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SEC Chair Gensler's Mutual Fund Views Revealed in His Book

By Gary O. Cohen

SEC Chair Gary Gensler[1] co-authored a 2002 book[2] (Book) that set out his views on mutual funds,[3] as follows:

- "[m]utual funds have become the investment of choice" for many millions of "American households,"[4] but investor "strategy" "to beat the market" is "ill founded";[5]
- actively managed mutual funds are a "[t]rap"[6] for investors because "by any objective measure, [these] mutual funds are failing their millions of devoted clients";[7]
- index mutual funds are "a miracle"[8] for most investors, as "the best way to avoid the trap and achieve higher returns with lesser risk";[9]
- exchange-traded index mutual funds "can offer marginally lower costs and substantially better tax consequences than index funds";[10]
- the "governance of mutual funds" is "strange"[11] and "bizarre"[12] and "unknown elsewhere in corporate America";[13]
- mutual fund "directors have a difficult time striking a proper balance between working with the adviser and vigorously pursuing "investors' interests," and "[t]oo often the outcome is simply acquiescence to whatever the adviser proposes";[14] and
- the Securities and Exchange Commission (SEC) came "to the [r]escue" when it "mandated expanded disclosure of the after-tax performance of mutual funds,"[15] but it is "bizarre" that the "SEC requires no disclosures of the costs of trading the portfolio."[16]

Chair Gensler's criticism of actively managed mutual funds is all the more poignant because his identical twin brother Robert[17] was a manager for T. Rowe Price mutual funds[18] at the time of the book's publication.

Praise for Book

The Book jacket records the praise by leaders of the financial world.

Former SEC Chair Arthur Levitt[19] called it a "fascinating book" that "tell[s] consumers how to avoid the traps and make the markets work for them with less risk."[20]

John C. Bogle, renowned founder of the Vanguard Group and its innovative index mutual funds, called the book "wonderful" with a "hard-hitting message" that will "assure you of long-term investment success."[21]

Former Secretary of the Treasury, Lawrence Summers, called the book "compelling" in taking "a hard look at how Americans invest their money and suggest[ing] better options."[22]

Don Phillips, Managing Director of Morningstar, Inc. (Morningstar), said that the book "exposes many of the flaws that drag down fund performance and suggests ways that investors can tune out the noise and focus on meeting their long-term goals."[23] He added that the "mutual fund industry isn't going to like this book one bit, but its story needs to be heard."[24]

Book's Views

Knowledge of Chair Gensler's views expressed in the Book can help gauge his point of departure in leading the SEC's regulation of mutual funds. Persons with such knowledge can be better equipped as to whether and how to propose and react to SEC regulatory developments.

However, Chair Gensler's views expressed in the book may not be his current views. His views may have changed over the many years since the book's publication in 2002. It also goes without saying that the empirical data on mutual fund performance on which he relied are dated. And obviously, certain facts and circumstances regarding the mutual fund industry that existed at the time have changed.

Nevertheless, the author of this article did not find that Chair Gensler or his co-author has repudiated the views expressed in the Book. Amazon continues to offer the Book for sale.[25] The principal view of the Book—that index funds generally outperform actively managed funds over time—continues to find support in current mutual fund performance data.[26] Consistent with the Book's enthusiastic endorsement of exchange-traded index mutual funds, Chair Gensler, earlier this year, reported his single largest holding to be the Vanguard Total Stock Market ETF at $25 to $50 million.[27]

Gensler's Credentials

Chair Gensler's views are based on broad and deep experience in financial matters in the commercial, governmental, and educational worlds. His federal governmental experience has been in both the executive and legislative branches.

As an apparent testament to this experience, Chair Gensler received some bipartisan support for his nomination for SEC Chair.[28]

At the time of his nomination, Chair Gensler was Professor of Global Economics and Management at the MIT Sloan School of Management and senior advisor to the MIT Media Lab Digital Currency Initiative.[29] He researched and taught "blockchain technology, digital currencies, financial technology, and public policy."[30] His annual income from MIT was more than $315,000.[31]

On the personal side, Chair Gensler is 64 years old.[32] He was born in Baltimore.[33] His father sold cigarette and pinball machines to local bars.[34] He has three daughters.[35] His wife died some years ago.[36] He is a runner who finished nine marathons and one 50-mile ultramarathon.[37] He's also a mountain climber, having climbed Mt. Rainier and Mt. Kilimanjaro.[38] He reported net worth between $41 and $119 million and annual income between $1.07 and $5.14 million.[39]

Chair Gensler received an undergraduate degree in economics in 1978 and an MBA degree in 1979 from The Wharton School, University of Pennsylvania.[40] In undergraduate school, he was *summa cum laude* and a member of the crew team as coxswain.[41]

In 1979, he joined Goldman Sachs, where he spent 18 years.[42] He became partner at age 30, one of the youngest persons to do so.[43] He focused on mergers and acquisitions, headed the firm's Media Group, led fixed income and currency trading in Asia, and co-headed Finance, which was responsible for the firm's worldwide Controllers and Treasury efforts.[44]

He held two positions at the Department of Treasury under President Bill Clinton: Assistant Secretary for Financial Markets (1997–1999) and Under Secretary for Domestic Finance (1999–2001).[45] Along the way, he won the Department's highest honor.[46]

In 2001, Chair Gensler joined the staff of Senator Paul S. Sarbanes, Chair of the Senate Banking Committee, as a senior adviser and helped write the Sarbanes-Oxley Act, which amended corporate responsibility, accounting and securities laws.[47]

He was Chair of the Commodity Futures Trading Commission from 2009 to 2014 under President Barack Obama.[48] He was Chief Financial Officer for Hillary Clinton's 2016 presidential campaign.[49] He then served as Chairman of the Maryland Financial Consumer Protection Commission from 2017 to 2019.[50]

In November 2020, he became a volunteer member of President Joe Biden's transition planning team regarding the Federal Reserve, Commodity Futures Trading Commission, SEC, and Federal Deposit Insurance Corporation.[51]

Fund Importance

Chair Gensler's Book observes that "[m]utual funds have become the investment vehicle of choice" for many millions of "American households."[52]

He recounts that "before the development of mutual funds, people with small to moderate amounts of money did not have a realistic option for investing in stocks and bonds."[53] "Instead," he explains, "their savings were relegated to either bank savings accounts or whole life insurance."[54] He further explains that the "ability to own part of America's corporations was generally the province of institutional and wealthy investors who bought stocks and bonds from full-service brokers."[55]

Chair Gensler says that the "advent of mutual funds offered all investors a chance at the superior long-term performance of equity investing, as well as a convenient way to buy bonds."[56] One benefit to investors is "diversification, as most [mutual funds] owned a broad spectrum of the market."[57] Another benefit is that "compared with the full-service brokerage commissions of the time, mutual funds' costs were relatively attractive."[58] A third benefit is that, "[m]utual funds offered liquidity, as they must by law be prepared to redeem an investor's shares at the end of each day."[59]

Fund Governance

Despite the benefits of mutual funds, Chair Gensler describes the "governance" of mutual funds as "bizarre,"[60] "strange,"[61] and "unknown elsewhere in corporate America."[62] He points to the extraordinary facts that: an "adviser," not "individual investors," sets up a fund; a fund "has no employees of its own"; and "[a]ll of the research, trading, money management, and customer support staff actually work for the fund's adviser."[63]

He warns that the "company managing your mutual fund does not share your interests," because the company: "has its own shareholders and profits to consider"; "wants to take more risk in order to attract assets in bull markets"; "wants to charge high management fees that come directly from your returns"; and "wants to justify its existence by trading frequently, even if that increases your tax bill."[64]

Fund Directors

Chair Gensler's view of independent fund directors is that the law requires them to act as independent watchdogs, but that does not mean that directors must negotiate for the lowest advisory fees for the benefit of shareholders.

He sees the legal standard to be as follows. The SEC recognizes "inherent conflicts of interest and potential for abuses that can arise from this structure"[65] of mutual funds managed by for-profit investment advisers. The Investment Company Act of 1940 (1940 Act), in "an effort to address this conflict, . . . establishes specific roles for fund directors"[66] According to US Supreme Court Justice William Brennan, the 1940 Act "was designed to place unaffiliated fund directors in the role of independent watchdogs, to furnish an 'independent check upon the management of investment companies.'"[67]

Chair Gensler notes, however, that this legal standard "has never been interpreted very stringently."[68] He quotes former SEC Chair Arthur Levitt who described the legal duties of a mutual fund board as: "Directors don't have to guarantee that a fund pays the lowest rates. But they do have to make sure that fees fall within a reasonable band."[69]

In Gensler's view, this approach would be an anathema in the "real world."[70]

But ultimately, Chair Gensler states, "the problem with mutual fund management is cultural, not regulatory."[71] In practice, "directors have a difficult time striking a proper balance between working with the adviser and vigorously pursuing investors' interests."[72] The outcome "too often" is "simply acquiescence to whatever the adviser proposes."[73]

The bottom line for Chair Gensler is that "[m]any directors view their role as simply auditing the performance of the adviser and making sure there is no malfeasance or accounting problems, rather than acting as the shareholders' advocate."[74] The result is that shareholders "pay significantly higher fees" than they would if "shareholders actually ran the company."[75]

Actively Managed Funds

Chair Gensler believes that the situation described above leads to "management fees, trading costs, and sales loads" that "weigh heavily on actively managed funds."[76] For this reason, he says, "the chances of your manager beating the market are small."[77] He cites "[e]vidence suggest[ing] that the average actively managed mutual fund underperforms the market" most of the time.[78] Perhaps referring to his experience running marathons, Chair Gensler refers to the fees, costs and loads as "The Ankle Weights on Running an Actively Managed Fund."[79]

Chair Gensler concedes that "[n]onetheless, each year some money managers will outperform the average fund, and even the market as a whole."[80] But he emphasizes that "past performance truly is no guarantee of future results."[81] He argues that the "fact that a fund has outperformed the market for the past year, five years, or even ten years turns out to be a very poor predictor of whether it will outperform the market in the future."[82] He presents data showing that "[f]unds that are above average for a time tend to regress to the below-market performance of the average fund."[83]

He goes on to bemoan the fact that, despite the foregoing, "[m]ost investors simply choose funds based on past performance."[84] He questions whether individual investors have the capacity to "identify these managers in advance of their market-beating performance."[85] He maintains that "there is no reason to believe that [an individual investor] will do any better a job picking *stock pickers* than . . . picking *stocks.*"[86]

Index Funds

Faced with the foregoing drawbacks of actively managed mutual funds, Chair Gensler enthusiastically embraces the option of index mutual funds. "The indexing option," he says, is a "miracle" and a "testament to technological innovation, human imagination, and market capitalism."[87]

Chair Gensler explains that index mutual funds are "a bargain for investors," because "they needn't hire the highly paid stock pickers required for active investing, or pay the transaction costs their strategies impose."[88]

He favors exchange-traded index mutual funds, because they "can offer marginally lower costs and substantially better tax consequences than [other] index funds."[89]

SEC Regulation

Chair Gensler's book does not address the SEC's role in regulating financial entities generally or regulating mutual funds specifically in any comprehensive way. He makes no extensive evaluation or assessment. Rather, he comments on the SEC's role in scattered factual and historical statements. Most of his statements have to do with disclosure, either that the SEC mandates or that the SEC has not required.

Given his criticism of actively managed mutual funds, it comes as no surprise that Chair Gensler approves the SEC's "government-mandated disclaimer that accompanies every fund's reported results—'past performance is no guarantee of future results'"—as being "absolutely true."[90]

Chair Gensler also praises the SEC in coming to the "[r]escue" when it "mandated expanded disclosure of the after-tax performance of mutual funds."[91]

On the other hand, Chair Gensler finds it "bizarre" that the "SEC requires no disclosures of the costs of trading the portfolio."[92] The result, he says, is that mutual "funds are simply silent on trading costs in their reports to [investors]."[93] He ridicules this result by imagining "a regular corporation failing to report its largest controllable costs in its annual or quarterly reports."[94]

He thinks that the SEC acted "oddly" in finding that Rule 529 programs "should be regulated under the same rules as municipal securities."[95] He criticizes the finding as having "exempted [the 529 programs] from disclosure rules," resulting in "no federal oversight of the disclosures required of these plans."[96]

Chair Gensler observes that "[i]n 2001, the SEC took various actions in an effort to make fund directors more independent of the fund's adviser."[97] He notes that the SEC "raised the required percentage of independent directors," provided that "[i]ndependent directors, rather than the advisers, must also select and nominate other independent directors," and "imposed more stringent disclosure requirements for those directors."[98] Despite the SEC's efforts, he concludes that "[i]n practice, though, directors have a difficult time striking a proper balance between working with the adviser and vigorously pursuing investors' interests."[99]

In what may have been a slip of the technical tongue, Chair Gensler incorrectly states that "[i]n 2001, the SEC . . . raised the required percentage of independent directors from 40 to 50 percent."[100] Actually, the SEC said that "[w]e are amending the Exemptive Rules to require that the boards of funds relying on the rules have a majority of independent directors,"[101] explaining that "[t]he independent directors thus would need to comprise *more than half* of the membership of the board."[102]

Looking Ahead

The question arises whether, and to what extent, Chair Gensler might seek to implement his views on mutual funds as expressed in his Book.

It seems highly unlikely that Chair Gensler would seek to rectify what he sees as the "strange"[103] and "bizarre"[104] structure of mutual fund governance. This structure, consisting of a mutual fund managed by an independently-owned investment adviser, is baked into the 1940 Act, and any fundamental change would require legislative amendment.

Likewise, it seems highly unlikely that Chair Gensler would seek to change, in any fundamental way, the legal standard governing mutual fund directors, which he says "has never been interpreted very stringently."[105] The legal standard has been interpreted by the SEC and the courts over a long period of time and is well-established both in policy and practice. Any fundamental change would require amendment of the 1940 Act. On the other hand, Chair Gensler could seek to establish a more stringent interpretation of the legal standard through administrative action ranging from SEC jawboning to enforcement action.

Chair Gensler's principal view is that actively-managed mutual funds are a "[t]rap,"[106] and he fervently recommends exchange-traded index mutual funds as less costly and risky. He could promote this view through the imposition of disclosure requirements. For example, he finds it "bizarre" that the "SEC requires no disclosures of the costs of trading the portfolio."[107] The SEC has proposed[108] sweeping modifications of its mutual fund disclosure framework and is currently reviewing public comments with a view to adopting modifications. This presents Chair Gensler with a tailor-made opportunity to help implement his views through enhanced disclosure.

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NOTES

1 Gary Gensler was nominated by President Joseph R. Biden to chair the U.S. Securities and Exchange Commission (SEC) on February 3, 2021, confirmed by the U.S. Senate on April 14, 2021, and sworn into office on April 17, 2021. SEC, Biography, Chair Gary Gensler [hereinafter SEC Biography], available at *https://www.sec.gov/biography/gary-gensler*. For detailed information on Chair Gensler's confirmation, *see infra* n. 28.

2 Gregory Baer and Gary Gensler, The Great Mutual Fund Trap (2002) [hereinafter Book]. The Book is subtitled "An Investment Recovery Plan" and summarized on the cover as "How Americans Are Losing Billions to the Mutual Fund and Brokerage Industries—and How You Can Earn More with Less Risk." Co-author Gregory Baer, a graduate of Harvard Law School, served in the General Counsel's office at the Federal Reserve Board and was Assistant Secretary for Financial Institutions at the Department of Treasury. Book at back jacket flap.

3 The Book covers more than mutual funds, including such topics as money management in general and individual investing in particular. This article focuses principally on parts of the Book dealing with equity mutual funds. This article speaks as of August 23, 2021.

4 Book, *supra* n.2, at 61.

5 *Id.* at 119.

6 *Id.* at 1.

7 *Id.* at 61.

8 *Id.* at 20.

9 *Id.* at 6.

10 *Id.*

11 *Id.* at 113.

12 *Id.* at 111.

13 *Id.*

14 *Id.* at 112.

15 *Id.* at 109.

16 *Id.* at 104. For current and proposed SEC disclosure requirements for the costs of trading a mutual fund's portfolio, *see infra* n.92.

17 Perhaps the different paths taken by Chair Gensler and his brother are reflected in their differences. Gary is said to be a Democrat and Robert, a Libertarian. Gary is said to be right-handed and part his hair on the left, while his identical twin brother is said to be left-handed and part his hair on the right. "The Gensler Twins: Identical? Don't You Believe It," *Bloomberg* (Nov. 18, 2021), available at *https://www.bloomberg.com/businessweek*. Photographs found by the author of this article on the Internet show the twin brothers with too little hair to be parted.

18 Robert Gensler worked at T. Rowe Price from 1993 to 2012. He started as an equity research analyst and moved up to manage three equity mutual funds. The last mutual fund was the Global Stock Fund, a $591 million fund that he took over in 2005. Hanah Cho, "Longtime T. Rowe manager Robert Gensler to retire," *Baltimore Sun* (Apr. 13, 2021), available at *https://www.baltimoresun.com/business/bs-bz-trowe-gensler-retirement-20120413-story.html*. Robert Gensler was a "Morningstar . . . 'five-star' manager," Book, *supra* n.2, at 94, and "very successful money manager," who "provided important support [to the Book] even as his identical twin brother's project questioned the very nature of his industry." *Id.* at x.

19 SEC, SEC Biography: Chairman Arthur Levitt, available at *https://www.sec.gov/about/commissioner/levitt.htm,* stating:

> Arthur Levitt was the 25th Chairman of the Securities and Exchange Commission. First appointed by President Clinton in July 1993, the President reappointed Chairman Levitt to a second five-year term in May 1998. On September 9, 1999, he became the longest serving Chairman of the Commission. He left the Commission on February 9, 2001.

20 Book, *supra* n.2, at back jacket.

21 *Id*.

22 *Id*.

23 *Id*.

24 *Id*.

25 Amazon offers the hardbound book new for $49.63 and used from $1.35 and the paperbound book new for $8.85 and used from $6.03.

26 Morningstar, for example, has reported as recently as March of this year:

> In general, actively managed funds have failed to survive and beat their benchmarks, especially over longer time horizons; only 23% of all active funds topped the average of their passive rivals over the 10-year period ended December 2020; long-term success rates were generally higher among foreign-stock, real estate, and bond funds and lowest among U.S. large-cap funds.

Ben Johnson, CFA Director of Global ETF Research, Morningstar Manager Research, *Morningstar's Active/Passive Barometer* (Mar. 2021), available at *https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/Morningstar-s-U-S-Active-Passive-Barometer-Year-End-2020.pdf?utm_source=eloqua&utm_medium=email&utm_campaign=&utm_content=28441.*

27 Paul Kierman, "Biden's Nominee for SEC Chief, Gary Gensler, Reports Net Worth Between $41 Million and $119 Million," *Wall St. Journ*. (Feb. 12, 2021) [hereinafter WSJ Article], available at *https://www.wsj.com/articles/bidens-nominee-for-sec-chief-gary-gensler-reports-net-worth-between-41-million-and-119-million-1.*

28 The Senate Banking, Housing and Urban Affairs Committee sent Chair Gensler's name to the full Senate for confirmation on a vote of 14 to 10 with the support of two Republicans. The vote was on March 11, 2021. Paul Kierman, "Gary Gensler, Biden's Pick to Head SEC, Approved by Senate Committee," *Wall St. Journ.* (Mar. 10, 2021), available at *https://www.wsj.com/articles/gary-gensler-biden-s-pick-to-head-sec-approved-by-senate-committee-11615404521*. The full Senate confirmed his nomination for the remaining term of his predecessor on a vote of 53 to 45 with the support of three Republicans. The vote was on April 14, 2021. US Senate, Legislation & Records, available at *https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00148*. A few days later, the full Senate confirmed his nomination for a full five-year term on a vote of 54 to 45 with the support of four Republicans. The vote was on April 20, 2021. US Senate, Legislation & Records, available at *https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00157*.

29 SEC Biography, *supra* n.1.

30 Zach Church, MIT Management Sloan School, Biden SEC pick Gary Gensler on fintech, regulation, and blockchain (Jan. 21, 2021), available at *https://mitsloan.mit.edu/ideas-made-to-matter/biden-sec-pick-gary-gensler-fintech-regulation-and-blockchain*.

31 WSJ Article, *supra* n.27.

32 Chair Gensler was born on October 18, 1957. *Gary Gensler*, WIKIPEDIA [hereinafter Wikipedia Entry], available at *https://en.wikipedia.org/wiki/Gary_Gensler#cite_ref-nytimesprotess_9-0*.

33 SEC Biography, *supra* n. 1.

34 Wikipedia Entry, *supra* n.32.

35 SEC Biography, *supra* n.1.

36 Wikipedia Entry, *supra* n.32.

37 *Id*.

38 *Id*.

39 WSJ Article, *supra* n.27.

40 SEC Biography, *supra* n.1.

41 Wikipedia Entry, *supra* n.32.

42 Book, *supra* n.2, at back jacket flap.

43 *Id*.

44 SEC Biography, *supra* n.1.

45 *Id*.; Book at back jacket flap.

46 Chair Gensler won the Alexander Hamilton Award. SEC Biography, *supra* n.1.

47 *Id*.; Book, *supra* n,2, at back jacket flap.

48 SEC Biography, *supra* n.1.

49 Wikipedia Entry, *supra* n.32.

50 SEC Biography, *supra* n.1.

51 Trevor Hunnicutt, Michelle Price, "Biden taps Gensler to work on Wall Street oversight review," *Reuters Business News* (Nov. 6, 2020), available at *reuters.com/article/us-usa-election-biden-wallstreet/biden-taps-gensler-to-work-on-wall-street-oversight-review-source-idUSKBN27M2YI.*

52 Book, *supra* n.2, at 61.

53 *Id*. at 62.

54 *Id*.

55 *Id*.

56 *Id*.

57 *Id*.

58 *Id*.

59 *Id*.

60 *Id*. at 111.

61 *Id*. at 113.

62 *Id*. at 111.

63 *Id*. at 110.

64 *Id*. at 115.

65 *Id*. at 112.

66 *Id*.

67 *Id*. (citing Burks v. Lasker, 441 U.S. 471, 484 (1979), available at *https://supreme.justia.com/cases/federal/us/441/471/*).

68 *Id*. at 112.

69 *Id*.

70 *Id*.

71 *Id*.

72 *Id*.

73 *Id*.

74 *Id*. at 112-113.

75 *Id*. at 113.

76 *Id*. at 16

77 *Id*. at 14.

78 *Id*. Obviously, the specific data are too dated to be described here. For more current data, *see supra* n.26.

79 *Id*. at 100.

80 *Id*. at 16.

81 *Id*.

82 *Id*.

83 *Id*. Obviously, the specific data are too dated to be described here. For more current data, *see supra* n.26.

84 *Id*.

85 *Id*.

86 *Id*. (emphasis in original).

87 *Id*. at 20.

88 *Id*.

89 *Id*. at 6.

90 *Id*. at 61.

91 *Id*. at 109 (footnote omitted).

92 *Id*. at 104. The SEC's Form N-1A Registration Statement for open-end management investment companies (mutual funds), available at *https://www.sec.gov/about/forms/formn-1a.pdf*, under "Item 3, Risk/Return Summary: Fee Table, *Portfolio Turnover;*" calls for disclosure of the costs of trading the portfolio as follows:

> The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was ___ % of the average value of its portfolio.

The SEC has proposed what it calls "comprehensive modifications to the mutual fund . . . disclosure framework." *Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements*, Release Nos. 33-10814, 34-89478, IC-33963 (Aug. 5, 2020) [hereinafter SEC Disclosure Modifications Proposal], available at *https://www.sec.gov/rules/proposed/2020/33-10814.pdf*. The SEC, at 537, proposes to modify the disclosure requirement for trading costs to read as follows:

> 7. Disclose whether the Fund (if not a Money Market Fund) may engage in active and frequent trading of portfolio securities to achieve its principal investment strategies. If so, explain the tax consequences to shareholders of increased portfolio turnover, and how the tax consequences of, or trading costs associated with, a Fund's portfolio turnover may affect the Fund's performance.

For a summary of the SEC's proposed modifications to the mutual fund disclosure framework, *see* Gary O. Cohen, "SEC Proposes Big Changes to Mutual Fund Disclosure Framework," *The Investment Lawyer,* Vol. 27, No. 11 at 1 (Nov. 2020).

93 Book, *supra* n.2, at 104.

94 *Id*.

95 *Id*. at 291.

96 *Id*.

97 *Id*. at 112.

98 *Id*.

99 *Id*.

100 *Id*.

101 *Final Rule: Role of Independent Directors of Investment Companies*, SEC Release Nos. 33-7932, 34-43786, and IC-24816 at text accompanying n.21 (Jan. 2, 2001) (footnote omitted), available at *https://www.sec.gov/rules/final/34-43786.htm#P115_20656.*

102 *Id.* at n.21 (emphasis added).

103 Book, *supra* n.2, at 113.

104 *Id*. at 111.

105 *Id*. at 112.

106 *Id*. at 1.

107 *Id*. at 104. For the SEC's current and proposed disclosure requirements, *see supra* n.92.

108 SEC Disclosure Modifications Proposal, *supra* n.92.