CENTER FOR CAPITAL MARKETS COMPETITIVENESS
OF THE
UNITED STATES CHAMBER OF COMMERCE

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
202/463-5609 • 202/955-1152 FAX
david.hirschmann@uschamber.com

November 5, 2010

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

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

Dear Ms. Murphy:

The U.S. Chamber of Commerce is the world's largest business federation representing the interest of more than 3 million U.S. businesses of all sizes, sectors, and regions. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective, it is an important priority of the CCMC to support a free enterprise system that promotes competition and economic growth. CCMC welcomes this opportunity to comment on the U.S. Securities and Exchange Commission's ("the Commission") proposed rule issued on August 4, 2010, regarding mutual fund distribution fees and confirmations.

CCMC commends the Commission's efforts to protect investors through enhanced clarity and transparency and to preserve investor choice in the purchase of mutual fund shares. While we are supportive of greater transparency, we are concerned that limits placed on marketing and sales fees will leave investors with fewer investment choices and less service as market participants will likely adapt product offerings and services to changes in fees.

These limits may also have the effect of disproportionately increasing overall costs to smaller investors who wish to maintain the same level of service as account level fees may be charged to pay for those services.

Furthermore, we believe that the automatic conversion of mutual fund class shares may also result in fewer investment choices and increased costs as market participants may need to make significant system changes to track these conversions. These issues are discussed in more detail below.

Enhanced Transparency

CCMC supports the Commission's goal of enhancing investor understanding of fees paid in connection with a mutual fund investment. The proposed rule 12b-2, a replacement for rule 12b-1, re-characterizes so-called "distribution fees" as either marketing and services fees or ongoing sales charges. CCMC believes that this new, more descriptive language will provide added clarity and aid investors in understanding what they are paying. The enhanced transparency will help eliminate confusion among investors.

Limits on Fees

We are concerned, however, that the proposed rule 12b-2 imposes arbitrary limits on some legitimate costs of doing business. Instead of the existing system of 12b-1 fees, funds would be permitted to impose a 25 basis point annual marketing and service fee and a new ongoing sales charge for additional distribution expenses that would be subject to a cumulative cap on the asset-based sales charges that may be imposed. In general, CCMC believes that the new fee ceilings are unnecessary and the competitive marketplace is a sufficient check against excessive fees. The new limits on marketing and sales fees for mutual fund shares will stifle innovation and flexibility, leaving investors with reduced services and investment choices. When the market determines the level of fees acceptable for any product or service, competition peaks, driving innovation and lowering costs.

Furthermore, placing arbitrary limits on mutual fund fees does not necessarily protect investors.

While at first glance this may appear to be a simpler and more transparent approach, we believe that it will have a substantial, adverse impact on a small but important segment of investment advisers and investors. As the Commission is well aware, 12b-1 fees are often used to pay intermediaries for bundled financial planning advice, active account management, recordkeeping, and other administrative expenses. For example, under the current rule, investment advisers are able to provide active account management services to investors on behalf of a mutual fund and be reimbursed by the fund. To the extent that these services continue to be provided, it is perfectly reasonable that a fee may be charged.

If adopted, the proposed cumulative cap on sales charges will limit these payments over time. In order for the services to continue, the mutual funds and investment advisers will seek other means of compensation. Perhaps advisers (and other intermediaries) will be forced to charge investors directly for administrative services they perform that benefit mutual funds. Investors with small accounts may have to pay a minimum annual account management fee that would be far higher, or they may have to pay a transaction-based fee. It is likely that small investors' costs will increase disproportionately.

In the long run, the Commission is most effective when it relies upon disclosure and transparency to regulate. In this case, it is important to remember that sales and distribution charges are legitimate business expenses. We believe that an arbitrary maximum will continue to foster an environment in which market participants pay for the same services with fees carrying different labels, thus leading to less transparency and more investor confusion. For these reasons we believe that the proposed cumulative cap on sales charges should be dropped in favor of clear and transparent disclosure of expenses.

Automatic Conversion of Mutual Fund Class Shares

We are also concerned that the automatic conversion of class shares will increase costs for retirement plan administrators, who may lack the resources to pay for the extensive record-keeping system changes needed to keep track of the cumulative fees and the conversions. Ultimately, these costs may be passed onto the plan participants, or the class shares may no longer be offered as an investment option.

Furthermore, the retirement plan accounts need investment advice, education, asset allocation and shareholder services that would not be cost-effective to provide without the compensation provided by the class shares. As such, retirement plan participants might not have access to these needed services or might decide to forego these services rather than paying for them up-front through an out-of-pocket sales charge.

Impact on Small Business

As noted above, the automatic conversion feature will be costly to implement, but will be particularly burdensome to smaller fund management companies that lack the scale economies of larger firms. With a disproportionately higher overhead, smaller firms will be forced to pass on the additional costs to investors, thus putting them at a competitive disadvantage. This will lead lower investment returns for investors, as these costs are ultimately born by investors. Furthermore, it could lead to more concentration in the fund management industry and thus fewer choices for investors.

Conclusion

In conclusion, CCMC believes that the Commission's efforts to enhance fee transparency and reduce investor confusion comes at the expense of fewer investment choices, reduced services and disproportionately higher costs for smaller investors. Additionally, we believe that an arbitrary maximum on fees may, in effect, lead to less transparency. We recommend that the Commission refrain from imposing any fee ceilings and allow a competitive market place to spark innovation that keeps investment choices vast while maintaining the same level of service at lower costs. Further, we recommend that ongoing sales charges for all classes of mutual fund shares be permitted as long as investors reap the benefits of needed services.

We appreciate the opportunity to comment on the proposed rules regarding mutual fund distribution fees and confirmation. We would be happy to discuss these issues with the appropriate Commission staff.

Sincerely,

David Hirschmann

David Hirschmann

cc: The Honorable Luis A. Aguilar, Commissioner, U.S. Securities and Exchange Commission
The Honorable Kathleen L. Casey, Commissioner, U.S. Securities and Exchange Commission
The Honorable Troy A. Paredes, Commissioner, U.S. Securities and Exchange Commission
The Honorable Elisse B. Walter, Commissioner, U.S. Securities and Exchange Commission