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November 5, 2010

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

Re: Proposed Rule, Mutual Fund Distribution Fees; Confirmations, File No. S7-15-10

Dear Ms. Murphy:

Merrill Lynch, Pierce, Fenner & Smith Incorporated appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rule and rule amendments relating to mutual fund distribution fees and confirmations (the "Proposal").[1] Under the Proposal, current rule 12b-1 under the Investment Company Act of 1940 (the "Investment Company Act") would be replaced with a new rule and certain other rules would be amended. Registered open-end management investment companies ("funds") would continue to be allowed to bear certain costs of distributing their shares, but the Proposal would limit the cumulative amount of sales charges investors would pay, regardless of the form in which they are paid (e.g., front-end loads, deferred loads, or ongoing sales charges). Funds and their principal underwriters also would be given the ability to offer classes of shares that could be sold by dealers, with sales charges set by the dealers ("dealer share class"). Finally, the Proposal would require clear and plain disclosure about all sales charges in fund prospectuses, annual and semi-annual reports to shareholders, and confirmations.

We support the Commission's desire to serve the interests of investors by updating the rules governing the use of fund assets to pay for distribution to reflect changes in the marketplace. We also agree that steps should be taken to enhance investor understanding of the distribution related fees associated with their investments by increasing clarity and transparency of these fees. Thus, we generally support proposed rule 12b-2 for its recognition that this use of

[1] Merrill Lynch, Pierce, Fenner & Smith Incorporated is a registered broker-dealer and investment adviser, and a wholly-owned subsidiary of Bank of America Corporation.

cumulative amount of ongoing sales charges that an investor may pay, as this will benefit investors who may hold investments in certain share classes of mutual funds longer than they originally intended.

We do not believe, however, that the proposed amendments to rule 6c-10, providing for the creation of dealer class shares, will provide any net benefit to investors. To the contrary, we believe the creation of new share classes under the proposed amendments to rule 6c-10 will increase costs to funds and their shareholders and create confusion for investors. Therefore, we believe that these changes would be unduly burdensome for the industry and not in the best interests of investors.

Our specific views concerning the Proposal are set forth in detail below.

I. Proposed Rule 12b-2 – Marketing and Service Fees

Proposed rule 12b-2 would permit a fund to use a limited amount of its assets to pay for marketing and servicing expenses, provided the amount does not exceed 25 basis points per year, which is the NASD service fee limit set forth in NASD Conduct Rule 2830. This amount would not be subject to the cumulative sales charge limit included elsewhere in the Proposal and, unlike current rule 12b-1, would not require a fund's board to adopt a plan or make any special findings. We agree with the Commission's assessment that this approach would serve the interests of most categories of investors.

However, we urge the Commission to consider carefully the potential impact of a limit on marketing and service fees on small retirement plan sponsors and money market funds used as sweep vehicles. 12b-1 fees for retirement offerings are often used to pay for essential services rather than for distribution. These services include recordkeeping and plan participant support for retirement plans. The Commission's assessment of the impact of the Proposal should recognize the fundamental differences that exist among providers, products and services within the retirement marketplace and the costs associated with providing those services. In particular, should rule 12b-2 limit fees for recordkeeping and plan participant support to 25 bps, it is unclear how current service fees, which may be in excess of that amount, would be restructured without reducing the level of support to holders of retirement share classes.

Individual financial advisors perform a wide variety of functions crucial to the success of both small retirement plan sponsors and their employees, including investor education through ongoing personal services to employers and their employees about retirement investing and the employer's particular retirement plan. Although plan sponsors of all sizes may rely on individual financial advisors, small businesses due to their size may not have sufficient internal resources and may depend heavily on the services of individual financial advisors. We urge the Commission to consider whether the proposed 25 bps limitation is sufficient and to ensure that funds be able to offer share classes under proposed rule 12b-2 with a servicing fee that is adequate to cover the costs of services that are provided to smaller plans that have fewer assets and a greater need for services.

Similarly, we urge the Commission to consider the impact of the rule 12b-2 limit on money market funds that are used as a sweep vehicle for free cash balances in brokerage accounts. These funds tend to use 12b-1 fees as service or platform fees rather than distribution fees. For instance, service fees may be used to pay for accounting services for the more frequent transaction volume associated with money market funds used as sweep vehicles. The Commission should consider the impact to these services a rule 12b-2 fee limitation may have.

II. Proposed Amendments to Rule 6c-10

A. On-going Sales Charge

The proposed amendments to rule 6c-10 would permit a fund to use fund assets to pay asset-based distribution fees in an amount that exceeds the amount permitted under proposed rule 12b-2, if certain conditions are met. First, to the extent that the amount charged exceeds the amount permitted under proposed rule 12b-2, the excess amount would be deemed an "ongoing sales charge" and be subject to a cumulative sales charge limit and an automatic conversion feature. As with proposed rule 12b-2, a fund's board would not be required to adopt a plan or to make any special findings.

We agree with the Commission that allowing funds to use an ongoing sales charge to pay for distribution expenses is fair to investors and helps to provide investors with alternative ways to pay for sales charges. We also agree with the Commission that those sales charges can and should be more clearly disclosed to investors and applied more consistently with front-end sales charges. Our specific views regarding certain aspects of the proposed 6c-10 amendments and responses to specific requests in the Proposal from the Commission are set forth below.

FINRA Rule. The Proposal requests comment on whether ongoing sales charges should be treated as a form of deferred sales load subject to the FINRA sales charge limitations. We generally support this approach, based on FINRA's knowledge, expertise and experience in setting sales charge limits, but would reiterate our concern about the potential impact on small retirement plan sponsors and certain money market mutual funds used in sweep accounts where 12b-1 fees have been used more as service and/or platform fees than as distribution fees.

The Commission proposed that a fund may deduct an ongoing sales charge to finance distribution activities at a rate established by the fund, provided that the cumulative amount of sales charges the investor pays on any purchase of fund shares does not exceed the amount of the highest front-end load that the investor would have paid had the investor invested in another class of shares of the same fund (the "reference load"). If the fund does not charge a front-end load on any class of shares, or if the front-end load class also has an asset-based distribution fee of more than 25 basis points, the maximum front-end load allowed under NASD Conduct Rule 2830 would act as the reference load. We believe that this approach to capping the ongoing sales charges as between funds with loaded classes and those without will likely confuse investors with little additional investor benefit. If the Commission believes that the maximum sales charge permitted under Rule 2830 is appropriate to protect investors from excessive sales charges, it should be adopted as an industry standard and applied consistently across all funds and fund families.

Reinvested Dividends. Regarding the issue of whether to impose ongoing sales charges on shares acquired through the reinvestment of dividends, the Commission asked for comment on whether to adopt the approach reflected in the NASD sales charge rule, or an alternative approach proposed by the Commission that would allow funds to levy ongoing sales charges on those shares as long as the shares convert to another class no later than the shares on which the dividends or distributions were earned convert. We believe that adopting the NASD provision would impose a greater technological burden on the industry because it would require reinvestments of distributions on one share class into a rule 12b-2 compliant share class (rather than merely prorating shares for conversion) and would be confusing to investors. We also believe that cross dividend reinvestment would be confusing to clients who invest in class C shares but receive class A shares upon dividend reinvestment.

Instead of these approaches, we urge the Commission to consider treating all shares from dividend reinvestments as a single lot that would convert on a proportional basis with other share conversions. We believe this would be far less costly to implement than either the Commission's proposal or the NASD provision, while being equally beneficial and less confusing to investors.

B. Conversion

The Proposal provides that neither funds nor financial intermediaries would be required to keep track of the actual dollar amount of ongoing sales charges paid by each individual shareholder account for purposes of the maximum sales charge limitation. Instead, a fund or intermediary could satisfy the maximum sales charge limitation by providing that shares subject to an ongoing sales charge convert automatically to another class of shares having no ongoing sales charge after a set period of time.

The Proposal requests comment on the proposed method for capping a shareholder's payment of ongoing sales charges and the proposed monthly conversion feature. We agree with the Commission's proposal of monthly conversions, as it follows the B share conversion methodology that is widely accepted within the industry. We also prefer the Commission's proposed automatic conversion method over keeping track of actual dollar purchases, because this methodology will be easy for investors to understand and will provide a consistent experience for investors who may already be familiar with the similar approach taken for converting B shares for many years.

The Commission has assumed that the Proposal would not interfere with the ability of a shareholder to transfer shares from one intermediary to another, since financial intermediaries today already have the ability to transfer share lot histories. The Proposal requests comment on the Commission's assumptions in this area. We agree that intermediaries, funds, and/or their transfer agents have the ability to transfer share lot histories on transfers today. To test how well the current process works, we reviewed 6 months of recent Class C share transfers to us involving 86 different fund families and found that we had received the transaction histories in 98.56% of these transfers. However, non-broker-dealer intermediaries, such as retirement plan record keepers, typically do not transfer histories. Accordingly, it would be very difficult or impossible to satisfy the requirements of the proposed rule for transactions such as IRA rollovers from retirement plans. Because transaction histories are not always provided, we request that the

Commission address how conversions and/or exchanges should be handled when no transaction history is provided.

C. Proposed Rule 6c-10(c) Dealer Share Class

Proposed Rule 6c-10(c) would permit a fund to offer a class of shares to dealers who would then be free to determine for themselves the amount of commissions to charge, rather than charging commissions according to a schedule in the prospectus. We believe the proposal to allow for a dealer share class would create significant investor confusion. We also believe that the costs ultimately borne by investors to implement the rule changes would be greater than any savings realized from the dealer share class. Finally, we believe that mutual fund investors currently have a wide variety of service and payment options, and that changes to the current marketplace are unnecessary. As a result, we do not believe that the proposed creation of a dealer share class is in the best interest of fund investors.

Potential Investor Confusion. Mutual fund share offerings are already complex and difficult for investors to understand. We are concerned that rule 6c-10(c) will further complicate those offerings and cause additional investor confusion. We believe that investors will be confused by yet another share class with a commission schedule that is not set forth in the prospectus, and that it will not be easy to compare the dealer share class to other classes of shares within a particular fund. We also believe that the availability of a dealer share class will vary across funds and that it will be more difficult for investors to understand the cost differences and distribution arrangements across fund families. Finally, because different broker-dealers may have different pricing models for the same fund, it will be difficult for investors to compare costs and services for mutual funds across broker-dealers. The introduction of this much complexity seems contrary to the Commission's efforts to enhance investor understanding of costs of mutual fund investing by, for example, requiring standardized comparative data for investment companies (e.g., standardized fee and expense tables in prospectuses).

Costs. Fund families and intermediaries will incur significant costs to sell the dealer share class. Because a dealer share class may be priced differently for different fund families, intermediaries would have to incur significant costs to develop and maintain multiple pricing structures, each with its own pricing rules and conventions. There would also be a cost to maintaining additional and legacy share classes. There would be both one-time and ongoing expenses related to the changes required to update conversion/exchange systems, class structure, and new share classes. Finally, there would be costs to update client statements and confirmations to display information about the dealer share class that is not included today in connection with fund transactions. We estimate that our initial technology costs would exceed $2 million to allow for a dealer share class. In addition, it would be difficult for an investor to move his or her accounts to another broker-dealer because each dealer class would be unique to the individual broker-dealer. We believe that the totality of these costs outweighs any benefit investors would receive from the creation of a dealer share class.

No clear investor benefit. We question whether any investor benefits would be realized by the creation of a dealer share class. Competition already exists in the marketplace. Today, clients may purchase funds through full service firms or fund supermarkets, and may also purchase direct marketed funds without the use of a broker-dealer. The costs of investing in

mutual funds are different depending on whether an investor chooses to use the services of a broker-dealer, and what services the investor actually receives. Investors also have many different collective investment product options (like ETFs and ETNs) with different pricing conventions and services available. Clients today utilize full service broker dealers (or dual registrants) for the wide array of services, platforms and products available. Additionally the marketplace offers clients other service models that provide fewer services than the full-service firms at a lower cost. As a result, most of the purported benefits of the dealer share class already are occurring in the market place through the use of multiple share classes, fee waivers, alternate products (e.g., ETFs, ETNs), and various levels of service relationships.

D. Rule 10b-10 – Trade Confirmations

The Proposal would amend rule 10b-10 to increase the information that broker-dealers are required to provide to customers on trade confirmations. New information would include details about the imposition of ongoing sales charges, marketing and service fees, and other charges. These amendments would reverse previous guidance from the Commission and its staff that allows broker-dealers to exclude from transaction confirmations information about mutual fund sales charges because that information is available in fund prospectuses. While we support the idea of providing relevant transaction information to investors, providing the proposed data points on a client confirmation would significantly increase the length of those confirmations, and would provide information that is largely redundant of that available in the prospectus. In fact, under the proposal the average length of a confirmation could well double. In our view, there is no appreciable benefit to investors that would outweigh the costs involved with moving disclosures from fund prospectuses to transaction confirmations or including the additional information in transaction confirmations as proposed.

Confirmations should provide an investor with information about a transaction to enable the investor to confirm that the transaction was processed correctly. Certain information regarding fees and charges of an investment and potential conflicts of interest may be more beneficial to the investor prior to entering into a transaction. We urge the Commission to consider whether the information could be provided in an alternative manner. We also urge the Commission to consider whether the disclosure proposed should be product neutral and not limited to mutual funds. Given the potential other regulatory changes mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding disclosures to retail investors in connection with the sale of a product or service, it may be premature for the Commission to mandate such disclosure solely for mutual funds.

E. Recordkeeping

The Proposal requests comment on the Commission's estimates of the costs associated with recordkeeping requirements under the Proposal. We believe the Commission has significantly underestimated the costs associated with enhancing recordkeeping capabilities to meet the requirements of the proposed rules and amendments. Under the Proposal, we would be required to build out enhancements to our recordkeeping capabilities to establish and maintain a new dealer share class, to track lots for conversion, to transfer associated lot histories, and to convert and/or exchange shares in accordance with the sunset provisions of the Proposal. We estimate that we will incur initial technology costs of nearly $4 million ($2 million for the new

dealer share class, remainder in technology costs to implement other proposed changes), and that future compliance will result in materially higher ongoing recordkeeping expenses.

III. Conclusion

We appreciate the opportunity to comment on the Proposal. We support the Commission's efforts to protect individual investors, encourage mutual fund sales, and ensure fair compensation for financial intermediaries. We also agree that steps should be taken to promote investor understanding of the fees associated with their investments and to eliminate outdated requirements. As a result, we generally support proposed rule 12b-2 and the concept of a cumulative cap on ongoing sales charges. We do not believe, however, that the proposed amendments to rule 6c-10 to allow for a class of shares to be priced by dealers are in the best interests of investors because of the confusion, costs, and lack of any clear benefit to investors from the proposal. We also urge the Commission to consider the potential benefits of these proposals against the potential investor costs. Please do not hesitate to contact me if you would like additional information about our comments.

Sincerely,

R. Scott Henderson

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