DC PLAN INVESTMENT COUNCIL

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

November 4, 2010

Re: **File Number S7-15-10 - Mutual Fund Distribution Fees and Confirmations**

Dear Ms. Murphy:

The Defined Contribution Plan Investment Council ("The Council") is grateful for the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposed new rule and rule amendments that would replace Rule 12b-1 under the Investment Company Act of 1940.

The Council advocates for successful qualified plan and participant retirement outcomes through the collaborative efforts of experienced, qualified retirement plan advisors, investment firms and asset managers, and defined contribution plan service providers. The Council accomplishes this mission by its focus on: identification of duties, responsibilities and attributes of the professional retirement plan advisor, sharing our professional standards with plan sponsors who are responsible for the success of their plans, providing collective thought capital to decision makers, product providers, legislators and the public, giving voice to the retirement plan advisor community, tools to evaluate advisors, ensuring the quality of services needed for successful retirement outcomes.

The Council commends you for taking the initiative to increase transparency of mutual fund fees. Indeed, enhanced transparency will place investors in a better position to gauge product competitiveness, to compare different types of accounts and ultimately to enhance their retirement outlook. Under current rules and regulations, a gap exists between retirement plans and retail mutual fund accounts in terms of fee disclosures[1] ; we believe that fee disclosures for retail mutual fund shares that help retirement investors make better-informed decisions are a desirable outcome of your regulations. However, the proposed regulations may have side effects as they (1) do not address the categorization of mutual fund expenses in a way that provides the itemized information fiduciaries need to make decisions, (2) do not recognize the specific situation of qualified retirement plan fiduciaries or their advisors, and (3) set a limit on expenses that can seriously affect access to retirement benefits among working Americans who most stand to benefit from defined contribution plans.

To enhance the proposed regulations, we recommend that the SEC include in its final rule a standard categorization of fees to recognize that Mutual Funds incur expenses not only for sales/distribution and management but also for ongoing administration services including compliance, investor education and communication, and record keeping. The last three functions are critical in the context of retirement plans. Indeed, plan fiduciaries are required to conduct regular investment reviews as part of their ongoing due diligence process, including assessing the appropriateness of all fees. In good times, large corporations with deep pockets

[1] Reasonable Contract or Arrangement Under Section 408(b)(2)--Fee Disclosure [Federal Register: July 16, 2010 -Volume 75, Number 136 Rules and Regulations - Page 41599-416387/16/2010]

Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans [Federal Register: October 20, 2010 (Volume 75, Number 202 Rules and Regulations - Page 64909-64946] may be able to pay a consultant fee to conduct periodic investment reviews but few private employers and non-profit organizations would be able to conduct required reviews if fees from plan assets could no longer be used for this purpose. As they follow guidelines established in section 404(c) of ERISA, plan sponsors, their service providers and advisors deliver participant communication and education that all come at a cost. More enlightened plan sponsors also engage the services of participant investment advisors whose compensation is regulated by the Department of Labor[2] . Finally, tax laws and labor regulations impose administration requirements on retirement plans that do not apply to retail mutual fund accounts or Individual Retirement Accounts. Recognizing these expense categories as distinct from distribution expense would help investors obtain the information they need to make an apple-to-apple comparison of their various accounts.

Many services in the expense categories mentioned above are delivered by Professional Retirement Plan Advisors as they analyze the needs of the employees of their client organizations, in order to help each organization develop retirement plan configurations that match employees' needs. These Advisors gain a full understanding of the incumbent retirement plan, the plan sponsor's circumstances and benefits philosophy before making recommendations,. They help formulate an investment policy to document how the sponsor exercises prudence in the review of the fund array and investment options. They are experts about fiduciary responsibilities, plan rules and regulations, plan administration, participant behavior, and more. They are readily available to the plan sponsor throughout the year. They document their service offering and then monitor the fulfillment of those services on an ongoing basis. Professional Advisors ensure that plan participants have access to the education, communication, services and asset allocation counseling they need to make informed decisions. A quality retirement plan attracts and retains quality employees. None of these benefits are available in retail accounts. To successfully achieve your desired social goal, the final SEC needs to recognize these benefits in final regulations.

Our second recommendation for the SEC is to either address the situation of retirement plans very specifically in the final regulations or to exempt Mutual Fund shares for use in Retirement Plans subject to Department of Labor fee disclosure requirements from the proposed statement purchase and confirmation requirements. Indeed, retirement plans are already subject to fee disclosure requirements from the Department of Labor and the Internal Revenue Service. Redundancy would confuse many defined contribution plan participants, potentially leading some to interpret each new disclosure as yet another layer of fees. Convincing participants to save enough to appropriately fund their retirement requires constant effort. Even if the redundant disclosures increase 401(k) plan opt-out rates by only a few percent, inertia will make it an extremely difficult and lengthy process to undo damage.

Our third recommendation is to exempt retirement plans subject to Department of Labor fee disclosure requirements from a fee cap in the final regulations. We share the SEC's desire to strive for social progress measured in term terms of retirement outlook for US workers and we regard price control as an obstacle to accomplishing our common objective. Over the years,

[2] Investment Advice--Participants and Beneficiaries Federal Register: November 20, 2009 (Volume 74, Number 223 Rules and Regulations - Page 60156-60157]

retirement plan advisors have been able to negotiate with service providers and Mutual Fund families to reduce fees. There is ample evidence that the Retirement Plans market is competitive and that fees have been reduced as a result of market forces without regulatory intervention. As mentioned above, 12b-1 fees cover a great deal more than distribution expense in a retirement plan context. In the first few years after a 401(k) plan is newly established, plan assets are small. Yet, fixed costs associated with plan design, plan set-up and compliance expenses can be high when expressed as a percentage of plan assets. Capping plan expenses for retirement plans could dis-incent plan creation among the emerging businesses that fuel job creation. As defined benefit plans are disappearing from employee benefit packages, the last thing our society needs is a retreat of the 401(k) plan that is the most democratic approach to retirement funding.

On a final note regarding the cost of implementing regulations, we want to reiterate the comments submitted by The SPARK Institute indicating that their "members have concluded that the costs they would incur are so significant that they are unwilling to attempt to upgrade their systems."[3] Based on general observations and informal discussions, we concur with this grim assessment. Should final regulations vastly underestimate the actual cost of systems implementation, Professional Advisors and Plan Fiduciaries could be in the awkward position of making recommendations and decisions from among solutions, all of which may be deemed to be unacceptable from a regulatory standpoint.

We are grateful for your consideration of our comments on your proposed regulations. For additional information, please contact Tim Black at (508) 251-2625 or Eric Henon at (860) 653-1705

Respectfully

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[3] Larry H. Goldrum, General Counsel, The SPARK Institute, Inc. November 2, 2010