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Compensating Power: An Analysis of Rents and Rewards in the Mutual Fund Industry

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Recent allegations of malfeasance in the investment management industry—market-timing, late-trading, revenue-sharing, and several others—involve a broad range of mutual fund operations. This Article seeks to explain the common source of these irregularities by focusing upon a trait they share: the practice of investment advisers' capitalizing upon their managerial influence to increase assets under management in order to generate greater fees from those assets. This Article extends theories of executive compensation into the context of investment management to understand the extraction of rents by mutual fund advisers. Investment advisers, as collective groups of portfolio managers, interact with the boards of trustees of mutual funds in ways analogous to the dealings of business executives with corporate boards of directors. In this setting, the managerial power hypothesis of executive compensation provides a useful paradigm for understanding distortions in arm's-length bargaining between investment advisers and fund boards, as well as limitations of the market's ability to ensure optimal contracting between those parties.

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I. INTRODUCTION

In the wake of the heaviest outpouring of criticism in its history, the investment management industry has been punished with handsome profits and proposals for a lucrative future stream of Social Security revenues. The year following New York Attorney General Eliot Spitzer's September 2003 accusation of malfeasance in mutual funds was truly an *annus horribilis* for those funds and the financial

houses that invest the funds' money.[1] Prior to Spitzer's announcement, investment advisers[2]—firms of professional money managers who collectively manage more than $7 trillion in assets and advise more than 8000 mutual funds[3]—had enjoyed general approbation for the way in which they ran their businesses.[4] Indeed, while much of corporate America suffered through its own outbreak of accounting malfeasance, commentators hailed mutual funds (owned by ninety-one million investors living in nearly half of all U.S. households[5]) and their unique structure as models of corporate governance.[6] Spitzer's press conference, however, triggered an unceasing tide of opprobrium, which has flowed over the investment management industry and befouled its reputation.

But as the market has recuperated since then, the indignation has ebbed. Shareholders seem to have forgiven any enormities and returned to invest anew and to share in the funds' success.[7] Yet structural flaws in the industry remain. And with the tremendous amount of assets invested in mutual funds, spiced with the possibility that Social Security reform might some day direct an additional $65 billion into personal fund accounts each year,[8] the late transgressions

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1. *See* Press Release, Office of N.Y. State Att'y Gen. Eliot Spitzer, State Investigation Reveals Mutual Fund Fraud (Sept. 3, 2003) [hereinafter Press Release, Eliot Spitzer], *available at* http://www.oag.state.ny.us/press/2003/sep/sep03a_03.html.

2. Although the term "investment adviser" may be understood colloquially to refer to an individual who manages money, the term as used in the mutual fund industry and this Article refers to a professional business organization staffed by such individuals. The Investment Advisers Act of 1940 (Advisers Act) defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities" and "person" to mean "a natural person or a company." Investment Advisers Act of 1940, Pub. L. No. 768, §§ 202(a)(11), (16), 54 Stat. 847 (1940) (codified at 15 U.S.C. § 80b-2(11), (16) (2000)). It is in the latter sense of a company that this Article uses the term "investment adviser."

3. *See* INV. CO. INST., 2004 MUTUAL FUND FACT BOOK 1, 13 (44th ed. 2004).

4. *See* Richard M. Phillips, *Mutual Fund Independent Directors: A Model for Corporate America?*, PERSPECTIVES, Aug. 2003, at 2, 12.

5. *See* INV. CO. INST., *supra* note 3, at 79-80.

6. *See* Phillips, *supra* note 4, at 2, 12.

7. *See, e.g.*, Laura Johannes, *Strong Performers Suffer Less in Mutual-Fund Scandals*, WALL ST. J., Jan. 24, 2005, at C1; David Serchuk, *Fund Companies: After the Fall*, FORBES, Jan. 14, 2005, *available at* http://www.forbes.com/strategies/2005/01/14/cz_ds_0114sf.html ("More than a year after the mutual fund industry got into trouble for late-trading and market-timing practices, shares of some of the offending fund companies have bounced back nicely.").

8. *See* Tom Lauricella, *In Bush Plan, Who Will Do the Managing?*, WALL ST. J., Feb. 4, 2005, at C1 ("Robert Pozen, chairman of MFS Funds and a member of the presidential commission that backed private accounts, estimates that about $65 billion will flow into the accounts every year."). Of course, until any Social Security plan is successfully adopted,

compel a serious appraisal of the industry's architectural vulnerabilities.

After presenting an introduction to the charges against mutual funds, the unique structures of these funds, and the dynamics at work in the alleged malfeasance, this Article in Part II provides background on the components and organization of the investment management industry, beginning with a brief history of its development in the United States and a discussion of the rationales that encourage investment in pooled vehicles. Part III argues that the relationship between mutual fund boards of trustees and the investment advisers that those boards hire can best be understood within the paradigm of executive compensation. Part III then considers what the prevailing model of executive compensation, the optimal contracting approach, might predict when deployed in the investment advisory context. Part IV explores the limitations of the optimal contracting approach and, finding that theory wanting, suggests that another theoretical approach, the managerial power hypothesis, which has heretofore been confined to the operating company[9] context, might apply with equal or greater force in the mutual fund setting. Part V examines the malfeasance exposed by the recent industry investigations and argues that the behavior in question can best be understood as camouflaged extraction of compensation from fund shareholders. The Article concludes that recently proposed and adopted regulatory reforms are, and will continue to be, inadequate to the task of vitiating the influence of investment advisers and the conflicts of interest that currently pervert those advisers' incentives to the detriment of shareholders.

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industry executives have an incentive to diminish estimates of potential inflows to avoid appearing rapacious. Conversely, opponents of Social Security reform have an incentive to inflate the figures to suggest that reforms involving personal accounts are driven by the financial industry's desire for profit. Other estimates suggest that $75 billion or more would flow into personal accounts. *See* Peter Bucci, *Bush Plan Could Add $75B to Funds Annually*, IGNITES, Nov. 8, 2004, http://www.ignites.com/articles/print/20041108/bushplan_could-funds.annually ("Ken Worthington, an analyst at CIBC World Markets, expects 100 million of 130 million taxpayers to invest some of their Social Security money in private accounts. Contributions will likely average $750 a year, assuming an annual cap of $1,000. In comparison, he says, the fund industry took in some $200 billion annually from 1996 to 2003.").

9. The term "operating company" is used in the investment management industry—and this Article—to refer to a typical company other than an investment company or mutual fund; that is, a company outside the investment management business whose primary purpose is the provision of goods or services and not simply the investment of assets. *Cf.* Investment Company Act of 1940, § 3(a)(1), 15 U.S.C. § 80a-3(a)(1) (2000) (setting forth the definition of "investment company" under the 1940 Act).

In the past two and a half years, federal and state investigators have alleged that investment advisers—including many of the most well-respected firms in the business, such as Putnam Investments (Putnam), Alliance Capital (Alliance), and Massachusetts Financial Services (MFS), to name but a few—have indulged in a feast of abuses, including illicitly abetting private investors in arbitraging mutual funds to the detriment of other fund shareholders;[10] failing to "fair value" the worth of assets under their management;[11] permitting favored shareholders to buy and sell fund shares illegally after the daily trading deadline;[12] selectively disclosing the holdings of securities in their funds' portfolios to preferred clients;[13] appropriating shareholder assets to boost fund sales and, in turn, their own advisory fees;[14] and, perhaps not surprisingly, destroying evidence of the aforementioned abuses.[15]

Spitzer sounded the first ominous note on September 3, 2003, when he held a press conference to announce a complaint alleging the

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10. *See, e.g.*, Investment Advisers Act Release No. 2213, Mass. Fin. Servs. Co., Investment Company Act Release No. 26,347, 82 SEC Docket 341 (Feb. 5, 2004), *available at* http://www.sec.gov/litigation/admin/ia-2213.htm.

11. *See, e.g.*, Alison Sahoo, *SEC Probe: Pricing Problems Widespread*, IGNITES, Mar. 24, 2004, http://www.ignites.com/articles/print/20040324/probe_pricing_problems_widespread ("More than half of the 961 global funds and 219 complexes that responded to an SEC inquiry letter used fair-valuation procedures less than five times in the past 20 months. Another 277 funds, or 31% of the respondents, didn't use fair valuation at all during that time.").

12. *See, e.g.*, Riva D. Atlas & Diana B. Henriques, *U.S. Closes Mutual Fund Intermediary*, N.Y. TIMES, Nov. 26, 2003, at C1 ("The regulators in the Office of the Comptroller of the Currency coordinated their decision to close Security Trust with Mr. Spitzer's office and the Securities and Exchange Commission, which both announced their own actions yesterday. The S.E.C. accused the company and three former executives of facilitating hundreds of illegal trades by hedge funds managed by Edward J. Stern, who reached a settlement with Mr. Spitzer in early September.").

13. *See, e.g.*, Paul F. Roye, Dir., Div. of Inv. Mgmt., U.S. Sec. & Exch. Comm'n, Remarks Before the ICI General Membership Meeting (May 20, 2004), *available at* http://www.sec.gov/news/speech/spch052004pfr.htm ("In addition, as the fund industry was resisting efforts to require more frequent disclosure of mutual fund portfolio holdings, some management firm personnel allegedly were selectively disclosing portfolio information that was later used to trade against their funds and harm their investors."); Deborah Brewster, *SEC Hits Out at Mutual Funds' Credibility Gap*, FIN. TIMES (London), May 21, 2004, at 19 (reporting on Paul Roye's announcement that some firms "were selectively disclosing portfolio holdings").

14. *See, e.g.*, Press Release, U.S. Sec. & Exch. Comm'n, Fifteen Firms To Pay over $21.5 Million in Penalties To Settle SEC and NASD Breakpoints Charges (Feb. 12, 2004) [hereinafter Press Release, SEC], *available at* http://www.sec.gov/news/press/2004-17.htm.

15. *See, e.g.*, Gregory Zuckerman, Tom Lauricella & John Hechinger, *Former Fred Alger Official Pleads Guilty*, WALL ST. J., Oct. 17, 2003, at C1 ("But on Sept. 4, Mr. Connelly allegedly told a subordinate to 'delete certain e-mails,' and directed her to instruct three other Alger people who reported to Mr. Connelly to delete e-mails about the [late] trading.").

complicity of several major fund groups in illegal market-timing and late-trading.[16] In the year following that dramatic press conference, barely a week passed during which the industry escaped accusations of yet more transgressions.[17]

Within days of Spitzer's announcement, a pack of governing agencies had loosed investigations of their own upon the investment advisory business.[18] Indeed, within just a matter of months, the Securities and Exchange Commission (SEC) had issued Wells notices,[19] conducted depositions, and even reached settlements in several of its investigations.[20] The aggregated penalties, fines, and fee reductions levied against the investment advisers in just two of those early settlements amounted to almost $1 billion.[21] Since then, other federal regulators and a posse of state agencies have joined the SEC in conducting investigations into dozens of fund complexes, and the aggregate amount paid to settle investigations has climbed to many billions of dollars.[22]

In addition, the SEC quickly proposed and adopted a litany of new rules aimed at patching the industry's ethical leaks. These regulations call for broader disclosure with respect to pricing

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16. *See* Press Release, Eliot Spitzer, *supra* note 1.

17. Until September 2005, the industry publication, *Ignites*, maintained on its Web site a "Scandal Timeline," which in the first year following Spitzer's press conference, from September 3, 2003, to September 3, 2004, listed 204 separate entries. E-mail from Chris Frankie, Managing Editor, *Ignites*, to Hannah Campbell, *Tulane Law Review*, in New Orleans, La. (Jan. 25, 2006) (on file with the *Tulane Law Review*).

18. *See* Brooke A. Masters, *Mutual Fund Abuses Alleged in Two Cases*, WASH. POST, Sept. 17, 2003, at E1.

19. After conducting an investigation into alleged wrongdoing, but prior to recommending that the Commission approve an enforcement action, the staff of the SEC will (in a Wells notice) typically provide defendants with one final opportunity (through a Wells submission) to persuade the staff to change its recommendation. The process derives its popular name from John Wells, the Chair of an Advisory Committee on Enforcement Policies and Practices that published a report in 1972 recommending this procedure. *See* LOUIS LOSS & JOEL SELIGMAN, FUNDAMENTALS OF SECURITIES REGULATION 1481-84 (5th ed. 2004).

20. *See* Press Release, SEC, *supra* note 14.

21. The settlement orders, formalized as SEC releases, set forth the underlying allegations and any penalties or fines to which investment advisers have agreed. *See* Alliance Capital Mgmt., L.P., Investment Advisers Act Release No. 2205A, Investment Company Act Release No. 26,312A, 81 SEC Docket 3401 (Jan. 15, 2004), *available at* http://www.sec.gov/litigation/admin/ia-2205a.htm (setting forth a penalty of $250 million, excluding additional fee reductions and settlements aggregating to $600 million); Mass. Fin. Servs. Co., Investment Advisers Act Release No. 2213, Investment Company Act Release No. 26347 (Feb. 5, 2004), *available at* http://www.sec.gov/litigation/admin/ia-2213.htm (setting forth a total settlement of $225 million).

22. Hank Ezell, *Mutual Fund Cleanup Gets Good Reviews*, ATL. J. CONST., Aug. 29, 2004, at 4Q.

discounts,[23] codes of ethics,[24] investment company governance,[25] and new compliance programs,[26] among almost a score of topics. The self-regulating organizations have also sharpened their pencils, with the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) issuing new corporate governance rules to their members.[27] Congress, too, stoked the legislative machinery, holding numerous committee hearings on the matter and voting on bills aimed at addressing the growing list of complaints.[28]

Of course, the civil bar never long remains ignorant of plumes of smoke emanating from regulatory investigations; plaintiffs' attorneys have commenced an eager hunt for fire of their own. They have already filed more than one hundred civil law suits—both class actions and derivative suits—against dozens of investment advisers, funds, and trustees.[29]

What has been remarkable about this decline and fall is not so much its speed but the pedigree of its tragic hero: the mutual fund industry boasted a largely celebrated history reaching back eighty years. Ostensibly, the investment management business benefits from many of the textbook safeguards designed to guarantee the integrity of any financial industry and to permit optimal contracting amongst all parties.

First, mutual fund boards boast high percentages of independent trustees, who are charged with bargaining at arm's length with investment advisers on behalf of fund shareholders.[30] Second, the industry comprises more than 8000 different funds, and competition

23. *See* Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26,464, 69 Fed. Reg. 33,262, 33,263-65 (June 14, 2004).

24. *See* Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256, Investment Company Act Release No. 26492, 69 Fed. Reg. 41,696, 41,696 (July 9, 2004).

25. *See* Investment Company Governance, Investment Company Act Release No. 26,520, 69 Fed. Reg. 46,378, 46,378 (Aug. 2, 2004).

26. *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204, Investment Company Act Release No. 26,299, 68 Fed. Reg. 74,714, 74,715-23 (Dec. 24, 2003).

27. *See* Phillips, *supra* note 4, at 1.

28. *See* Stephen Labaton, *House Backs Bill To Overhaul Mutual Funds*, N.Y. TIMES, Nov. 20, 2003, at C1 (reporting the U.S. House of Representatives' vote of 418-2 to approve legislation "aimed at deterring trading abuses and fund mismanagement, improving the disclosure of fee information and increasing the independence of fund boards").

29. *See, e.g.*, Complaint, Hammerslough v. Mass. Fin. Servs. Co., No. 04-CV-1185 (S.D.N.Y. Feb. 13, 2004) (a derivative action consolidated as part of the multidistrict litigation of market timing and related claims involving several fund complexes, such as Alger, Columbia, Janus, MFS, One Group, Putnam, and Allianz Dresdner).

30. *See* INV. CO. INST., *supra* note 3, at 8, 27.

for the 91 million investing shareholders would appear to be robust.[31] With scores of investment advisers competing for more than $7 trillion in assets,[32] one would be hard pressed to imagine a more vigorous marketplace. Third, both investment advisers and investment companies are heavily regulated by several important federal regulations, including not only the Securities Act of 1933[33] (the Securities Act) and the Securities Exchange Act of 1934[34] (the Exchange Act) but also the Investment Advisers Act of 1940[35] (the Advisers Act), the Investment Company Act of 1940 (the 1940 Act),[36] and the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).[37] Furthermore, the industry is also governed by specific provisions of the Internal Revenue Code[38] (the Code) and the Employee Retirement Income Security Act of 1974 (ERISA).[39] Largely as a consequence of the stringency of these regulations, the industry is obliged to disclose vast quantities of information about mutual funds and their advisers. In annual reports, semi-annual reports, prospectuses, statements of additional information, certified shareholder reports, and several other regularly required disclosure documents, advisers must, in extensive detail, lay bare the fees, performance histories, investment strategies, and risks of the funds they manage. For any given mutual fund, the disclosure documents filed with the SEC annually may easily amount to several hundred pages. Fourth, many of the shareholders in these funds are not simply passive retirees; they are sophisticated and powerful governmental pension plans, university endowments, and frequently other mutual funds, each aggressively pursuing its own interest with a full-time staff of highly educated and well-informed managers. Finally, shareholders of mutual funds, like any other

31. *See id.* at 13, 79-80.

32. *See id.* at 79.

33. Pub. L. No. 22, 48 Stat. 74 (codified as amended at 15 U.S.C. §§ 77a-77aa (2000)).

34. Pub. L. No. 291, 48 Stat. 881 (codified as amended at 15 U.S.C. §§ 78a-78mm).

35. Pub. L. No. 768, 54 Stat. 847 (codified as amended at 15 U.S.C. §§ 80b-1 to 80b-21).

36. Pub. L. No. 768, 54 Stat. 789 (codified as amended at 15 U.S.C. §§ 80a-1 to 80a-64). The Investment Company Act is often colloquially referred to as either the Company Act or, with apparent disregard for the fact that the Advisers Act was passed in the same year, the 1940 Act.

37. Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 U.S.C.A. (West 2005)).

38. 26 U.S.C. § 4982(a)-(f) (2000).

39. Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified as amended in scattered sections of 5, 18, 26, 29, and 31 U.S.C. (2000)).

investors, have access to the courts to pursue legal remedies to void any advisory agreements that are adverse to their pecuniary interests.

With such an arsenal of structural protections, the investment management industry should have proven largely immune to inept governance and distortions in optimal contracting amongst its constituent parties. Then whence, one must ask, came this collapse?

While the soothing effects of a market rebound appear to have cooled the interest of some investors in seeking an answer to that question, the amounts of money at stake are simply too significant to ignore. Settlements and fines in the first year of investigations alone amounted to many billions of dollars, and those amounts are very likely to grow significantly through civil litigation.[40] Moreover, those sums could be dwarfed by the billions and even trillions of dollars in revenues that some analysts believe Social Security reform would bring to the industry.[41] If mutual funds are truly as susceptible to malfeasance as the broad array of regulatory investigations would suggest, surely the time to understand those vulnerabilities is now, prior to the emergence of new irregularities and before the arrival of substantial inflows of money magnifies the problem.

This Article argues that the industry's faults can be found in the idiosyncratic structure of mutual funds, a structure that exacerbates the ability of managers to wield substantial power and to use that power to extract rents both overtly and surreptitiously from shareholders.[42]

The very structure of mutual funds lays them open to such abuses. The typical mutual fund is a rudimentary legal vessel into which shareholders contribute money and over which a board of trustees governs; the fund has no offices, no equipment, and no employees.[43] Instead, all the functions that a fund needs to perform in order to achieve its basic mission—which is, essentially, to increase the value of each shareholder's investment—are performed by third parties.[44] The most important of these service providers is the entity that manages the fund's investment portfolio, the investment adviser.

The investment adviser enters into an advisory agreement with the fund, represented by the fund's board of trustees, pursuant to which the adviser agrees to manage the fund's money in exchange for a fee

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40. *See* Ezell, *supra* note 22.

41. *See* Lauricella, *supra* note 8; Bucci, *supra* note 8.

42. *See generally* Paul G. Mahoney, *Manager-Investor Conflicts in Mutual Funds*, 18 J. ECON. PERSP. 161 (2004) (describing the structure of mutual funds and the incentives and conflicts facing managers and brokers).

43. *See* INV. CO. INST., *supra* note 3, at 2.

44. *See id.*

calculated as a percentage of the assets under management. In essence, the investment adviser serves as the entire management and all the personnel of the fund. If a fund—that is, its board of trustees—is unhappy with the investment adviser's performance, there is but one contractual recourse: to terminate the advisory agreement. The board is heavily constrained from hiring or firing particular executives or portfolio managers who work for the investment adviser because those individuals report directly only to their own company's board of directors.

Termination of an advisory agreement, however, would have a devastating effect on the fund. To change the investment adviser of a fund would be to change the very nature of the fund and to nullify an essential reason many shareholders have invested in the fund: namely, to obtain the services of a particular investment adviser. When thousands of shareholders flocked to the Magellan Fund in its heyday—the period during which it rose 2700% between 1977 and 1990[45]—many of them were not merely hoping to aggregate their monies with other shareholders; rather, they were specifically seeking the wisdom of Peter Lynch, the celebrated portfolio manager who had won superlative returns on shareholder investments. Magellan's board might have believed, therefore, that to replace Lynch and Fidelity Investments with another adviser would have been to convert the fund into a completely different investment choice. Rather, the board might conclude that, if shareholders are unhappy with their investment adviser, they do not need to wait for the fund's board to provide a remedy; the shareholders have a remedy of their own at their ready disposal: they can simply redeem their shares and leave the fund. Of course, the ability to redeem is useful to shareholders only if they know when to do so. Many shareholders, however, may not be paying close attention to whether their adviser is extracting insupportable fees, either because they are unwilling or unable to monitor the situation or because they are receiving sufficiently large returns from the fund not to mind losing out on additional gains. Either way, many shareholders may not exit a fund even when it may be in their interest to do so. In any event, the termination of advisory agreements is so rare as to be practically nonexistent. This limitation severely restricts the ability of

45. *See* Stephen Schurr, *A Little Knowledge Can Often Be a Dangerous Thing*, FIN. TIMES (London), Dec. 14, 2004, at 12 ("I am awestruck by [Lynch's] genius as a money manager, as evidenced by the 2,700 per cent return of the Magellan fund from 1977 to 1990.").

a fund's board to control the management of the fund. Investment advisers are well aware of this limitation.

Typically, the only recourse open to a board is for its members to make their displeasure known publicly, in an attempt to embarrass an uncooperative investment adviser or to invite the possibility of SEC scrutiny of the adviser. Particularly in the current climate of heightened regulatory oversight, the threat of such action by a board certainly can restore some balance of power with the investment adviser. Advisers are therefore not completely free to impose their unchecked will in the annual negotiations with a fund board. Accordingly, if an adviser wishes to extract rents without triggering board outrage, it may have to camouflage its behavior—that is, an investment adviser may attempt to obtain greater-than-optimal value from shareholders without being detected.

In the unique structure of investment companies, advisers are essentially surrogate executives to mutual funds, and advisory agreements govern their compensation. And, as has been argued in the study of executive compensation,[46] though not before in the mutual fund context, a substantial degree of managerial power may distort optimal contracting and permit managers to extract rents. In this setting, advisers wield a great deal of managerial power and often use that power to extract value from shareholders beyond what has been negotiated in the advisory contract. Indeed, this novel application of the managerial power hypothesis demonstrates that the alleged transgressions are best understood as camouflaged attempts by advisers to mine rents from fund shareholders.

II. THE INVESTMENT ADVISORY INDUSTRY

A. *A Brief History of Mutual Funds*

The notion of pooling money into a common investment fund is not a new one. Indeed, European financiers have been investing in mutual funds or their antecedents for hundreds of years.[47] In Britain,

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46. *See, e.g.*, Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 843-49 (2005); Lucian Arye Bebchuk, Jesse M. Fried & David L. Walker, *Managerial Power and Rent Extraction in the Design of Executive Compensation*, 69 U. CHI. L. REV. 751, 785 (2002); *cf.* Kevin J. Murphy, *Explaining Executive Compensation: Managerial Power Versus the Perceived Cost of Stock Options*, 69 U. CHI. L. REV. 847, 857-69 (2002) (arguing that managers extract greater compensation through the undervalued "perceived cost" of stock option incentives as opposed to managerial power).

47. Dustin Woodard, *The History of Mutual Funds*, http://mutualfunds.about.com/cs/history/a/fund_history.htm (last visited Mar. 28, 2006).