amending the Investment Company Act of 1940 to permit the use of the adviser's fee for distribution expenses, which locates the incentive to keep distribution expenses reasonable exactly where it belongs—with the fund adviser;

Prohibiting shadow transactions—such as revenue sharing, directed brokerage, and soft-dollar arrangements—that are riddled with conflicts of interest, serve no reasonable business purpose, and drive up costs;

''Unbundling'' commissions, such that research and other services, heretofore covered by hidden soft-dollar arrangements, will be the subject of separate negotiation and a freer and fairer market;

Requiring enforceable market timing policies and mandatory redemption fees—as well as provision by omnibus account intermediaries of basic customer information to funds to enable funds to enforce their market timing, redemption fee, and breakpoint discount policies; and

Requiring fair value pricing and strengthening late trading rules.

MUTUAL FUND REFORM ACT OF 2004

The Mutual Fund Reform Act of 2004 (MFRA) restores truly fiduciary fund governance, simplifies fund fees, confronts trading abuses, creates a culture of compliance, and eliminates the conflict-riddled shadow transactions that drive up costs. The essence of the legislation is not any regulatory regime it creates, but the market forces it liberates. Obscurity is the enemy of a free market. Too little information—and too much incomprehensible information—equally undermine informed investor decision-making. The Mutual Fund Reform Act lifts the veil off mislabeled and misleading transactions, ensures genuine transparency, and promotes true price competition.

With 95 million American stakeholders, mutual funds are truly America's investment vehicle of choice. MFRA strives above all to preserve the attractiveness of mutual funds as a flexible and investor-friendly vehicle for long-term, diversified investment. That goal requires a careful balancing of accountability and incentive—or carrot and stick. Federal and state governments cannot police, much less micromanage, over 8,000 funds. The overriding duty to shareholders rests primarily with the funds themselves, and secondarily with the funds' service providers—each guided by a clearer statement of purpose and priority, incentivized by a more robust and transparent market that rewards low cost and good performance—because it can truly identify them—and accountable for failures that privilege fund managers' or brokers' interests over shareholders.

Vanguard Founder and industry savant John Bogle calls the Mutual Fund Reform Act of 2004 ''the gold standard in putting mutual fund shareholders back in the driver's seat.''The Consumer Federation of America says the Mutual Fund Reform Act of 2004 ''will save mutual fund investors potentially tens of billions of dollars a year by wringing out excess costs.'' The Securities and Exchange Commission's (SEC) recent spate of regulatory initiatives is a testament to Washington's will in redressing the scandals and excessive fees that erode America's retirement and college savings. But the SEC cannot take the range of initiatives that are necessary to rationalize an industry governed by 64-year-old legislation. It is time for Congress to take the step that truly empowers America's investors and invigorates market forces. It is time for reforms that finally put investors first.

MFRA is divided into four titles: Title 1 (Fund Governance); Title 2 (Fund Transparency); Title 3 (Fund Regulation and Oversight); and Title 4 (Studies). The provisions under each title are analyzed below.

TITLE 1: FUND GOVERNANCE

Independent directors

The Mutual Fund Reform Act empowers a truly independent board of directors to exercise its essential ''watchdog'' role as the original Investment company Act of 1940 envisioned. An inherent tendency to defer to authority—or to parties with more information—must be countered with both numbers and authority for the board to reliably flex its independent muscle in the best interests of shareholders. Thus, at least 75% of the board must be independent—including the chair.

That independence must be self-perpetuating. Thus, independent directors will nominate new directors and adopt qualification standards for such nomination.

Close relationships with fund advisers, or other significant service providers, can easily compromise independence. Thus, the legislation tightens the definition of independence to exclude individuals with material business or close family relationships with such service providers. Further, the legislation directs the SEC to study whether substantial aggregate compensation from a fund adviser, especially when directors serve on multiple boards, compromises independence.

Directors' fiduciary duty

Building on the ringing declaration in the Investment Company Act's Preamble, section 36(a) refers specifically to the fiduciary duty of directors—but it has been a relatively empty reference. Merely to recite ''fiduciary duty,'' it appears, will not ensure fidelity to it. Directors need direction—and content—in discharging their fiduciary duties. MFRA supplies both. MFRA amends the Investment Company Act to make expressly clear that the directors' fiduciary duty obliges them to act in the best interests of shareholders.

A ''fiduciary'' duty is supposed to be a rigorous one—yet its content has been unenforced guesswork. Mindful of the industry's complexity, NFRA thus directs the SEC to provide directors with specific guidance on the content of their fiduciary duty. Such content will include, at a minimum, determining the extent to which independent and reliable sources of information are sufficient to discharge director responsibilities, negotiating management and advisory fees with due regard for the actual cost of services, including economies of scale, evaluating management quality and considering potentially superior alternatives, evaluating the quality, comprehensiveness, and clarity of disclosures to shareholders regarding costs, evaluating any distribution or marketing plan of the company, including its costs and benefits, evaluating the size of the fund's portfolio and its suitability to the interests of shareholders, implementing and monitoring policies and procedures to ensure compliance with applicable securities laws, and implementing and monitoring policies with respect to predatory trading practices, such as market timing.

Investment advisers' fiduciary duty

After Wharton School and SEC studies in the 1960s found that mutual fund shareholders pay excessive fees because they lack bargaining power, the SEC recommended to Congress that it require that fees be ''reasonable.'' That did not happen. Instead, in 1970, Congress imposed a ''fiduciary'' duty on fund advisers with respect to fees. As with the directors' ''fiduciary'' duty, however, the term lost any meaningful moorning in client-first professional stewardship. Indeed, in a watershed judicial interpretation of the adviser's ''fiduciary'' duty under section 36(b), the Second Circuit deemed the duty satisfied unless the adviser charged ''a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's-length bargaining.'' Gartenberg v. Merrill Lynch Asset Mgt., Inc., 694 F.2d 923 (2d Cir. 1982). Against such a startling hurdle, no plaintiff ever wins an excessive fee case—and the SEC has declined to hold fund directors accountable for failing adequately to review adviser fee agreements (under section 36(a)).

Once again, merely invoking the phrase ''fiduciary'' will not ensure fair stewardship. MFRA makes clear that the fund adviser's fiduciary duty with respect to fees ''may require reasonable reference to actual costs of the adviser and economies of scale.'' Advisers are entitled to a fair profit—and nothing in MFRA ''caps'' or ''legislates'' fees, or otherwise imposes a ''price control.'' But MFRA does ensure that accountability is fairly allocated in the interests of shareholders.

MFRA also addresses another fiduciary deficit in the relationship between fund adviser and fund director. Conscientious independent directors may experience reckless intimidation and misdirection trying to penetrate the adviser's monopoly on critical fund information. Indeed, as Fund Democracy founder Mercer Bullard noted three years ago, under the current regime, ''fund directors who try to do their jobs may do so at their own risk. In 1997, the directors of the Navellier Aggressive Small-Cap fund complained to the SEC that the fund's adviser, Louis Navellier, had refused to provide information they needed to evaluate his services. . . . Intent on proving that no good deed goes unpunished, Navellier dragged the fund's directors through years of litigation,'' which was finally resolved in the directors' favor.

Subjecting directors to the sufferance of fund advisers turns the fiduciary duties of both on their heads. MFRA cures this damaging imbalance by specifying that fund advisers owe a specific fiduciary duty to provide information that is material to fund governance. In other words, directors will no longer be obliged to think of every possible question necessary to obtain essential information—much less be bullied by resistant advisers.

Termination of fund adviser

When fund managers cease to perform as effective stewards of the investments entrusted to them, they should be subject to the market discipline facing most Americans on the job—termination. Independent directors, exercising their fiduciary duties in the best interests of shareholders, should have the latitude to replace fund managers without undue fear of reprisal, spurious litigation, and other tactics by recalcitrant advisers. MFRA accordingly directs the SEC to issue regulations that facilitate the process by which independent directors, upon critical evaluation of fund management, terminate the service of fund management in the exercise of their fiduciary duties without undue exposure to financial or litigation risk.

Independent accounting and auditing

Last December, Business Week magazine called for Congress to ''reverse the embarrassing exemption it gave to the mutual-fund industry from the Sarbanes-Oxley corporate reform law's requirement that outside auditors evaluate internal controls.'' MFRA requires an audit committee, with requirements that track Sarbanes-Oxley provisions, and selection by that committee of an independent accountant.

Compliance provisions

MFRA, like S.1971 introduced by Senators Corzine and Dodd, draws significant inspiration from the lessons of the corporate scandals that gave rise to the Sarbanes-Oxley Act of 2002. While those corporate scandals triggered a massive public outcry, it is noteworthy that the total cost to the American public was far less than the trading abuses and excessive fees in the $7 trillion mutual fund industry. Thus, MFRA engenders a culture of compliance—employing tools from the landmark Sarbanes-Oxley Act.

MFRA requires adoption—by funds, investment advisers, and principal underwriters—of a code of ethics, which is reasonably designed to prevent violation of securities laws. This code must be disclosed to the public and reviewed annually. MFRA further requires appointment of a chief compliance officer, whose compensation is set by independent directors, who reports directly to independent directors, who may be an employee of the fund adviser, but who may be terminated only with the consent of the independent directors.

MFRA requires certain certifications to ensure careful monitoring and accountability. And finally, mindful of the singular contribution of whistleblowers to illumination of the current scandals, MFRA installs rigorous protections against retaliation for disclosing violations of securities laws or codes of ethics.

TITLE 2: FUND TRANSPARENCY

Cost consolidation and clarity

For the market to discipline excessively high-cost funds, investors must know total costs in comprehensive and accessible disclosures. Current regulations require disclosure of a fund's ''expense ratio''—but that figure excludes significant costs borne directly by investors. These largely hidden ''transaction costs'' occur when the fund buys and sells securities in its portfolio. As the SEC recently noted in its Concept Release on transaction costs, ''for many funds, the amount of transaction costs incurred during a typical year is substantial. One study estimates that commissions and spreads alone cost the average equity fund as much as 75 basis points.'' In other words, transaction costs may sometimes double the cost of investment. Additional transaction costs, such as market impact and opportunity costs, may cost even more.

MFRA enhances cost disclosure in several ways. First, MFRA requires standardized computation and disclosure of two cost ratios: the first is the expense ratio, designed to capture fund operating expenses, and the second is the transaction cost ratio, designed to capture the true costs of portfolio management. These two ratios must then be combined and disclosed as a single ''investment cost ratio.'' MFRA recognizes that certain transaction costs, such as commissions and bid-ask spreads, are indisputable candidates for disclosure in the ''transaction cost ratio''—while others, such as market impact and opportunity costs, may more precisely reflect simply the principal price a manager is willing to pay (or accept) for securities, and thus may not, in the ultimate judgment of the SEC, warrant computation and disclosure as part of the transaction cost ratio.

Additionally, MFRA assists investors confronting voluminous fund information with clear, simple, and at-least annual actual dollar cost disclosure. Including actual cost disclosure in the one document that investors do routinely review—their own statement—simplifies cost analysis for all investors and promotes genuine cost competition.

Some say that mutual fund reform invites the proverbial ''rock on jello''—and that a wily industry will react to reasonable restraints of one type of cost by simply shifting the cost to a new label. MFRA stabilizes the mutual fund fee structure. The SEC is directed to standardize all allowable types or categories of fees, expenses, loads, or charges borne by fund shareholders. New costs cannot be created without an SEC determination that the new cost is in the best interests of shareholders of (i) a particular fund, (ii) certain types of funds, or (iii) funds generally. Everyone, including (or perhaps especially) the mutual fund industry, acknowledges the critical importance of restoring investor trust. By stabilizing the fee structure—and building in safeguards against cynical manipulation of complex fee structures—MFRA takes the long stride toward ensuring sustained investor confidence.

Finally, MFRA addresses financial literacy by requiring clear explanation and definition of all types of fees, charges, expenses, loads, commissions, and payments—as well as where investors may find additional information about them.

Advisor compensation and ownership of fund shares

The Sarbanes-Oxley Act turned the spotlight on executive compensation—not merely to satisfy casual investor curiosity but to deter conflicts of interest and distorted incentives. MFRA does the same—albeit only with respect to portfolio management. If, as a consequence of disclosure, fund managers feel more motivated to earn their compensation, so much the better for investors. It may likewise be relevant whether fund managers are invested in the very funds they manage—and investors are entitled to know. Finally, insider transactions in the fund must be disclosed to the board of directors. Insider transactions are not per se problematic—quite the contrary, it may be a strong positive to have fund managers invested in the funds they manage. But to help deter potential abuses, the board should be informed of insider transactions. (In Title 3, MFRA prohibits short-term insider transactions to prevent abusive rapid trading by insiders.)

Broker confirmations

MFRA requires point-of-sale disclosure of the source and compensation to be received by the broker in connection with the transaction. Such disclosure is standard with other financial instruments—and broker/dealers can do the same for mutual fund investors. Significantly, however, as discussed below, MFRA vastly simplifies broker disclosures by prohibiting certain conflict-riddled broker-compensation practices—such as revenue sharing, directed brokerage and soft-dollar arrangements—that artificially inflate broker commissions and introduce distorted sales incentives.

Breakpoint discounts

Breakpoint discounts are essentially ''volume discounts''—reductions in sales charges for purchases beyond certain thresholds. The policies for applying breakpoint discounts, however, can be complicated. For example, an investor may be entitled to a breakpoint discount based on total shares purchased over a period of time, or from different accounts or together with other family members.

The National Association of Securities Dealers (the self-regulatory organization of brokers and dealers) estimated that more than $86 million in breakpoint discounts were not correctly applied by broker/dealers in 2001 and 2002, which indicates investor overcharges in one out of every five eligible transactions.

MFRA requires more prominent disclosure of information and policies about breakpoint discounts, so that investors are better equipped to help themselves. Perhaps more importantly as discussed below under Customer Information from Account Intermediaries, MFRA bridges one critical gap in the uniform application of breakpoint discount policies.

Portfolio turnover ratio

Many investors do not understand that the benign, or even enticing, term—''actively managed''—may conceal inordinately high transaction costs. When fund managers buy and sell securities in the fund portfolio, they incur transaction costs, such as commissions, bid-ask spread costs, market impact costs and opportunity costs. All of these costs diminish performance. To be sure, some actively managed funds do very well. But investors have a right to know, in straightforward terms, just how ''actively'' the portfolio is managed. The portfolio turnover ratio is a good indicator. MFRA requires prominent disclosure of the portfolio turnover ratio, as well as explanation of its meaning and implications for cost and performance. Thus, MFRA takes no legislative position on the propriety of active or passive management—but merely equips investors with clearer and more comprehensible information so that they can make decisions based upon their own investment objectives.

Proxy voting policies and record

Mutual funds are a seven-trillion-dollar industry—and control nearly one-third of U.S. equity voting power. See Alan R. Palmiter, Mutual Fund Voting of Portfolio Shares: Why Not Disclose? 23 Cardozo L. Rev. 1419, 1421 (March 2002). That is an impressive stake in U.S. corporate governance. Such enormous power is ill-suited to the shadows. MFRA requires disclosure of the fund's proxy voting record, as well as any proxy voting policies that may better equip investors to align their mutual fund purchasing with their corporate governance preferences.

Customer information from account intermediaries

Rules against market timing, application of breakpoint discounts, imposition of redemption fees on short-term trading—all of these salutary practices work only if the fund knows the identify and trading activity of its investors. But many financial intermediaries, including broker/dealers, convey aggregate trading information to funds through ''omnibus accounts,'' consisting of multiple anonymous fund customers. Failure of a fund to know its own investors seriously impairs fair and uniform enforcement of its trading policies.

As Niels Holch, Executive Director of the Coalition of Mutual Fund Investors, stated in a December 12, 2003 letter to the SEC, ''individual, long-term shareholders will not be guaranteed equal and fair application of fund policies, procedures, fees and charges, unless and until each mutual fund is provided information from its intermediaries about the identity of all shareholders in omnibus accounts and the individual transactions engaged in by those shareholders.''

MFRA requires that intermediaries convey to funds the basic customer identification and trading activity information needed to enforce fund policies fairly and uniformly. However, such information may only be used to enforce fund policies, and all proprietary rights to such customer information under state and federal law are preserved.

Advertising

Mutual funds fairly compete for investor attention and purchase. Indeed, because a certain percentage of investors can be expected to sell their shares every year, mutual funds want to meet these redemptions with new purchases so that ''net redemptions'' do not force funds to sell off too many portfolio assets. Advertising is one way to stimulate demand. However, some funds engage in questionable claims. Performance advertising, in particular, is fertile territory for misleading investors. Former SEC Chief Economist Susan Woodward put the matter bluntly in a recent Wall street Journal op-ed: ''A fund's past performance provides zero guidance about its future performance.''

MFRA directs the SEC to address several aspects of performance advertising, including unrepresentative short-term performance, performance based upon undisclosed non-recurring or improbable events, and performance based upon technically accurate but incomplete or misleading data.

Truthful and non-misleading advertising is a right guaranteed by the United States Constitution. MFRA respects that right—with requisite emphasis on ''non-misleading.''

TITLE 3: FUND REGULATION AND OVERSIGHT

MFRA is truly structural reform. It does not merely mandate yet more ''disclosure'' in an industry already saturated with voluminous disclosure rules. MFRA's essence is not the regulatory regime that it creates, but the free market forces that it liberates. MFRA fuels a competitive mutual fund market by making its transactions honest and comprehensible. Market distortions occur when market players can obscure their activities and mislead consumers. Examples addressed in MFRA include 12b–1 fees, revenue sharing, soft-dollar arrangements, and directed brokerage. MFRA lifts the veil of mislabeled and misleading transactions, creates true transparency and promotes meaningful competition. Merely demanding more disclosure—while salutary up to a point—risks encyclopedic and incomprehensible data dumps on investors.

A more honest and straightforward, and thus more vibrantly competitive, mutual fund market well serves the 95 million Americans who entrust their savings to mutual funds—and not incidentally, well serves the robustness of the mutual fund industry itself. Mercer Bullar, founder of Fund Democracy and sponsor of the recent Fund Summit in Oxford, Mississippi—where 11 lawmakers, regulators, and industry leaders convened to debate the direction of the industry—said of his panelists that they all share the aspiration for ''America's favorite retirement vehicle, a great institution, a great industry, to provide the best service it can for America's investors.'' That aspiration permeates the Mutual Fund Reform Act of 2004. And central to that aspiration is the recognition that scandal, cynicism, and revolt are inevitable consequences of confusing and opaque cost schemes.

Time magazine notes, for example, that investors have been flocking to ''separately managed accounts''—customized investment vehicles with minimum investment requirements. One noteworthy virtue, writes Time, of separately managed accounts: ''fee transparency. Typically, separate-account mangers charge a flat annual fee of 1.5% to 2.5% of assets. In most cases there are none of the loads, redemption fees, 12b–1 marketing fees, trading commissions, or soft-dollar costs that proliferate in the mutual-fund world and drive annual expenses far higher than disclosed levels.'' The vexation here is not merely with the ''hiddenness'' of many of these costs—but with the very existence of such a confusing and cynical welter of ways to siphon investors' money. MFRA is a decisive answer to that vexation—and an answer that well serves all Americans, not only the ones who can afford the minimum investment requirements of separately managed accounts and hedge funds.

Asset-based distribution expenses (Rule 12b–1)

A sales load was once an honest sales load. Then came Rule 12b–1. Designed in 1980 by the SEC, Rule 12b–1 permitted funds to use fund assets, temporarily, for distribution and market—to (1) stimulate purchases and thus redress temporary net redemptions, and (2) increase the size of the fund so that cost savings from economies of scale could be passed along to investors. The theory was sound. But Rule 12b–1 has wandered far from its original moorings. It has become a permanent fixture of most fee schedules, and can cost investors up to 1% of their investment every year. Over the life of a retirement plan, that 1% can cost an investor 35% to 40% of his or her retirement income. And it does not appear that investors have benefited from economies of scale.

Nearly two-thirds of 12b–1 fees end up in the hands of brokers. In other words, 12b–1 fees have become disguised loads.

Fund management properly includes fund distribution. MFRA accordingly places the distribution duty where it belongs. MFRA gets funds out of the distribution business by prohibiting asset-based distribution fees (such as 12b–1 fees)—but, importantly, amends the Investment Company Act of 1940 to make clear that fund advisers may use their adviser fees for distribution expenses. What happens when fund advisers use their own profits—instead of tapping directly into investors' money—for distribution expenses? Distribution expenses become very reasonable.

In negotiating their fees with an empowered and independent board, advisers will now have to make the case that their costs necessarily include specified distribution expenses. And once advisers receive their fee, distribution expenses will, dollar for dollar, reduce adviser profits. That dynamic locates the incentive to keep distribution expenses reasonable precisely where it belongs. And MFRA incorporates one additional structural check on unreasonable distribution expenses—one that goes to the heart of the inherent conflict between fund managers and fund shareholders. If the board of directors determines that certain distribution expenses are not in the best interests of existing shareholders, then the board may stipulate that no part of the adviser's fee may be used for that expense. A distribution expense designed solely to pump up the asset base of an already large fund, for example, and not otherwise necessary to meet net redemptions, would obviously well-serve the adviser, who collects a percentage of net assets, but not necessarily existing shareholders.

Importantly, MFRA does not prohibit distribution expenses or sales charges. Charging a load (subject to NASD rules) is fully justified—but call it a load, make it account-based and don't disguise it in a permanent asset-based distribution fee.

Indefensible brokerage practices

There is a reflexive preference in approaching our markets for demanding ''disclosure'' as a total solution—and sometimes as a total substitute for clear ethical and practical judgments. But some practices cannot be rationally defended. And some clear rules enrich and enliven our markets. We do not tell football players that they can clip, hold, or jump offside as long as they do so openly. We should not tell fund advisers and broker-dealers that they may misuse investor money with soft-dollar arrangements, revenue sharing and directed brokerage as long as they file reports. ''Disclosure'' of these practices merely precipitates an even more confusing blizzard of incomprehensible information—and even further alienates average investors from meaningful participation in the mutual fund market. As former SEC Chairman Arthur Levitt aptly remarked, ''[t]he law of unintended results has come into play: Our passion for full disclosure has created fact-bloated reports, and prospectuses that are more redundant than revealing.'' Three practices—soft dollar arrangements, revenue sharing, and directed brokerage—ought not clutter any mutual fund prospectus. And neither funds nor fund advisers should be spending time and money crafting elaborate disclosures and justifications of ultimately indefensible practices. By simply prohibiting these practices, MFRA vastly simplifies the disclosure regime, and benefits all stakeholders.

Revenue sharing

Kiplinger.com commentator Steven Goldberg calls revenue sharing ''the fund industry's most insidious practice . . . It sounds benign, but it boils down to mutual fund payola, giving brokers, financial planners or other financial advisers a little extra compensation if they sell a load fund to you. That is, a little something extra over and above the load you're already paying.'' A ''little something''? Annual revenue sharing payments to brokerage firms total an estimated $2 billion. And investors listening to a broker's ''advice'' may not realize that the broker's ''Preferred List'' of mutual funds is a function of this payola.

Moreover, revenue-sharing, like nearly two-thirds of 12b–1 money, goes to brokers, as a presumptive ''distribution'' expense—yet revenue sharing effectively circumvents the elaborate rules capping 12b–1 fees at no more than 1% of assets. The only difference is that revenue sharing payments are made by the fund adviser, out of the adviser's fee—which of course comes from the fund assets. Consumer Federation of America, along with several consumer groups that have endorsed MFRA, note the negative impact of revenue sharing, despite the fact that such payments come from the adviser rather than directly from fund assets: ''At best, by eating into the manager's bottom line, the payments may reduce the likelihood that the management fee will be reduced in response to economies of scale. At worst, fund managers will pass along those costs to shareholders in a form that is even less transparent than directed brokerage payments.''

Revenue sharing aggravates the conflicted interests of both brokers and fund advisers at the expense of fund shareholders. On the one hand, brokers get payola out of the fund adviser's management fee—and peddle funds they're paid to peddle without the requisite regard for the investor's best interests. On the other hand, fund advisers collectively give away $2 billion of their evidently abundant fees to promote yet further sales of fund shares, which increases fund assets, which increases the adviser's fee, which makes more money available for payola. MFRA breaks this investor-hostile circular enrichment, and restores rational solicitude for investors' money.

Soft dollar arrangements

Under soft dollar arrangements, brokers inflate their commissions on portfolio trades and give credits to fund managers in return. These credits are then used for research services, software, hardware, and other manager ''overhead''—which directly and immediately benefit fund managers, but only indirectly, if at all, benefit the shareholders who pay for them. Moreover, these direct costs to shareholders are not even reflected in the expense ratio, because commissions—as with all transaction costs—are excluded from the expense ratio. Thus, by using surreptitious soft dollars, instead of honest hard dollars, the industry effectively hides yet another significant cost of mutual fund investment.

Soft dollars also effectively suppress entire markets. Soft dollar arrangements distort the markets in both trade executions and products and services ''purchased'' with soft dollars—because there is little or no meaningful price negotiation or competition in these markets. Why would there be? Fund advisers use investors' money, through artificially inflated brokerage commissions, and competition inevitably and severely suffers when demand is driven by someone else's money.

Managers should pay for their overhead out of their management fee instead of forcing shareholders to pick up the tab through artificially inflated brokerage commissions. MFRA effectively ''unbundles'' the commission dollar. All stakeholders can then more readily assess the true cost of trade execution. And industry research and other unbundled services, now purchased with hard dollars through traditional negotiation, will acquire more authentic market values. Some services will thrive; others will crater. That happens when the market is healthy and transparent, and the demand side cannot spend someone else's money.

MFRA's treatment of soft dollar arrangements, like its treatment of 12b–1 fees, is inspired not by intent to regulate private transactions—but to label such transactions honestly. Just as a load is a load, and should be charged as such, so research expense should be the fruit of competitive negotiation for research—not the backdoor largesse of forcing investors to pay inflated brokerage commissions.

John Montgomery of Bridgeway Funds perfectly summarized the justification for banning soft dollars (as opposed to mandating yet more elaborate ''disclosures'') when he testified before the House Capital Markets Subcommittee in March 2003: ''The bottom lines: Congress should not work to improve disclosure of soft dollars; it should simply stop the practice altogether. Ultimately, this will improve the quality of decisions made on things soft dollars buy, save shareholders some money, and greatly reduce the time that advisers, auditors, regulators, and lawyers spend trying to document the fairness of a firm's practice.''

Directed brokerage

Directed brokerage is the practice by a customer (such as a mutual fund or affiliated person) of directing brokerage business to a particular broker or dealer in exchange for services other than trade executions. Examples of such services include sales support (as with revenue sharing), or administrative services. Directed brokerage seems benign—but the effect is yet a further hidden cost to investors, in the form of higher brokerage costs. Once brokerage is ''directed'' by a customer, the manager's ability to obtain better or less expensive execution from a different broker is disabled.

Last December, Louis Harvey, president of Dalbar Inc., a Boston-based research company, told Investment News that the practice of directed commissions obscures what best execution actually costs. Thus, funds pay more than retail investors to buy and sell stock. ''If the practice is done away with, it will be replaced by competitive forces.''

In recognition of the indefensibility of the practice, several funds announced recently that they are ceasing directed brokerage arrangements. The industry's leading trade association, the Investment Company Institute, likewise recently advocated prohibiting directed brokerage.

Late trading

Late trading is already illegal. The policy problem with late trading is not with the law, but with the practice of processing some orders after the calculation of ''net asset value'' (NAV), and thus share price, for that day. Typically, mutual funds calculate their NAVs as of 4:00 p.m. EST, the closing time of the major U.S. stock exchanges. The SEC's Rule 22c–1 requires funds to calculate NAV at least once a day. All orders to buy or sell mutual fund shares received on a particular day are executed at the same price. Under Rule 22c–1, orders to buy or sell mutual fund shares must be executed at a price based on the NAV next calculated after receipt of the order. The Rule therefore requires that orders for most funds received after 4:00 p.m. be executed using the next day's price.

''Late trading'' refers to the practice of submitting an order to buy or redeem fund shares after the 4:00 p.m. pricing time yet receiving that day's price rather than the price set at 4:00 p.m. the following day, or placing a conditional order prior to 4:00 p.m. that is either confirmed or canceled after 4:00 p.m. A late trader typically seeks to trade profitably on developments after 4:00 p.m., such as earnings announcements or events in overseas markets. As noted, late trading is already illegal.

But when is an order to buy or sell ''received'' under Rule 22c–1—when the fund receives the order, or when an intermediary (such as a retail broker or a 401k administrator) receives the order? To date, the SEC has interpreted ''receipt'' as used in Rule 22c–1 to include receipt of an order to buy or sell mutual fund shares by retail brokers and other intermediaries. Investors may thus place orders to buy or sell fund shares through broker-dealers, through retirement accounts and through variable insurance carriers, confident that they will receive that day's price for the shares. According to some estimates, mutual funds receive over half of their orders in the form of aggregated orders provided by intermediaries after 4:00 p.m. The SEC is currently reexamining its rules.

MFRA directs the SEC to enforce the current strict terms of Rule 22c–1—but gives the SEC the authority to fashion rules that accommodate investors transacting through their preferred intermediaries. For example, if it can be verified that intermediaries received their orders from their customers before 4:00 p.m.—and the intermediaries have systems in place that ensure compliance and permit independent verification—then the rules developed by the SEC may permit processing of such orders by the mutual fund after the 4:00 p.m. close. MFRA's ultimate purpose is two-fold: (1) preserve the appeal of mutual funds as a flexible and investor-friendly vehicle for long-term investment; and (2) prevent the unfair dilution of mutual fund value by short-term predators.

Market timing

''I have no interest in building a business around market timers, but at the same time I do not want to turn away $10–20m,'' wrote Richard Garland, then head of Janus Capital Groups international business to a colleague. Thus did Mr. Garland succinctly describe the sirenic tug that triggered the current industry scandals.

''Market timing'' refers to a form of trading mutual fund shares in which short-term investors seek to exploit a perceived difference between the fund's calculated NAV and the actual underlying value of the fund's portfolio holdings. As earlier noted, funds must calculate their NAV and set their share price at least once a day—typically at 4 p.m. EST. Sometimes, the closing price of a portfolio security at 4:00 p.m. EST may not reflect its current market value. For example, an event may occur or news may be released after 4:00 p.m. that can reasonably be expected to have an impact on a security's price when trading resumes. Securities that trade overseas are especially fertile ground for market timers, because many hours may elapse between the close of trading in an overseas market and the calculation of the fund's NAV.

Market timers seek to reap quick profits in mutual fund shares from these arbitrage opportunities. A market timer seeks to purchase a fund's shares based on events occurring before the fund's NAV calculation. For example, a market timer might guess that rising prices in the U.S. securities markets indicate likely higher prices in overseas markets the next day. The market timer would purchase mutual fund shares that reflect stale closing prices in overseas markets. The market timer would then redeem the fund's shares the next day, when the fund's next NAV calculation would reflect the presumably higher prices in overseas markets. The market timer seeks to make a quick and relatively risk-free profit.

Market timing is not specifically illegal—hence the conundrum facing many fund advisers and other industry players. But many mutual funds discourage market timing, often resolutely, because timers take their profits directly out of the value of shares held by long-term investors—i.e., the very category of the 95 million American mutual fund investors most likely to have entrusted retirement and college savings to mutual funds. Sale of fund shares at an artificially low price based on stale information dilutes the ownership interest of existing shareholders. Similarly, redemption of fund shares at an artificially high price dilutes the interest of remaining shareholders.

Some question whether market timing strategies really work. Importantly, however, merely the perception that market timing works, and is available, encourages rapid trading, which burdens funds regardless of whether the underlying timing strategy works. A fund forced to meet multiple redemptions from rapid trading activity may be obliged to keep more fund assets in cash or sell more portfolio securities to meet such redemptions—which increases the fund's transactions costs at the expense of existing shareholders.

As noted earlier, MFRA's overriding purpose with respect to trading abuses is two-fold: (1) preserve the appeal of mutual funds as a flexible and investor-friendly vehicle for long-term investment; and (2) prevent the unfair dilution of mutual fund value by short-term predators. MFRA thus addresses the problem of market timing with solicitude for the long-term investor, and steers market timing away from the mutual funds. MFRA provisions include:

Requiring explicit disclosure in fund offering documents of market timing policies and specific procedures to enforce policies—and requiring that such a policy be deemed a "fundamental investment policy" (which cannot, under the Investment Company Act of 1940, be changed without a shareholder vote).

Requiring that any fund that declines to adopt enforceable restrictions on market timing must so advise prospective investors in its prospectus, advertising, and otherwise as determined by the SEC.

Requiring regular fair value pricing—so that NAV more fairly reflects actual portfolio value, and opportunities for predatory arbitrage are diminished.

Requiring mandatory redemption fees for short-term trading (which fees are deposited back into fund assets, thus benefiting all shareholders, while discouraging arbitrage by increasing its cost).

Permitting (but not requiring) redemption fees exceeding two percent for short-term transactions that are unfair to shareholders.

TITLE 4: STUDIES

Learning from experiences: Further study

MFRA seeks to perpetuate the dialogue and to preserve the wisdom gathered from hard experience. Several studies are directed:

A study and report by the SEC on the consequences of the inherent conflict of interest confronting fund advisers, the extent to which legislative or regulatory measures could minimize this conflict of interest, and the extent to which legislative or regulatory measures could incentivize internal management of mutual funds.

A study and report by the General Accounting Office (GAO) on coordination of enforcement efforts between SEC headquarters, SEC regional offices, and state regulatory and law enforcement entities.

A study and report by GAO on the SEC's current organizational structure with respect to investment company regulation, and whether that organizational structure sufficiently credits the importance of mutual fund oversight to the 95 million mutual fund investors in America, and whether certain features of that organizational structure, such as the separation of regulatory and enforcement functions, conduce to optimal regulatory understanding of current practices.

A study and report by the SEC on trends and causes in arbitration claims since 1995, and means to avert claims.

A study and report by the SEC on whether additional regulation of alternative investment vehicles, such as hedge funds, is appropriate to deter recurrence of trading abuses, manipulation of regulated investment companies by unregulated investment companies, or other distortion that may harm investors in shares of registered investment companies.

A study by the SEC, coupled with regulatory and acquisition initiatives as appropriate, designed to enhance the role of the internet in educating investors and providing timely information about laws, regulations, enforcement proceedings and individual funds. Further, the SEC should study the feasibility of mandating that funds have websites, and disclosure thereupon of material filings and fund information. Further, the SEC should take necessary steps to ensure that its EDGAR system is user-friendly and contains a search-engine that facilitates expeditious location of material information in the SEC's database.

By Mr. REID:

S. 2060. A bill to permit certain local law enforcement officers to carry firearms on aircraft; to the Committee on Commerce, Science, and Transportation.

Mr. REID. Mr. President, I rise today to introduce legislation to make it easier for local law enforcement officers to travel across the country. Whether on official travel or personal travel, Federal law enforcement officers are allowed to carry firearms with them throughout their travel. The legislation I am introducing today would extend the same privilege—and responsibility—to local law enforcement officers.

Ever since the horrific terrorist attacks that occurred on September 11, we have seen how our local emergency responders, including local law enforcement officers, play a vital role in protecting not just their local communities, but the entire Nation. We think of local law enforcement officers as the Nation's first responders, but they are also the Nation's early preventers. They are the first to identify local crimes that could turn into National attacks. They are the first to report suspicious behavior that could thwart a future terrorist attack. Stopping a terrorist threat before it becomes an attack is the best way to keep our Nation safe. That effort relies upon the eyes, ears and experience of our Nation's law enforcement officers.

A terrorist attack in any city is a national concern. Local law enforcement officers are a crucial element of the plan to protect our Nation. I appreciate the help of Detective David Kallas and General Counsel John Dean Harper for bringing this issue to my attention. This bill will help give them and their law enforcement colleagues the standing they deserve as they continue to protect our hometowns and the Nation.

By Mr. CONRAD (for himself, Mr. GRAHAM of Florida, Mr. ROCKEFELLER, Mr. AKAKA, and Mr. JOHNSON):

S. 2063. A bill to require the Secretary of Veterans Affairs to carry out a demonstration projects on priorities in the scheduling of appointments of veterans for health care through the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. CONRAD. Mr. President, as I visit with veterans in North Dakota and here in Washington, too often I hear that waiting periods for medical care, and particularly for specialty care, are too long. We owe an unbelievable debt to American's veterans, and it is just not right that they cannot get the medical care they need when they need it. The legislation I am introducing today begins to address this problem.

Last month, as Ranking Member of the Senate Budget committee, I scheduled a field hearing in Bismarck, ND, to listen to the concerns of veterans regarding funding for the VA. Because more than fifty percent of veterans in North Dakota live in highly rural areas with limited access to VA medical facilities, I was particularly concerned about funding for VA medical care and the continuing reports from veterans regarding access to care and delays in the scheduling of appointments for medical care, especially speciality care.

Last September, I expressed similar concerns in testimony to the VA CARES Commission during field hearings in Minneapolis. I emphasized to Commission members that many North Dakota veterans have to travel hundreds of miles to access health care from the Fargo VA Medical Center or another FA facility in VISN 23 and that the VA must do more to ensure timely access for appointments and other VA medical services.

Reports in the national press make clear, however, that significant problems remain in the scheduling of appointments for medical care, particularly specialty care. Further complicating matters, there are many questions regarding the reliability of VA data on waiting list for appointments and the causes for the waiting periods according to reports in 2003 by the Department of Veterans Affairs Office of Inspector General and in 2000 by the General Accounting Office.

In North Dakota, several veterans service officers have reported a number of veterans waiting months for eye care, orthopedics and one veteran waiting almost ten months for back surgery. Another veteran, from the Bismarck area, was required to travel to Iowa for cancer treatment.

In view of these continuing concerns, I am today introducing legislation that would require the VA to undertake a two year pilot demonstration to study the implementation, cost and impact on VA services of several recent directives by the VA relating to the scheduling of medical appointments. The demonstration would be undertaken in three VISN networks, one highly rural, one rural, and one urban, that represent a cross-section of VA providers.

Under the demonstration, the VA would offer participating veterans, both new enrollees and established patients, service-connected and non-service connected, an appointment for primary care evaluation, hospitalization including specialty care or outpatient care within a 30 day period. If the VA facility is unable to provide the medical care within the designated period, the Department would make arrangements for the care at another VA facility or non-VA facility. Every effort, however, would be made to provide the medical care for the veteran through the VA healthcare network.

Finally, because of concerns regarding the accuracy of VA data on appointment periods, the bill requires the VA to report to Congress by FY 2007 on waiting periods for health care appointments, primary care and speciality care services. The VA would be required to report on the waiting periods for appointments by VA facility and VISN, include a breakdown of waiting periods by speciality, and submit recommendations to Congress for addressing the shortages of medical personnel. Finally, the legislation requests the Secretary, on the basis of the two year demonstration, to report to Congress by FY 2007 on the costs associated with implementation of the VA directive in the three VISNs and to report on the estimated cost to fully implement the directive throughout the VA system.

I am very pleased that my distinguished colleagues, Ranking Member of the Senate Committee on Veterans Affairs, Senator BOB GRAHAM and Senators JAY ROCKEFELLER, TIM JOHNSON and DANIEL AKAKA are joining me in sponsoring this legislation. I am also honored to have the strong support of the Disabled American Veterans and the AMVETS for this legislative proposal. I want to express my appreciation to Dave Gorman, DAV Executive Director; Joseph Violante, DAV National Legislative Director; Mike Dobmeier, former National Commander of the DAV and Rick Jones, AMVETS, National Legislative Director for their support.

It is critical that Congress and the Administration address the concerns of our veterans on the issue of waiting periods for medical care before adjourning of the 108th Congress. Veterans returning from Iraq, Afghanistan and from other peacekeeping deployments around the globe should not have to wait months for needed medical care. The needs of injured military personnel are great and the VA system will play a key role in their recovery. I encourage the Senate Committee on Veterans Affairs to review this legislation carefully and to act favorably on the measure before Congressional adjournment this fall.

I ask unanimous consent that the text of this legislation along with the letters of endorsement from the Disabled American Veterans and the AMVETS be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2063

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEMONSTRATION PROJECT ON PRIORITIES IN SCHEDULING OF APPOINTMENTS OF VETERANS FOR HEALTH CARE THROUGH THE DEPARTMENT OF VETERANS AFFAIRS.

(a) PROJECT REQUIRED.—The Secretary of Veterans Affairs shall carry out a demonstration project to assess the feasibility and advisability of providing for priorities in the scheduling of appointments of veterans for health care through the Department of Veterans Affairs in accordance with the following:

(1) The Department of Veterans Affairs Waiting Time for Appointments goals (30–30–20) of 2000.

(2) The provisions of the Veterans Health Administration directive entitled ''Priority For Outpatient Medical Services and Inpatient Hospital Care'' (VHA Directive 2002–059).

(3) The provisions of the Veterans Health Administration directive entitled ''Priority Scheduling for Outpatient Medical Services and Inpatient Hospital Care for Service Connected Veterans'' (VHA Directive 2003–062), dated October 23, 2003.

(b) PERIOD OF PROJECT.—The Secretary shall carry out the demonstration project during the two-year period beginning on October 1, 2004.

(c) LOCATIONS OF PROJECT.—(1) The Secretary shall carry out the demonstration project throughout each of three Veterans Integrated Service Networks (VISNs) selected by the Secretary for purposes of the project.

(2) In selecting Veterans Integrated Service Networks under paragraph (1), the Secretary shall ensure that the project is carried out in urban, rural, and highly rural areas.

(d) PROJECT REQUIREMENTS AND AUTHORITIES.—(1) Except as provided in paragraphs (2) and (3), in carrying out the demonstration project the Secretary shall schedule appointments for veterans for outpatient medical services and inpatient hospital care through the Department in accordance with the goals and directives referred to in subsection (a).

(2) The veterans covered by the demonstration project shall include any veterans residing in a Veterans Integrated Service Network covered by the project, whether new or current enrollees with the Department and including veterans with service-connected disabilities and veterans with non-service-connected disabilities.

(3) The Secretary shall schedule each appointment under the demonstration project in a Department facility unless, as determined by the Secretary—

(A) the cost of scheduling the appointment in a Department facility exceeds the cost of scheduling the appointment in a non-Department facility to an unreasonable degree; or

(B) the scheduling of the appointment in a non-Department facility is required for medical or other reasons.

(4) In carrying out the demonstration project, the Secretary may utilize the Preferred Pricing Program (PPP) of the Department, or similar programs or authorities, in the locations covered by the project.

(5) In this subsection, the terms ''Department facility'' and ''non-Department facility'' have the meaning given such terms in section 1701 of title 38, United States Code.

(e) ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR CARE AND SERVICES.—(1) Not later than January 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the waiting times of veterans for appointments for health care and services from the Department during the preceding year.

(2) Each report under paragraph (1) shall specify, for the year covered by the report, the following:

(A) A tabulation of the waiting time of veterans for appointments with the Department for each category of primary or specialty care or services furnished by the Department, broken out by particular Department facility and by Veterans Integrated Service Network.

(B) An identification of the categories of specialty care or services for which there are lengthy delays for appointments at particular Department facilities or throughout particular Veterans Integrated Service Networks, and, for each category so identified, recommendations for the reallocation of personnel, financial, and other resources to address such delays.

(f) REPORT ON PROJECT.—The report under subsection (e) in 2007 shall also include information on the demonstration project under this section. That information shall include—

(1) a description of the project, including the Veterans Integrated Service Networks selected for the project, the number of veterans covered by the project, the number and timeliness of appointments scheduled under the project, and the costs of carrying out the project;

(2) an assessment of the feasibility and advisability of implementing the project nationwide; and

(3) such other information with respect to the project as the Secretary considers appropriate.

DISABLED AMERICAN VETERANS,
Washington, DC, February 4, 2004.

Hon. KENT CONRAD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CONRAD: On behalf of the more than one million members of the Disabled American Veterans (DAV), we are pleased to support your proposed legislation to assess the feasibility and advisability of providing priorities in the scheduling of appointments through the Department of Veterans Affairs (VA) in accordance with VA's own access directives and goals.

The highest priority for VA health care must always be the core group of veterans the system was designed to treat: service-connected disabled veterans, the medically indigent, and those with special needs and catastrophic disabilities. As you are aware, in the past year, the Secretary of Veterans Affairs has issued two directives relating to priority care and the scheduling of appointments for service-connected veterans. In addition, VA has set access standards for patient appointments and struggled with improving its access goals of 30–30–20 for primary and specialty care appointments; specifically, access to non-urgent primary care appointments within 30 days, non-urgent appointments with a specialist within 30 days of the date of referral, and being seen by a provider at VA health care facilities within 20 minutes of a patient's scheduled appointment. Despite VA's efforts, we continue to hear reports from veterans of lengthy delays in getting appointments for both primary and specialty health care and services.

Through a pilot project in three Veterans Integrated Service Networks representing urban, rural, and highly rural areas, your bill seeks to improve access for veterans seeking VA health care and to evaluate the personnel, cost, and other resources necessary for VA to meet its own access goals. The annual reporting requirements about delay times for primary and specialty care appointments nationwide, and recommendations for the allocation of personnel, financial, and other resources needed to address such delays are essential and will help Congress and VA better understand the actual resources necessary to meet veterans health care needs in a timely manner.

It has been abundantly clear for some time that our government needs to develop long-term solutions to the funding problems facing the veterans health care system. This proposed measure will help begin to address this issue. The DAV and the other major veterans groups are united in our support for legislation that would guarantee an adequate level of funding for the VA medical system as the key to ensuring timely access to quality health care for our nation's veterans. The Congress and the Administration must make the commitment to provide the necessary resources to fulfill the obligation to care for America's sick and disabled vetrans—now and in the future.

Thank you for your continued interest in this issue, and for sponsoring this important legislation. We greatly appreciate your efforts on behalf of our nation's sick and disabled veterans.

Sincerely,

ALAN W. BOWERS,
National Commander.

AMVETS,
Lantham, MD, February 9, 2004.

Hon. KENT CONRAD,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: It is our understanding that you plan to offer legislation that would help reduce the time veterans must wait for a VA doctor's appointment. AMVETS, a nationwide veterans service organization, is pleased to support your proposal.

The need for reducing the time veterans wait for medical exams is well documented. A report issued last year by the President's task force on improving veterans health care delivery said there were nearly 300,000 veterans waiting for medical services at the start of 2003.

While progress is being made to gain more timely care for veterans, the Secretary's decision to halt enrollment of certain veterans for the remainder of the year and into the next fiscal year is another clear indicator that VA cannot meet its own standard for scheduling and appointment within 30 days.

Your proposal would establish a two-year pilot program in three Veterans Integrated Service Networks—a highly rural VISN, a rural VISN, and an urban VISN—to improve access for veterans seeking care and determine how much such standards would cost in terms of resources and impact on other VA medical services.

In effect, the bill provides a valuable tool to use for reducing waiting times and responding to the healthcare needs of veterans. Moreover, it would provide vital information on the actual resource needs necessary to ensure veterans earned benefits are provided in a timely manner.

We are grateful for your leadership in proposing this legislation, and we thank you for supporting the men and women who have served America's Armed Forces.

Sincerely,

RICHARD A. JONES,
National Legislative Director.

Mr. GRAHAM. Mr. President, I rise today with my friend, Senator CONRAD, in support of legislation to ensure that the Department of Veterans Affairs meets appropriate health care access standards.

With more than 60,000 veterans nationwide still on waiting lists to see a doctor—in some cases for more than a year—we must take measures to combat this problem. Right now, at the Gainesville VA Hospital in my home State of Florida, there are 1,085 veterans that have been waiting 6 months or longer to see a primary care doctor. And at the Fort Myers Outpatient Clinic, almost 600 veterans must wait at least a year to see an eye doctor. While VA has made improvements over the past year, I remain skeptical of their ability to rectify the problem. My concerns were exacerbated by a May 2003 Inspector General report which concluded that VA needed to improve their accuracy in tracking patients on waiting lists.

The legislation Senator CONRAD and I are introducing today would establish three pilot programs that seek to improve the timeliness of veterans' access to VA health care services. The programs would first require VA to meet the access standards they set for themselves at 30 days for a primary care appointment and 30 days for a specialty care appointment. If VA cannot schedule an appointment for a patient within this timeline, then they must provide for the service elsewhere, such as through contracts with local private health care facilities.

This initiative would merely put VA's already existing access standards into law, reinforcing VA's own targets and sending a message that we are willing to work with VA to help combat this problem. It has been over a year now that the Department has dealt with waiting lists and has yet to eliminate them. We cannot continue to sit back and criticize—we have provided the funding VA needs, and now we must also try to assist them in other ways.

Most importantly, the pilot program would be cost-neutral because it grants the Secretary discretion to defer from the access requirements if the cost of outside care exceeds that of VA's. Therefore, there will be no detriment to the VA system for providing timely access to needed health care services. I know my colleagues agree that our Nation's veterans deserve quality health care within a reasonable time frame, and I urge them to support this legislation.

AMENDMENTS SUBMITTED & PROPOSED

SA 2281. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table.

SA 2282. Mr. SCHUMER submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2283. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2284. Mr. LAUTENBERG submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2285. Mr. INHOFE proposed an amendment to the bill S. 1072, supra.

SA 2286. Mr. WARNER (for himself, Mrs. CLINTON, Mr. DEWINE, and Mrs. MURRAY) proposed an amendment to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra.

SA 2287. Mr. FEINGOLD (for himself and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2288. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2289. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2290. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2291. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2292. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2293. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2294. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2295. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2285 proposed by Mr. INHOFE to the bill S. 1072, supra; which was ordered to lie on the table.

SA 2296. Mr. FITZGERALD submitted an amendment intended to be proposed by him to the bill S. 1072, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2281. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 756, between lines 3 and 4, insert the following:

SEC. 1409. STUDY ON INCREASED SPEED LIMITS.

(a) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall conduct a study to examine the effects of increased speed limits enacted by States after 1995.

(2) REQUIREMENTS.—The study shall collect empirical data regarding—

(A) increases or decreases in driving speeds on Interstate highways since 1995;

(B) correlations between changes in driving speeds and accident, injury, and fatality rates;

(C) correlations between posted speed limits and observed driving speeds;

(D) the overall impact on motor vehicle safety resulting from the repeal of the national maximum speed limit in 1995; and

(E) such other matters as the Secretary determines to be appropriate.

(b) REPORT.—Not later than 1 year after the date of completion of the study under subsection (a), the Secretary shall submit to Congress a report that describes the results of the study.