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S7-12-10
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September 7, 2010

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OFFICE OF THE SECRETARY

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Committee
100 F Street, NE
Washington, DC 20549-1090
Via Certified Mail

Re: Public comment on target-date mutual funds, my previous correspondence to Chairman Mary Shapiro on July 14, 2010 and non-appearance on public comments on SEC website as of September 6, 2010

Dear Elizabeth:

In recently reading an article in Investment News on August 30, 2010, by Darla Mercado, entitled, "SEC's Target Date Proposal Met with Raging Indifference" it mentioned that there were only 21 letters posted on the SEC's website. What is troubling is that the SEC conveniently omitted my letter to Chairman Shapiro on July 14, 2010. While it may have been a mistake not to send it to you directly, the American public needs to know the researched points I put in my letter, namely.

- Disclosure is a major problem with target-date mutual funds, and additional disclosure will do little if anything to help investors. Additional disclosure may actually harm investors.
- Target-date mutual funds are overwhelmingly complex, have poor performance, and the more I research them are piling on with additional risks such as increased use of derivatives.
- Lastly, the problem of hypocrisy. As the enclosed letter documents, the Federal Government (including the Securities & Exchange Commission where you work) and The Federal Reserve System, the two key regulators who oversee financial markets do not put a majority of their 401(k) thrift plan assets in volatile mutual funds. Empirical proof in the letter shows that both the federal government and the Federal Reserve place a majority of their assets in guaranteed accounts backed either by the U.S. Treasury or life insurance companies.

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It is my hope that you post this information at the very least on your website. You will find copies of my previous certified correspondence to Chairman Shapiro as well as copies to J. Mark Iwry and Michelle Greene of Department of Treasury which is supposed to look out for investors interests, as well as Senator Herbert Kohl, who originated the investigation in regards to target date funds.

Hoping to hear from you, I remain.

Sincerely,

Barry J. Dyke

Encl: Comments on Proposed Rule Investment Company Advertising: Target Date Retirement Fund Names and Marketing
Certified Letter to Chairman Mary Shapiro, July 14, 2010, including analysis of Fidelity Freedom 2020 Target-Date Retirement Fund
Certified Letter to J. Mark Iwry, Special Advisor to Secretary of the Treasury, July 21, 2010
Certified Letter to Michelle Greene, Deputy Assistant for Financial Education, Treasury, July 21, 2010
Certified Letter to Senator Herbert Kohl, Special Committee on Aging, July 14, 2010

Comments on Proposed Rule
Investment Company Advertising: Target Date Retirement Fund Names and Marketing

[Release Nos. 33-9126, 34-62300, IC-29301; File No. S7-12-10]

Sep. 2, 2010	Larry W. Beeferman and Matthew B. Becker, Pensions and Capital Stewardship Project, Harvard Law School, Cambridge, Massachusetts
Sep. 1, 2010	Brian H. Graff, Executive Director/CEO, American Society of Pension Professionals & Actuaries, Arlington , Virginia
Aug. 31, 2010	David P. Loftus, Financial Advisor, Patriot Financial Group, Warwick, Rhode Island
Aug. 30, 2010	Richard R. Applegate, President, First Commonwealth Financial Advisors, Inc.
Aug. 27, 2010	Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association, New York, New York
Aug. 24, 2010	Sharath Sury, Professor of Finance and Economics, San Jose, California
Aug. 23, 2010	Ryan Alfred, President, BrightScope Inc., San Diego, California
Aug. 23, 2010	Laura P. Lutton, Editorial Director, Fund Research Group, Morningstar, Inc., Chicago, Illinois
Aug. 23, 2010	Tina G. Stavrou, North American Securities Administrators Association, Washington, District of Columbia
Aug. 23, 2010	Lew Minsky, Executive Director, Defined Contribution Institutional Investment Association (DCIIA), Washington, District of Columbia
Aug. 23, 2010	Kevin R. Keller, CAE, CEO, Certified Financial Planner Board of Standards, Inc., Washington, District of Columbia
Aug. 23, 2010	David Certner, Legislative Counsel and Legislative Policy Director, AARP
Aug. 23, 2010	Senators Tom Harkin, Michael Enzi, and Herb Kohl, U.S. Senate
Aug. 23, 2010	Michael Isaac, CCO, Stadion Money Management, Inc., Watkinsville, Georgia
Aug. 23, 2010	Scott Goebel, Senior Vice President and General Counsel, Fidelity Management & Research Company
Aug. 23, 2010	Andrew N. Owen, Executive Vice President, Wells Fargo Funds Management, LLC, San Francisco, California
Aug. 23, 2010	Darrell Braman, Managing Counsel; David Oestreicher, Chief Legal Counsel; Danielle Nicholson Smith, Managing Legal Analyst; and David Abbey, Managing Counsel; T. Rowe Price

Aug. 23, 2010	Karrie McMillan, General Counsel, Investment Company Institute
Aug. 23, 2010	Chip Castille, Managing Director Head, US Defined Contribution, BlackRock, Inc.
Aug. 23, 2010	Kristi Mitchem, Senior Managing Director, Defined Contribution, State Street Global Advisors
Aug. 23, 2010	Mary Beth Rhoden, Secretary and Associate Counsel, Russell Investments
Aug. 23, 2010	Jeffrey S. Coons, Ph.D. CFA, President, Manning & Napier Advisors, Inc.
Aug. 23, 2010	James Szostek, Vice President, Taxes & Retirement Security, American Council of Life Insurers
Aug. 23, 2010	Edward Ferrigno, Vice President, Washington Affairs, Profit Sharing / 401k Council of America
Aug. 23, 2010	Lisa J. Bleier, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, Washington, District of Columbia
Aug. 23, 2010	David S. Schwartz, Senior Counsel, The Mutual Fund Directors Forum
Aug. 20, 2010	Jane White, President, Retirement Solutions, LLC, Madison, New Jersey
Aug. 20, 2010	George C.W. Gatch, Chief Executive Officer, IM Americas, J.P. Morgan Asset Management
Aug. 20, 2010	Ronald Surz, President, Target Date Solutions
Aug. 18, 2010	Thomas M. Jones, Investment Advisor Representative, Tucson, Arizona
Aug. 16, 2010	Jodi DiCenzo, CFA, CPA, Partner, Behavioral Research Associates
Aug. 13, 2010	F. William McNabb, III, Chairman and Chief Executive Officer, The Vanguard Group, Inc., Malvern, Pennsylvania
Aug. 10, 2010	Memorandum from the Division of Investment Management regarding a July 21, 2010 meeting with representatives of Defined Contribution Institutional Investment Association
Aug. 5, 2010	John S. Morgan, Navigator Newsletters
Aug. 4, 2010	Mark S. Yamada, President and CEO, PUR Investing Inc., Toronto, Canada
Aug. 3, 2010	Robert Sole
Jul. 20, 2010	Richard J. Heinz, Lisle, Illinois
Jul. 13, 2010	Steffanie H. Burgevin, Senior Vice President, Investment Officer, Wells Fargo Advisors, LLC, Leesburg, Virginia
Jul. 11, 2010	James C. Brown, Fairfax, Virginia
Jul. 9, 2010	Maurice J. Betts, Alexandria, Virginia
Jul. 8, 2010	Concepcion G. Perez
Jul. 8, 2010	Edward J. Spall, retired engineer, Manassas, Virginia
Jul. 8, 2010	M.G.
Jul. 8, 2010	Virginia Blum, Silver Spring, Maryland

Jul. 5, 2010	Edward L. Stanton, Retired Engineer, Fountain Valley, California
Jul. 5, 2010	Alan H. Moore, COO, Slavic401k.com, CPA, Masters in Economics, Boca Raton, Florida
Jul. 2, 2010	John Daisy, Albany, New York
Jun. 30, 2010	Keith L. Shadrick, President, Axia Advisory Corporation, Indianapolis, Indiana
Jun. 25, 2010	Ron Surz, PPCA Inc.
Jun. 23, 2010	Edward K. Watkins, Ledyard, Connecticut
Jun. 17, 2010	Arthur E. Kieran, Individual Investor, Killeen, Texas

http://www.sec.gov/comments/s7-12-10/s71210.shtml

CASTLE ASSET MANAGEMENT

July 14, 2010

RECEIVED
SEP 13 2010
OFFICE OF THE SECRETARY

Ms. Mary Shapiro
Chairman
Securities & Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Public comment on target date mutual funds, reference SEC release 2010-103, June 16, 2010, New Measures to Help Investors in Target Date Funds, New Disclosure

Dear Chairman Shapiro:

I realize that the SEC's authority for substantive regulation target-date funds is limited. It appears that the only thing the agency can do is to ask for more disclosure in regards target-date funds. However, I sincerely believe that additional disclosure will do little, if anything to protect Americans' retirement funds and could actually put them more in harm's way.

Since there is a sixty day window for public comment on the state of target-date funds, there are three major problems I would like to submit with this letter in regards to public comments for target-date mutual funds.

The first major problem is disclosure. Additional disclosure has become the de facto legal method of absolution of financial sins of Wall Street, and the financial industry. More often than not, additional disclosure has given financial institutions more legal protection and exemptions from legal liability—whereas investors get less.

The second major problem is the overwhelming complexity of target-date mutual funds, and overall poor investment performance. Today, the typical target date mutual fund can have more moving parts than a nuclear powered aircraft carrier. And despite their quantitative sophistication and computer model asset allocation programs, most investors in target-date funds would have been better off in treasury bills, bonds or annuities over the past ten years. [As you may already know, the Standard & Poor's 500 stock index has fallen at an annualized rate of 3% a year over the past 10 year years (including dividends and controlling inflation)].

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The third problem is hypocrisy. Empirical proof shows that although target-date mutual funds are the most favored Department of Labor qualified default investment account (QDIA) for private industry 401(k) plans since the Pension Protection Act of 2006, two of the country's key financial regulators—the federal government and the Federal Reserve System—do not embrace the volatile target-date funds they have chosen for the private sector.

This letter will prove and confirm that the $270 billion Federal Government Thrift Plan (TSP) [the largest 401(k) thrift plan in the world] and the $5 billion Federal Reserve System 401(k) invest a majority of their retirement savings in *guaranteed accounts* or *fixed life insurance annuities*.

Additional research, done by me and others, through reviewing SEC proxy statements, reveals the nation's executives also favor *guaranteed deferred savings accounts* secured by their company's balance sheets—not volatile target-date mutual funds.

Lastly, the majority country's largest banks—which have received trillions of dollars of taxpayer assistance, relief, guarantees, backstops, subsidies and favorable laws, invest a substantial amount of their core Tier One Capital and deferred compensation plans into *high cash value life insurance* and *annuity* products.

First, let us address the problem of disclosure. Today Americans are disclosed to death with everything from auto loans, cell phone bills, credit cards, broker-dealer arbitration agreements, student loans, to subprime mortgages. With each new social problem, lawmakers' knee jerk reaction is to have increased financial disclosure. It is cheap, easy and supposedly empowers people to make better decisions.

Trouble is disclosure does not work consistently—in many times not at all. Take credit cards and truth-in-lending which require lenders to disclose interest rates and fees. Law makers thought that disclosing annual percentage rates (APR) would help borrowers shop around for better deals in credit. But studies show that people still don't understand what APR means. *Increased disclosure has not led to lower rates*. Yet in February 2010, lawmakers, with the Credit Card Accountability & Disclosure Act, piled on more disclosure requiring credit card companies post agreements on-line. But disclosure agreements are buried in fine print. Nobody reads them anyways. Disclosure statutes are overused and overtly broad. Consumers are so inundated with disclosure requirements they become numb. Elizabeth Warren, the TARP overseer and law professor says this about credit card disclosure, "I teach contract law at Harvard, and I can't understand half of what it says." And upon careful inspection, a credit card is simple in comparison to the complexity of a target-date mutual fund which is an over cooked concoction of mutual funds, stocks, bonds, derivatives, commodities and so on.

The issue of additional disclosure for target-date funds is particularly important because many consumers are in these investments as the *default choice* for their 401(k) plan. Just disclosing the investment strategies does not make people aware of the real risks. Telling people that they have a certain percentage in stocks means nothing. Tragically, the majority of people in these instruments are not Wall Street financiers, at best they are unsophisticated savers. Finally, investment strategies within a target-date fund are subject to varying and changing methods of asset allocation, and to the whims of the investment manager. With these facts in mind, it is hard to believe that additional disclosure will protect investors.

Lastly, a paper released in the winter of 2010, entitled "The Failure of Mandated Disclosure" written by Omri Ben-Shahar of The University of Chicago Law School, and Carl E. Schneider at the University of Michigan Law School reveals the *spectacular failure of mandated disclosure*, a commonly used regulatory technique in financial matters. Using empirical evidence, Ben-Shahar and Schneider show that mandated disclosure failed to improve financial decisions in every field (e.g. financial transactions, insurance, health care, Miranda warnings and goods & services).

Secondly, target-date funds are relatively new incredibly complex financial instruments which are virtually impossible to rate or measure. As a funding medium for Americans 401(k) s, target-date funds have performed poorly, particularly during 2008. Many of the strategies used by target-date funds such as asset allocation and automatic rebalancing failed to insulate Americans from the market crash. Asset allocation, promoted by Wall Street which is fixated on selling investment products, proved to be a worthless defense. Investors and target-date funds piled into investments such as commodities, foreign stocks—but these assets proved risky and fell like everything else. The target-date fund concept of "Glide Path" which maintained that a fund should have a larger portion of the fund in guaranteed instruments as it neared retirement was an absolute joke. In 2008, 2010 target-date funds from Fidelity, American Funds, Vanguard, T. Rowe Price, and Oppenheimer had *50% or more of their portfolios in volatile equities*. Despite what computer model programmers say, there is no perfect asset allocation model. In a down market, anything without a guarantee gets hammered.

People want to believe, and Wall Street is more than willing to sell magic potions to wealth—financial alchemy—if you will. Target-date funds are just one of the latest magic potions. If there was some mathematical formula to invest mathematically which would be certain to come out ahead of buying and holding, then we would have a perpetual wealth machine. We are sold, as a ticket to wealth, gimmicks such as dollar-cost averaging, market timing strategies, asset allocation, enhanced options , rebalancing and target-date funds. While there may be some psychological benefits to some of these ideas, and they may protect you somewhat in down markets, there is no secret to creating wealth. It is time to stop believing the drivel that you can make money without really working for it. It is all bunk. There is no mathematical formula, asset allocation, rebalancing or glide path that guarantees or enhances wealth creation.

For the purpose of this letter, and for the benefit of retirement investors everywhere, I reviewed a popular target-date mutual fund which a client had, the Fidelity Freedom 2020 Fund (FFFDX). After spending between 20 and 30 hours pouring over this target-date fund, I am more confused as ever. I have included a seven page summary of this one target-date fund—boiled down from literally thousands of investment holdings. Key findings are as follows.

One. The Fidelity Freedom 2020 fund has been in existence since 1996. The fund has significant assets over $19.1 billion dollars. It is run by one of the country's largest mutual fund managers, Fidelity Investments.

Two. Performance of the fund has been poor. According to Fidelity website, the average annual return over five years has been 2.57%, over ten years 1.8% (June 2010).

Three. Fidelity Freedom 2020 is extremely complicated. It is a mutual fund containing twenty-eight separately managed mutual funds.

Four. The number of stock and bond holdings in the Fidelity 2020 Fund is in the aggregate, incomprehensible. As of May 31, 2010, according to Fidelity there are over 3,350 *different stock holdings* alone.

Five. There is tremendous cross ownership of large stocks within in the funds—making a mockery of the diversification/asset allocation concept. For instance stocks such as Chevron, Microsoft, and General Electric are in the top ten holdings of three mutual funds within the target-date fund. JPMorgan Chase and Bank of America—two banks who have benefited tremendously from taxpayer assistance in the credit meltdown, are top ten holdings of four of the funds.

Six. There are more than 120 commodity linked notes, commodity futures and commodity swaps within Fidelity Freedom 2020.

Seven. There are more than 200 hundred pages of bond holdings.

Eight. In my review of the bond funds, the Fidelity High Income Fund troubled me as it contained a large allocation of *Payment-in-Kind (PIK) bonds*. PIK bonds are similar to negative amortization subprime mortgages, in that if the bondholder cannot make interest payments, additional interest is added to the bond principal. If people really knew what PIK bonds were, I believe they would not want to own them. Are these risks being disclosed? But there they are, PIK bonds buried and camouflaged in their target-date mutual fund. There are roughly $390 million of these PIK bonds within Fidelity Freedom 2020. There are also over $430 million of highly leveraged private equity buyout loans for companies such as Aramark, HCA, Toys R Us, Hertz, First Data, Sunguard, Michael's Stores, Clear Channel, Six Flags, FairPoint and others. FairPoint and Six Flags have already filed bankruptcy, Clear Channel struggles under its massive debt load.

Nine. In light of the above, I find it impossible that the average American investor could easily comprehend such an investment, never mind monitoring it. The complexity is overwhelmingly.

Furthermore, Chairman Shapiro, as you know, even the most sophisticated investors got hammered in the investment mania which led up to this massive economic correction. As you are aware, Finra—your prior employer and financial self-regulator—

theoretically a very sophisticated investor—had disastrous investment results in 2008. According to form 990, Finra lost *$695 million or about 30% of its portfolio* when it invested in unregulated hedge funds, private equity investments, equities and so on. If a professional regulator/investor such as Finra loses 30% in the market, how is more disclosure going to help average Americans with target-date funds?

Finally, there is hypocrisy. Facts reveal that The Federal Government, The Federal Reserve System 401(k), the nation's executives and the nation's major money center banks do not invest their self-directed retirement plans nor their reserves into extremely complex hard to understand, even harder to evaluate target-date mutual funds. They invest their money into products with guarantees.

Let's first examine what federal employees (including those at the SEC, White House and Congress participate in) put their money in the Thrift Savings Plan (TSP). As of December 31, 2009, the TSP has $271 billion in assets. [Federal employees and those of the Federal Reserve System can theoretically take on more market risk; since they are covered under Cadillac defined benefit pension plans, which 80% of Americans no longer enjoy. (Source: Employee Benefits Research Institute) but they do not].

Federal Thrift Savings Plan
www.tsp.gov
Assets as of 12/31/2009

	Inception Plan style	Assets % of Plan $$/Billions	Volatility	5 Year Return	10 Year Return
G Fund	**1987 Interest**	**$118.7 43.8%**	**none Treasury backed**	**4.20%**	**4.62%**
F Fund	**1988 Fixed income**	**$16.8% 6.19%**	**low moderate**	**5.06%**	**6.39%**
C Fund	**1988 Stock index**	**$66.9 24.6%**	**moderate**	**0.47%**	**-0.94%**
S Fund	**2001 Small Cap**	**$18.4 6.78%**	**moderate high**	**2.25%**	**N/A**
I Fund	**2001 Int'l stock**	**$23.6 8.70%**	**moderate high**	**3.67%**	**N/A**
L Funds*	**2005 Allocation**	**$26.6 9.81%**	**All risks Unknown**	**N/A Various**	**N/A Various**

L Funds are the Lifecycle or Target-date funds, the one size fits all is recommended to federal employees. On the TSP plan description it says, *"Putting your entire TSP account into one of the L Funds will help you achieve the best expected return for the amount of expected risk that is* appropriate *for your time horizon."* L Funds consist of asset allocations of the above G, F, C, S and I funds. What is of particular interest is that the L Funds, as of January 1, 2010, have large allocations of the G Fund. According to TSP, L Income Fund has 74% of its allocation in the G Fund, L 2010 has 70% of its allocation in G Fund, L2020 has 34%, L2030 has 21% and L2040 has 10% .Thus, each government life cycle fund has a guaranteed component, which target-date funds in the private sector do not.

Thus from the above, we can conclude that the TSP plan, with its G and F Funds, has 49.99% of its assets allocated to investments which have very low or moderate risk. What's more, *the G and F funds clearly outperformed their C, F and I stock counterparts* over five and ten years. And when you add in the asset allocations components of into the L funds, it is clear *that more than 50% of the TSP plan assets are backed by guarantees*—not target-date mutual funds.

Next there is asset mix of the Federal Reserve System 401(k) Thrift Plan. The Federal Reserve is, after the federal government, the top regulator of financial markets and has probably the highest concentration of PhD economists in the world. Where do the Federal Reserve System employees put a majority of their assets? *Not in target-date mutual funds*. The following is a summation of the Federal Reserve System Thrift Plan as of the first quarter of 2010

Composition of Federal Reserve 401(k) Thrift Plan First Quarter 2010
www.federalreservebenefits.org
Amounts invested include Asset Allocation Funds in core balances, designed by The Ayco Company LP, a Goldman Sachs Company

Fund Name	Assets/Millions % of Fund	Volatility	Underlying Assets
Interest Income Fund	**\$3,082.4 61.2%**	**None**	**86% fixed life annuity 13.8% Vanguard**
Government Securities Fund	**\$233.3 4.6%**	**low**	**Government Securities**
Bond index Fund	**\$204.5 4.1%**	**low-moderate**	**Bond index Barclays Agg.**
TIPS Index Fund	**\$84.6 1.7%**	**low**	**Treasury inflation protected securities**
Equity Fund	**\$507.4 10.1%**	**moderate-high**	**Equities-Blackrock Davis managed**
Equity Index Fund	**\$469.5 9.3%**	**moderate-high**	**MSCI U.S. Broad Market index**

International Equity Fund	**$295.6 5.9%**	**moderate-high**	**International stocks, various**
Small company Equity Fund	**$142.1 2.8%**	**moderate-high**	**Small company stocks**
REIT Index Fund	**$14.2 0.3%**	**moderate-high**	**Real estate investment trusts**

Thus, we can accurately conclude that the Federal Reserve System 401(k) Thrift plan has 71.6% of its assets—in the aggregate, invested in financial products of low market volatility (interest income, government securities, bond index and TIPS Index funds).

Lastly, Chairman Shapiro, my research in regards to executive retirement plans confirms that more often than not, executives for their own thrift plans/deferred compensation agreements/supplemental savings plans not in volatile mutual funds but in safe accounts generally backed by the balance sheet of the company. I previously wrote to Sen. Herbert Kohl in January 2010 about this. I will include a copy of my previously letter to the Senator, including an article by the Wall Street Journal which documents this trend as well.

Finally, I will include a copy of the book I wrote entitled; "The Pirates of Manhattan" which came out in May of 2007 and explains the historical problems of mutual funds. This did not address the newer problems with target-date mutual funds, which are far more complex yet and in many ways, more troublesome. My research also reveals that the country's major banks enthusiastically embrace high cash value life insurance and annuity products because of the stability of the products, lack of leverage, solid track record in investment management and other benefits.

This letter should be ample enough evidence that just adding more disclosure to target-date mutual funds will not help most American savers and unfortunately, probably hurt them.

I hope we can continue this discussion further. Americans, now more than ever, need impartial education, common sense financial regulation to build a better sustainable financial future.

Sincerely,

Barry J. Dyke

Encl: Fidelity Freedom 2020 Fund (FFFDX) Summary as of May 31, 2010, Copy of "The Pirates of Manhattan", Letter to Senator Hebert Kohl, January 3, 2010, Summary Fidelity Freedom 2020

CC: Senator Herbert Kohl, Chairman, Special Committee on Aging

Enclosures Available in Commission’s Public Reference Room