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Via Email:*rule-comments@sec.gov*

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

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

Dear Ms. Murphy:

Wells Fargo & Company ("Wells Fargo")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposal set forth in Release Nos. 33-9128, 34-62544, and IC-29367 (the "Proposal"). The Proposal establishes a framework for a new Rule and Rule amendments that would replace Rule 12b-1 under the Investment Company Act of 1940 ("ICA"). The current rule has permitted registered open-end management investment companies ("mutual funds" or "funds") to use fund assets to pay for the cost of promoting sales of fund shares. We support generally the Commission's goals to enhance investor understanding of distribution fees and to modernize the role of fund boards in overseeing distribution-related expenses, while continuing to provide investors with choices as to how and when to pay for sales charges. Since Wells Fargo both compensates financial intermediary firms through Rule 12b-1 fees and shareholder servicing fees and receives such fees, we take great interest in the Proposal and its impact on investors, the mutual fund industry and financial intermediaries. Accordingly, we are pleased to provide our thoughts on certain aspects of the Proposal.

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[1] Wells Fargo is a financial services company employing almost 280,000 team members. Its businesses include Wells Fargo Funds Management which serves as the investment adviser to the *Wells Fargo Advantage Funds*, with over $250 billion in assets under management across fourteen different share classes, each with its own arrangement for the payment of distribution costs and related shareholder services. Wells Fargo's broker dealer subsidiaries include Wells Fargo Advisors and Wells Fargo Investments, which together administer almost $1 trillion in client assets through 15,100 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states. Another subsidiary, HD Vest Financial Services, serves clients through 5,100 independent advisors.

I. Summary of Proposal

Under proposed new Rule 12b-2, mutual funds may continue to use a limited amount of their assets to pay for distribution related expenses. This "marketing and service fee" would be limited to 25 basis points (0.25%) per year and could be charged in perpetuity. The Proposal would also permit mutual funds to deduct from fund assets amounts in excess of the marketing and service fee, which would be treated as an alternative means of paying a front-end sales charge and would be called an "ongoing sales charge." The Proposal imposes limits on the asset-based sales charges by referencing the maximum front-end load imposed by the mutual fund or, if none, by referencing the aggregate sales load cap imposed under FINRA Conduct Rule 2830(d)(2) (the "referenced load"). A fund imposing an ongoing sales charge would be required to automatically convert fund shares to a class of shares without an ongoing sales charge no later than when the investor has paid cumulative charges that approximate the amount the investor otherwise would have paid through a traditional front-end load. The Proposal would also allow funds and intermediaries the option to individually negotiate terms that vary from the fund's schedule for sales charges through an exemption from Section 22(d) of the ICA.

II. Timing of Proposals

We believe that the timing of the Proposal is premature given that the Commission is in the midst of a major study on the effectiveness of existing legal and regulatory standards for broker dealers and investment advisers. We believe that it would be more appropriate to address and resolve the regulatory requirements applicable to broker dealers and investment advisers first, as any resultant changes could impact the nature of reforms to Rule 12b-1.

III. Uncertainty Surrounding New Rule 12b-2 - The Marketing and Service Fee

Rule 12b-1 has played an important role in the growth of the mutual fund industry by allowing payments to be made from fund assets to further distribution efforts. Over time, Rule 12b-1 fees have been utilized for reasons other than distribution efforts. A significant use of Rule 12b-1 fees today is for services provided to investors after a sale by a broker dealer or other intermediary that sells the fund. These services include, but are not limited to, recordkeeping and ongoing support functions provided by fund supermarkets and retirement plans to their customers and/or plan participants.

It is clear in the Proposal that the Commission recognizes that payments pursuant to Rule 12b-1 encompass a number of different activities, including those that can be described as purely distribution related and those that can be characterized as non-distribution related; each type of payment being clearly permissible payments made pursuant to the Rule. What the Proposal does not clarify is whether the same framework that is utilized within current Rule 12b-1 will be maintained within the new framework proposed for Rule 12b-2. In short, we request clarification regarding whether non-distribution related service fees are required to be paid out under Rule 12b-2 or whether a fund company may choose to pay them outside the parameters of Rule 12b-2.

Proposed Rule 12b-2 would permit mutual funds to deduct a service fee of up to the FINRA service fee limit (currently 25 basis points) from fund assets to pay for distribution activities, without being subject to the ongoing sales charge limits. The Proposal, however, is unclear as to how to determine what expenses fall within or outside the parameters of Rule 12b-2. Footnote 153 states in relevant part the following:

> "Because a fund with a Rule 12b-1 plan is expressly permitted to pay for distribution services, it is not critical to determine whether a particular service it pays for in connection with [a supermarket fee] is or is not for distribution.

Similarly, proposed Rule 12b-2 would not preclude funds from paying for these types of mixed expenses under Rule 12b-2. However, to the extent that funds need not rely on proposed Rule 12b-2 to charge expenses that can be clearly identified as not distribution related (e.g., sub-transfer agency fees), funds could instead characterize those expenses as administrative expenses and thus keep total asset-based distribution fees within the 25 basis point limit of the marketing and service fee."

This implies that while distribution related expenses would be required to be paid under Rule 12b-2 (and separately reflected in a fund's prospectus fee table under the heading "Marketing and Service Fee"), a fund could make the determination that non-distribution related expenses fall outside of Rule 12b-2 and therefore could be characterized as a fund operating expense (and reflected in a fund's prospectus fee table under the heading "Other Expenses").

This interpretation is particularly relevant to funds which offer share classes that charge a 25 basis point shareholder servicing fee consistent with FINRA's Conduct Rule 2830, in addition to varying levels of Rule 12b-1 fees, starting at 25 basis points. It is unclear whether the Proposal would allow those funds to consider this shareholder servicing fee as a non-distribution related expense outside the parameters of Rule 12b-2. Without further clarification regarding the types of services that are required to be paid for under Rule 12b-2, mutual fund families likely will take different approaches and similar services will be characterized differently leading to significant investor confusion.

If an existing 25 basis point shareholder servicing fee falls within the parameters of Rule 12b-2, share classes that charge only this fee and no Rule 12b-1 fee would need to convert this fee into a 25 basis point marketing and service fee, which would require funds to obtain shareholder approval. Such an outcome does not seem to have been contemplated in the Proposal, nor were the expenses associated with such an endeavor addressed.

IV. Ongoing Sales Charges

The Proposal would allow funds to impose "ongoing sales charges" up to a "reference load." Such on-going sales charges would be permitted in excess of the 25 basis point marketing and service fee. Amounts charged in excess of the 25 basis point marketing and service fee appear to be viewed by the Commission for purposes of the Proposal as the functional equivalent of a front-end sales charge and would be capped at the reference load.

The assumption that amounts in excess of the 25 basis point marketing and service fee represent the functional equivalent of a front-end sales load overlooks the important and varied on-going services that investors receive through different distribution channels. This approach is highly problematic for the share classes described below: Class C, Class R and money market fund sweep classes. The Proposal as currently formulated has implications beyond those described above and would significantly alter the way intermediaries use mutual funds in various distribution channels, impact the lineup of share class options offered by fund companies to investors by further limiting investor choice and require, in some cases, significant systems modifications.

A. Class C Shares

Class C shares offered by many fund families charge a "level load" consisting of a combined 100 basis points of Rule 12b-1 fees and shareholder servicing fees that are imposed for as long as the investor owns the shares. Class C shares also generally charge a small contingent deferred sales load of one percent if a shareholder redeems within the first year. Class C shares serve as an important investment option for shareholders, particularly those who do not have large amounts to invest. Such investors often choose Class C shares over Class A shares because they do not qualify for Class A breakpoints on front-end sales charges or because they have a relatively short investment timeline.

Under the structure as currently contemplated in the Proposal, 75 basis points of Rule 12b-1 fees currently charged on Class C shares would be viewed as an ongoing sales charge subject to the aggregate sales load cap. After a period of up to 8 years, such investors would be required to be converted to the Fund's Class A shares.

We believe that the Proposal may ultimately lead to the elimination of Class C shares as an investment option. There would be significant operational issues if the charge associated with a share class changed over time, particularly in those situations where the shares are purchased through one broker dealer and later transferred to an account at another broker dealer. This operational complexity might well cause broker dealers and fund complexes to cease offering this share class. Further, requiring Class C shares to convert after an investor has paid the functional equivalent of a front-end load may also cause intermediaries to decide to no longer offer Class C shares given that such intermediaries will no longer receive compensation after a period of time for on-going services that will continue to be provided. Class C shares may no longer be a viable form of offering, which would run contrary to the Commission's goal of preserving an investor's choice.

B. Retirement Shares (Class "R" Shares)

Class R shares offered by some fund families are available exclusively to employer-sponsored retirement plans and typically charge a 25 basis point Rule 12b-1 fee and a 25 basis point shareholder servicing fee. Class R shares were created to provide investment options to shareholders in smaller retirement plans that do not qualify for institutional or other similar share classes.

If the Commission were to require mutual funds to treat the shareholder servicing fee, which pays for services that are non-distribution related, as part of the Rule 12b-2 marketing and service fee, funds would be forced to treat 25 basis points as subject to the ongoing sales load cap, which would lead to the eventual conversion of Class R shares. There are a number of concerns associated with subjecting Class R shares to an ongoing sales charge cap and a conversion period. The effect of this requirement would threaten the viability of Class R shares, and could therefore lead to the elimination of mutual funds for the smallest retirement plans.

Class R shares are unique in that the fees charged are paid to service providers such as administrators and record-keepers to support ongoing services provided by such entities to smaller 401(k) plans. Such services are very different from those provided by a broker to a client in exchange for a front-end sales charge. There are significant operating costs associated with offering a retirement plan and providing support services; service providers supply a variety of ongoing services that are unique to retirement plans, important to plan participants and provided over the entire life cycle of the plan. As a result, mutual funds should be permitted to provide ongoing compensation for ongoing services rendered in the retirement context, without having to treat that compensation as a form of ongoing sales charge.

Another area of concern in the retirement context is the issue of requiring plans to convert shares. As the Commission acknowledges, plan recordkeeping systems generally do not have the functionality to track and manage share lot histories. While some recordkeepers may decide to assume the costs associated with building such functionality, many may decide to no longer offer retirement plan services in order to avoid the upfront expenses of implementing the required changes. Another unintended consequence could be that many plan sponsors could have no other alternative but to seek out other higher cost investment alternatives.

C. Money Market Mutual Funds used in Sweep Accounts

Many fund families offer share classes of money market funds designed specifically for sweep accounts. Many of these share classes charge a 25 basis point or greater Rule 12b-1 fee and a 25 basis point shareholder servicing fee. These share classes were created to provide shareholders with money market funds as investment options via broker dealer and bank sweep platforms.

If the Commission were to require mutual funds to treat the shareholder servicing fee, which pays for services that are non-distribution related, as part of the Rule 12b-2 marketing and service fee, funds would be forced to treat 25 basis points as subject to the ongoing sales load cap, which would lead to the eventual conversion of such shares.

Investor balances in sweep money market mutual funds tend to be very short-term – typically less than one week. Because of this and the high frequency of trades, the servicing and operational costs of these accounts are very high. The additional Rule 12b-1 fees that are charged by the mutual funds are used to compensate broker dealers or banks for these valuable services.

Furthermore, similar to retirement plans, the systems utilized to manage flows in and out of sweep accounts are not built to track and age investments by share lot. The infrastructure that would be required to be built if mutual funds are required to convert shares after a period of time does not make sense in the context of a share class created to manage short-term liquidity balances and not long-term investments. The conversion period for these classes would be close to 25 years; given the short-term nature of the investment in these classes, no investor would ever convert. However, the resources necessary to track the daily inflow and outflow from these classes for a theoretical conversion would be immense. It is likely that, as a result, financial institutions that currently offer sweep classes may be less likely to use money market mutual funds as a sweep investment alternative.

V. Consistent Reference Load

As proposed, the maximum sales load that would apply to any purchase of shares in a fund class subject to an ongoing sales charge would be the highest front-end load of another class of that fund that does not charge an ongoing sales charge, and which would act as a "reference load." For funds that do not have a share class that offers a front-end load or offers the front-end load with asset-based distribution fees in excess of 25 basis points, the reference load would be the maximum sales charge permitted by FINRA, which currently is 6.25% of the amount invested.

For purposes of calculating the maximum ongoing sales charge, each fund would be required to calculate its own reference load. This is very problematic and would lead to a wide variety of ongoing sales charge levels and conversion schedules. Investor confusion and operational complexities associated with varying conversion schedules seems a likely outcome. Rule 12b-2 should instead treat the FINRA sales charge limit of 6.25% as the reference load for purposes of determining the maximum amount of ongoing sales charge in all cases, even if a fund has a front-end load class of shares that can serve as the reference load. We believe that this approach would not only ease the operational complexities but would avoid unnecessary investor confusion.

VI. Board Considerations

We support those aspects of the Proposal that would lead to the modernization of the role of mutual fund boards in overseeing distribution fees. The original factors suggested by the Commission for use by Boards in approving Rule 12b-1 fees are outdated and fail to reflect the realities of the way Rule 12b-1 fees are used within the industry. To that end, we strongly favor the elimination of quarterly review of Rule 12b-1 fees and annual approval of Rule 12b-1 plans.

VII. The 22(d) Exemption

The proposal permitting funds and intermediaries to individually negotiate terms that vary from the fund's schedule for sales charges through an optional exemption from Section 22(d) should be studied further prior to any final rulemaking given its significance, the possibility of unintended consequences for clients and questions concerning the ability of the industry operationally to support the proposed changes. We support the Commission's intent to provide additional opportunities for competition within the industry, but believe that the SEC's current proposal would require substantial and costly structural changes at a time when other changes will be required by recently passed legislation and may create investor confusion or limit fund offerings instead of providing greater investor choice. The relative costs and benefits of the proposed change should be clearly understood before a system which has performed well for clients for years is changed.

As proposed, the offering price of a mutual fund would be dependent upon from whom an investor decides to purchase it (e.g., through a financial intermediary that offers negotiated mutual fund pricing, through a financial intermediary that does not offer negotiated mutual fund pricing, directly with the fund, or through a mutual fund supermarket). Significant resources would be needed to design, build, and maintain information sources and compliance systems to accommodate individual share classes over and above the existing framework of large numbers of fund offerings. Further study is necessary to determine whether the additional complexity will cause firms to reduce the number of funds distributed and whether the change will enhance or reduce the advice available to clients when purchasing funds.

Further study also is necessary to understand the effect that the proposal would have on an investor's ability to transfer shares between firms and the terms of any transfer. Clarification is needed as to several other points. First, whether the Commission expects that a client's purchase of these fund shares to be transferable and under what terms and circumstances. Second, if a client wishes to change firms, whether the client's mutual fund holdings are to be converted to the new firm's pricing or whether the new firm would be required to honor the prior firm's pricing schedule. Third, the effect of the additional choices and complexity on investors' ability to compare fund choices. These issues should be addressed before the final rule making.

The existing structure for mutual funds under 22(d) has served clients, the fund industry and the distribution channels well. Additional consideration is necessary to fully understand the consequences, intended and unintended, before the current proposal progresses.

VII. Conclusion

We reiterate our support of the overall intent of the Commission's proposal. We do believe, however, that the practical effect of these proposed changes could be unnecessary and untimely uncertainty on the part of the investor, the eventual elimination of certain share class structures, and the replacement of these choices with more costly alternatives. In light of this uncertainty as well as the Commission's current review of the legal and regulatory framework governing broker dealers and investment advisers, we urge the Commission to address and resolve the regulatory requirements applicable to broker dealers and investment advisers first, and then revisit the issue of 12b-1 reform.

Wells Fargo appreciates the opportunity to comment on this significant mutual fund reform initiative.

Very truly yours,

T. Hal Clarke
Deputy General Counsel