



**ICIMutual**  
*Partners In Risk Management*

*David Silver*  
*President*

April 1, 1999

The Honorable Arthur J. Levitt, Jr.  
Chairman  
United States Securities and Exchange Commission  
450 5<sup>th</sup> Street, N.W. – Room 6010  
Washington, D.C. 20549

Dear Mr. Chairman:

During your Keynote Address last week at the 1999 Mutual Funds Conference, you voiced concerns regarding the effects that “insured vs. insured” exclusions – as commonly found in directors and officers/errors and omissions liability insurance policies purchased by mutual funds and their investment advisers – may have on independent directors of insured funds. In particular, you noted that “a broad insured vs. insured provision ... won't cover the directors if they are sued by the investment adviser,” and suggested that independent directors “would serve themselves well by making certain that their insurance policies do not have such an exclusion.”

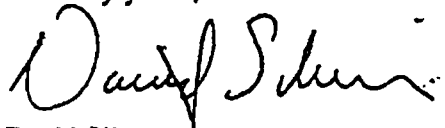
As the mutual fund industry's captive insurer, and as its leading provider of D&O/E&O insurance since 1988, ICI Mutual Insurance Company has been instrumental in developing new coverages to meet the evolving needs of mutual funds, and their directors, advisers and service providers. In the aftermath of recent suits brought against fund independent directors by fund advisers and at the request of Paul Royce, we commenced a review of our own “insured vs. insured” exclusion. Although ICI Mutual would have looked sympathetically at these recent claims as falling outside the purpose of the exclusion, we considered how the exclusion might be modified to clearly provide insurance coverage to independent directors in claims brought by co-insureds.

I am pleased to report that ICI Mutual has revised its D&O/E&O policies, available immediately, to address the legitimate concerns of fund independent directors in “insured vs. insured” situations, while protecting ICI Mutual against the potential for collusion and other abuses at which the exclusion has historically been directed. The revision, in the form of a standard policy endorsement, is attached. The endorsement ensures that fund independent directors may recover defense costs, settlements and

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judgments in bona fide "insured vs. insured" claims otherwise covered under their policies.

Sincerely yours,

A handwritten signature in cursive script that reads "David Silver".

David Silver

cc: Paul Roye, Director  
Division of Investment Management

Enclosure

# ICI MUTUAL INSURANCE COMPANY

## DIRECTORS AND OFFICERS/ERRORS AND OMISSIONS LIABILITY INSURANCE

### ENDORSEMENT NO.

INSURED		POLICY NUMBER
EFFECTIVE DATE	POLICY PERIOD	AUTHORIZED REPRESENTATIVE

**Specimen**

In consideration of the premium charged for this policy, it is hereby understood and agreed that notwithstanding anything to the contrary in the "Insured versus Insured" exclusion at Section V.H of this policy, coverage under this policy shall extend to Specified Loss incurred by any Independent Director or Insured Fund in an Internal Claim but only to the extent such Specified Loss is otherwise covered under this policy.

It is further understood and agreed that for purposes of this endorsement:

- (1) "Independent Director" means any Director of the Insured Fund who is not an "interested person" of such Insured Fund within the meaning of Section 2(a)(19) of the Investment Company Act of 1940.
- (2) "Internal Claim" means a non-collusive Claim made by any Insured against any Independent Director of an Insured Fund, or against such Fund, but only if it is a codefendant in such Claim with the Independent Director.
- (3) "Specified Loss" means (i) Costs of Defense, and (ii) settlements and judgments, if an independent counsel selected jointly by the Insurer and the Independent Director, provides an opinion that (a) in the case of a settlement, the settlement is fair and reasonable in light of the claim asserted, or (b) in the case of a judgment, the Internal Claim was reasonably defended.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of this policy other than as above stated.