Trusted Advisors for Generations

1801 Market Street
Philadelphia, PA 19103
800.526.6397 • 215.665.6000
www.janney.com

November 5, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Mutual Fund Distribution Fees; Confirmations; Securities Act Release No. 33-9128; Exchange Act Release No. 34-62544; Investment Company Act Release No. IC-29367; File No. S7-15-10

Dear Ms. Murphy:

Janney Montgomery Scott LLC ("**Janney**" or "**we**") appreciates the opportunity to comment on Securities Act ("Securities Act") Release No. 9128, Securities Exchange Act ("**Exchange Act**") Release No. 62544 and Investment Company Act ("**ICA Act**") Release No. 29367, in which the Securities and Exchange Commission (the "SEC" or "Commission") requests public comment on proposed changes to mutual fund distribution fees and enhancements to confirmation disclosures with respect to mutual fund transactions (the "**Proposal**").[1] The Commission's Proposal seeks to restructure the manner through which mutual funds pay for distribution by primarily:

- providing flexibility to fund intermediaries to impose their own account level fees and charges with respect to mutual fund transactions to encourage price competition;
- capping the amount of sales charges that a fund can pay; and
- improving transparency through confirmation disclosure by incorporating certain fees and expenses information related to a mutual fund transaction.

---

[1] Janney has participated in and writes here to reinforce certain of the points made in the comment letter from the Securities Industry and Financial Markets Association ("SIFMA") regarding the Proposal.

I. Introduction

Janney supports efforts to improve clarity and transparency with respect to the fees investors pay when they purchase shares of mutual funds. We also support efforts to provide clients with a choice of investment services and the manner by which clients pay for such services. This would include the choice of how to pay for mutual fund transactions and the advice and services we provide to clients in connection with such transactions.

While the Proposal does have favorable attributes, we believe that it may be premature to implement such changes now particularly in light of impending fiduciary standard initiatives from both the Commission in connection with personalized investment advice for individual investors and the Department of Labor in connection with ERISA and IRA accounts. These fiduciary standard changes may materially impact our business model and those of a number of other firms. In addition to our concerns on the timing of the Proposals, we feel it may, for a number of share classes and situations, actually undermine the desired outcome and have limited benefit to the majority of mutual fund investors. Finally, we are greatly concerned with the unintended consequences from such changes and the significant costs that we would incur in order to implement such changes.

II. Background Information

Janney is the largest full-service securities brokerage firm headquartered in Pennsylvania. We have nearly 1,900 employees in over 100 offices across 17 states primarily in the Eastern United States. We provide advice and service to both retail and institutional investors through our Private Client and Capital Markets businesses. We serve more than 350,000 retail customer accounts and over 400 institutional account relationships. We have built our business by focusing on our clients' best interest.

Janney's full range of investment products can be used to develop investment portfolios to meet a variety of financial objectives, risk tolerances and investment horizons for every stage of customers' personal and professional lives. The pricing and compensation of such products cover a range of alternatives to accommodate these various factors. Janney's Financial Consultants ("**FCs**") provide a central role with the customer relationship in either providing personalized investment advice directly or managing such advice through third parties or in many cases providing customers access to execution and other services. Often, customer accounts hold shares of mutual funds designed to meet client's financial objectives, risk tolerances and investment horizons. The range of mutual fund share classes in such accounts and the manner by which clients

pay for such services varies widely. We are concerned that the Proposal would unnecessarily disrupt our current business model in a manner that may not necessarily benefit clients.

III. Comments

A. Fiduciary Standard

As mentioned previously, we believe that the Proposal may be premature in light of the impending broker fiduciary standard which may further alter the point of sale suitability and ongoing fiduciary obligations of financial advisors. These fiduciary standard initiatives are currently being undertaken by both the Commission and the Department of Labor and could likely impact a significant number of our client relationships, including certain brokerage, ERISA and IRA clients. The results of the Commission's fiduciary standard study will be critical in making changes to rules and regulations that impact intermediaries and their dealings with clients. We believe that the Commission should first clarify the applicable standard of care to be applied when providing personalized investment advice to individual investors before implementing such sweeping and significant changes to mutual fund distribution. This would also allow firms time to analyze the impact of such changes on their business models and to take appropriate measures to transition their businesses to reflect such changes. In addition, this will ensure that the regulation of intermediaries in the mutual fund marketplace evolve in a cohesive and comprehensive manner.[2]

B. Account Level Charges

To the extent the Commission may feel it is appropriate to implement such changes prior to the resolution of any fiduciary standard changes, we offer several comments specific to the Proposal. With respect to the proposal to permit intermediaries to implement account level charges, we believe that such changes may not generate the anticipated increased competition among financial intermediaries in their sale of mutual funds. To the contrary, the Proposal may decrease investor choice in the selection of funds available to them, as well as their options for payment of fees. The currently available load structures offer substantial pricing flexibility. Clients often come to us for

---

[2] We note that the SEC has been considering changes to Rule 12b-1 a number of times over the years and had convened a Rule 12b-1 roundtable in 2007, but had not proposed specific changes at those times. Thus, it may be appropriate for the SEC to hold off on such changes a bit longer until some of these other regulatory initiatives are resolved. *See, e.g.*, http://www.sec.gov/spotlight/rule12b-1/rule12bagenda-061907.htm; http://www.sec.gov/news/studies/feestudy.htm; http://www.sec.gov/news/press/2004-16.htm.

our investment experience and expertise including mutual fund transactions. Clients that are not necessarily interested in such services always have the option of going to a mutual fund supermarket, no-load mutual fund family, exchange-traded fund or other less expensive, self-directed model. We believe that the current fee structure for mutual funds should not be disrupted, particularly since our clients typically seek a full-service relationship.

C. Marketing and Services Fees and Ongoing Sales Charges

The Proposal seeks to improve transparency of distribution and marketing fees by eliminating the term "12b-1" to describe the trail commission on a mutual fund transaction and introduces two new terms to describe these payments: "marketing and service fees" and "ongoing sales charges". In addition, the Proposal seeks to limit the amount of the "marketing and servicing fee" to 25 basis points and the "ongoing sales charges" to an amount equal to the highest sales load for a class of shares of the fund. We generally support the use of these new terms to describe such fees and charges. However, we do not believe that the implementation of certain caps with respect to these fees and charges seem appropriate.

In today's mutual fund marketplace, investors have a number of different fund share classes available to them that are designed to meet different investor needs and the manner by which investors, either directly or indirectly through the fund, may pay for support, services and advice related to mutual fund transactions. In each case, we continue to focus on what is in the investor's best interest and seek to place them with the fund share class that seems the most appropriate for them based on their particular situation.[3] As a full service brokerage and advisory firm, investors expect a certain level of ongoing support and services that are not typically available through discount brokerage firms, mutual fund supermarkets or no-load fund families. Certain mutual fund share classes, such as "Class C", "Class FI" and "Class R" shares allow investors to obtain these services, particularly smaller investment or retirement plan accounts, and to pay for these services indirectly through the current distribution and servicing fee arrangements. Without these options, investors may need to invest through advisory accounts in order to receive a comparable level of support and services, which could result in higher fees and expenses, not lower ones. Thus, we believe that maintaining appropriate investor options with respect to share classes and the manner by which investors may pay for their fund transactions should not be disrupted.

---

[3] As an example, Janney adheres to long standing FINRA sales practice guidance regarding appropriate share class holding periods in conjunction with its services and would do so as any rules change. An unintended consequence for the industry may be that certain firms seek continued revenue streams with inappropriate share class trading.

D. Confirmation Disclosures and Costs

The Proposal would require disclosure of additional fee information on confirmations for mutual fund transactions such as the price at which the transaction was effected, the remuneration paid by the customer to the broker-dealer (acting in an agency capacity), and in certain instances, the remuneration received by the broker-dealer from third party intermediaries such as mutual funds or affiliates. The goal of any type of disclosure should be to enable clients to make well-informed decisions regarding their investment options. While we are generally supportive of transparency to investors with regard to fees being paid in mutual fund transactions, we are concerned that the proposed additional disclosures may not be helpful to clients and may likely cause confusion. For example, duplicate disclosures in the prospectus and/or summary prospectus, which are provided to clients at the time of initial investment in a fund, and confirmations may undermine the overall effectiveness of disclosures.

In addition to potential client confusion, there would be significant costs incurred to add the necessary information to the confirmations and to be able to monitor share class conversion requirements due to the changed fee structure. These additional costs may result from the lengthening of the confirmations to include the required disclosures, most likely from a simple one page document to a multiple page document. Moreover, the costs of building a conversion feature for existing fund shares may far outweigh the benefit to those shareholders that hold shares until the time the Proposal suggests for conversion of grandfathered shares.

E. Implementation Schedule

We are concerned that the implementation schedule for new fund shares under the Proposal is extremely aggressive. We would urge the Commission to extend the proposed 18 month compliance period to 24 months given the anticipated complexities associated with systems and operational changes.

V. <u>Conclusion</u>

While the Proposal may effectively frame a number of issues relevant to intermediaries in the mutual fund marketplace, we believe that the timing for the Proposal is premature. This Proposal could also have a significant impact on our firm and others at a time when we our business model is already undergoing significant changes from fiduciary standard initiatives and other legislative and regulatory initiatives such as point-of-sale disclosure and suitability. In addition, the likely outcome of some aspects of the Proposal actually appears to undermine some of the changes it seeks to implement and

Janney Montgomery Scott LLC

would likely involve significant operational, administrative and other costs associated with the implementation of various components of the Proposal.

Janney appreciates the opportunity to provide our views. If you have questions, please contact the undersigned at (215) 665-6596.

Sincerely,

Ronald A. Holinsky
Deputy General Counsel

Member New York Stock Exchange, Inc. and other principal exchanges
Member Securities Investor Protection Corporation