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Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205549-1090

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Re: Proposed Changes to
Mutual Fund Distribution Fee Rules;
Proposed Rule 12b-2

Ladies and Gentlemen:

Please consider these few comments with regard to the proposed changes. They are my brief comments, made on my own behalf and not the comments or position of this firm or any client or other person.

As a state securities regulator who was in office when Rule 12b-1 was first considered and adopted, it is rather clear the reality of what goes on under the auspices of the Rule today diverges mightily from that originally intended. I applaud your efforts to consider changes and realignment. That said, given my ten + years of experience in the private sector, including work in the small pension plan and service provider arena, I urge you to take care to prevent unnecessary displacement of and imbalance among those who service smaller plans.

Many plans already pay for services through separate plan-level charges for plan services, including fixed and asset-based fees. Fee-based service arrangements are helpful to plans, plan sponsors and plan participants. They provide additional transparency for fees. This facilitates plan sponsor decision-making about whether fees paid by a plan and its participants are reasonable.

Those who sell insurance products to plan participants charge asset-based fees for distribution, plan compliance and administration services to separate accounts in which plans invest.[1] Investment advisers providing are also permitted to charge asset-based fees for plan consulting and advice services provided to a plan sponsor and its participants. However, under

[1] *See e.g.,* Rule 22d-2, which provides an exemption from Section 22(d) for certain registered separate accounts.

your proposal, the broker-dealers who currently sell investment products through smaller plans and receive 12b-1 fees will be disproportionately and significantly disadvantaged.

I applaud your proposal to the extent it will do away with the broker commission into which 12b-1 fees have aberrantly evolved under the current Rule in some circumstances. However, the revisions you make should not be allowed to undermine the beneficial and well-intended servicing and administration components provided under the Rule to retirement plans and their participants by broker-dealers and agents.

I urge that you not throw out the retirement plan servicing "baby" with the broker commission "bathwater." Further, in fashioning the new rules, please consider the entire retirement fund universe. Do not allow your new regulations to favor one market segment over another. I fear the insurance industry will be disproportionately benefitted to the disadvantage of the brokers who service these plans. Particularly with smaller plans, the brokers who make the initial sale of funds at NAV without a front-end load and earn only 12b-1 fees often provide follow-on services to their clients without further compensation. Investment advisers are paid for post-sale services, charging ongoing advisory fees based on assets under management regardless of whether another sale ever takes place. Sellers of insurance policies receive complex and lucrative trails on many if not all insurance products.

If the amount of compensation broker-dealers and agents selling "no load" mutual funds can receive *and* the length of time over which they can receive them are both capped at low levels, as proposed, there would no longer be any economic incentive for them to participate in this market. The Commission will have eliminated broker-dealers and agents from those who market investments to smaller retirement plans. The vacuum will be filled by insurance agents, selling variable and fixed annuity insurance products, where compensation disclosure is even murkier than the current 12b-1 compensation fog the Commission is attempting to clear up.

While I am certain the securities industry can fend for itself, I express my views with a focus on the smaller plans and their participants. Paying 12b-1 fees greater than the proposed 25 basis points to a broker who will then continue to service the investment and those who participate in the plan is a beneficial use of 12b-1 fees that should not be jettisoned. These plans and accounts should not be left to the insurance industry.

Thank you for your consideration.

Respectfully submitted,

Philip A. Feigin