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Court's Decision Recognizes Mutual Funds' Unique Structure

Washington, DC, July 22, 2011 - The Investment Company Institute and the Independent Directors Council welcome the U.S. Court of Appeals for the District of Columbia's decision to vacate the Securities and Exchange Commission's 2010 "proxy access" rule. That rule was designed to change shareholder nominations in elections for company boards of directors. In its ruling on *Business Roundtable and Chamber of Commerce of the United States of America v. Securities and Exchange Commission*, the court indicated the SEC enacted the rule in violation of the Administrative Procedure Act because the SEC failed adequately to consider the rule's effect upon efficiency, competition, and capital formation.

"The court's decision will spare fund shareholders the significant cost of complying with a regulation that failed to take into account the substantial protections that fund shareholders already enjoy," said ICI President and CEO Paul Schott Stevens. "The court correctly recognized that the SEC failed to address how funds' current regulatory structure reduces the need for proxy access and to assess the rule's disruptive effect on the efficient functioning of funds' boards. Given the unique protections that the Investment Company Act of 1940 provides for fund shareholders, the court was not convinced that the SEC had considered whether the benefits of proxy access would exceed the costs."

"As we have argued, the SEC's one-size-fits-all approach of applying the same rule to operating companies and mutual funds didn't work, because it didn't take into account the unique mutual fund governance and board structure. Today's decision is a victory for fund shareholders," said IDC Managing Director Amy Lancellotta.

"The decision sends a message to the SEC that in considering rules affecting public companies generally, the SEC cannot assume that the costs and benefits apply equally to investment companies and operating companies alike, but must conduct a careful, substantive analysis specifically tailored to the structure and operations of funds," said Ruth S. Epstein, a partner in Dechert's financial services group and a co-author of the ICI and IDC amicus brief.

The challenge to the SEC proxy access rule was brought by the Business Roundtable and the Chamber of Commerce of the United States. ICI and IDC filed an [amicus brief](#) that focused exclusively on the rule's application to registered investment companies, including mutual funds. ICI and IDC support in principle the SEC's efforts to further enfranchise shareholders, but believe that the proxy access rule as adopted was unsuited to the unique corporate governance structure of fund companies and boards and could increase costs for investors if implemented.