July 19, 2007

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: SEC Rule 12b-1 Roundtable (File No. 4-538)

Dear Ms. Morris:

The Securities Industry and Financial Markets Association ("SIFMA")[1] wishes to congratulate the Securities and Exchange Commission (the "Commission") for conducting an outstanding rule 12b-1 roundtable on June 19th. We believe it was a great success in terms of the diversity and expertise of the panelists, as well as with respect to the breadth of the issues covered.

In conjunction with the roundtable, SIFMA filed a White Paper with the Commission regarding mutual fund fees and expenses in the context of mutual fund distribution and shareholder servicing practices.[2]

Given the comprehensive nature of the discussion contained in the SIFMA White Paper, we are limiting our comments herein to certain matters that arose during the course of the June 19th roundtable.

OVERVIEW

The executive summary of the SIFMA White Paper concludes that:

> "Rule 12b-1 has been a success; curtailing or withdrawing the rule would harm investors and competition in the marketplace. Similarly, other fee arrangements have fostered innovation and supported higher levels of

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] SIFMA White Paper dated June 13, 2007 "Responding to Mutual Fund Investors' Changing Needs; Mutual Fund Distribution and Shareholder Servicing Practices. Available at: http://www.sifma.org/regulatory/pdf/12b-1MFWhitePaper6-13-07.pdf.

> services. It may be appropriate to improve disclosures for the benefit of investors and fund boards, but it would be a major mistake for the SEC to withdraw or substantially curtail Rule 12b-1, or otherwise to restrict the fee arrangements that have fostered innovation, flexibility, and investor choice."[3]

We believe that the vast majority of panelists who participated at the roundtable, even those who might have been expected to have divergent views, supported the above conclusions. Below we discuss these matters as well as other topics that were raised during the roundtable.

HISTORICAL PERSPECTIVE

The following text appears in the SEC press release announcing the roundtable:[4]

> "When the Commission adopted Rule 12b-1 more than a quarter century ago, the idea was that 12b-1 fees would be a temporary solution to address specific distribution problems, as they arose. But today's uses of 12b-1 fees have strayed from the original purposes underlying the rule, and it is time for a thorough re-evaluation," said SEC Chairman Christopher Cox. "This roundtable will help us review current uses of 12b-1 fees, how those fees impact retail investors, and the interests and concerns of independent directors, who must approve 12b-1 plans. The roundtable also will help us identify and evaluate the possibilities for reforming Rule 12b-1."

SIFMA supports the Commission's initiative to undertake a thorough review of Rule 12b-1, which was adopted in 1980. During the ensuing 27 years, mutual fund assets have increased to more than $11 trillion and are held by nearly 100 million investors. Also, the scope and nature of administrative and investment services provided to fund shareholders, and the entities providing such services, has changed dramatically during that period. In particular, the need for investment guidance is greater than ever given that mutual funds are the core investment of most retirement accounts, and there has been a wholesale shift from employer defined benefit plans to 401(K) and other defined contribution plans.

However, we disagree with the notion set forth in the press release, that Rule 12b-1 was intended to be a temporary solution, or the notion that the rule did not contemplate payments to dealers. The members of the first roundtable panel, several of whom were actually involved in the drafting of the rule, uniformly confirmed that Rule 12b-1 was never meant to be a temporary solution.

CURRENT USE OF RULE 12B-1 FEES/TRANSPARENCY

There was extensive discussion regarding the manner in which 12b-1 fees are utilized today, and there seemed to be little disagreement on three basic points. First, that such fees support legitimate and necessary administrative and investment services for fund shareholders. Second, that the utilization of 12b-1 fees has been impacted by the wholesale shift in shareholder servicing from funds to intermediaries, the substantial decline in front-end sales loads (or the converse) and the increased need of investors for

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[3] ID at p.3.
[4] SEC Press Release No. 2007-106.

continuous advice. Third, that existing disclosures may not have kept pace with current uses of 12b-1 fees, and that therefore transparency enhancements are needed.

We agree with all of these points and further discuss transparency below.

EXTERNALIZATION

During the roundtable, some panelists recommended that 12b-1 fees be assessed at the account level, rather than the fund level, as a means of making such fees more transparent to shareholders. Others noted that charging fees at the account level would engender very difficult administrative complexities for intermediaries and create adverse tax consequences for shareholders. One commentator estimated that these tax consequences could reduce fund returns by 10 to 20 basis points, which could cost a shareholder thousands of dollars on fund shares held over the long term.

We, therefore, do not believe that account level externalization is an appropriate methodology for addressing transparency. Rather, we note that the Commission has indicated that it contemplates reproposing a point of sale rule and is also undertaking a prospectus simplification project. Either, or both of these, would seem to be more effective vehicles for providing enhanced disclosure with respect to the level and uses of 12b-1 and possibly other fund fees and expenses, without giving rise to the anti-consumer unintended consequences associated with externalization.

EFFECT ON COMPETITION

Several panelists spoke to the important role that 12b-1 fees have played in leveling the competitive playing field between large and small funds and intermediaries. The availability of 12b-1 fees makes smaller funds more attractive to larger intermediaries, and correspondingly smaller intermediaries, that do not enjoy the same economies of scale as larger ones, are able to support and offer a broader choice of funds for their clients.

One panelist also pointed out that 12b-1 fees "democratize" the fund ownership process, since larger shareholders help defray the costs of providing shareholder support and investment services to smaller shareholders.

FUND BOARD APPROVAL PROCESS

At the time rule 12b-1 was adopted the Commission issued recommendations/guidelines which have become generally known as the "nine factors" fund boards should consider when approving 12b-1 distribution plans. While the factors are only recommendations, they have tended to become the template for board review of 12b-1 distribution plans. Several panelists questioned whether it was any longer necessary for boards to approve such plans, and there was broad agreement that the nine factors have become outdated in light of current 12b-1 fee utilization, and that this causes discomfort and concern on the part of fund boards when approving such plans. Therefore, even if the Commission chooses to continue to require board approval it should issue updated guidance regarding the matters fund boards should consider, which better aligns the process with current 12b-1 fee utilization.

We appreciate the opportunity to comment on the roundtable program, and once again congratulate the Commission on the fine manner in which it was organized and

conducted. If you have any questions concerning this letter or SIFMA's White Paper submission, please contact the undersigned or Michael Udoff, SIFMA Managing Director and Associate General Counsel, at 212-618-0509.

Sincerely,

Ira D. Hammerman
Senior Managing Director
and General Counsel

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Roel C. Campos, Commissioner
The Hon. Annette L. Nazareth, Commissioner
The Hon. Kathleen L. Casey, Commissioner
Andrew Donohue, Director, Division of Investment Management
Dr. Erik R. Sirri, Director, Division of Market Regulation
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