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OFFICE OF THE SECRETARY

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

RE: SEC requests for comments on File Number S7-15-10
Proposed rule change for 12b-1 fees

Dear Ms. Murphy,

Thank you for the opportunity to comment on SEC File Number S7-15-10, the potential changes to the rule governing 12b-1 fees. These comments are provided by individuals associated with FINRA registered broker dealer firms, who serve on FINRA's District 6 (Texas) committee. We are writing to you in our capacities as individual members of our respective firms. Our views and comments are our own and do not represent the opinions of FINRA. That said, we felt it was important for us to find consensus and provide our comments.

After a thorough review of the SEC's proposed rule changes, we find several areas of both agreement and disagreement. Below we attempt to describe each of those areas and how we feel the individual investor could potentially be affected by the proposed rule changes.

We agree with the SEC on the following points:

1) There is no benefit to individual investors in either;
    a) Returning to an "up-front" only method of mutual fund sales or,
    b) Eliminating the option to choose how they compensate for advice and counsel.
2) Individual investors deserve better "transparency" in terms of what fees they are being charged and for what specific purpose those fees can be used.
3) It is exceedingly difficult to create a "one size fits all" approach for every individual investor. Our experience has shown each individual investor has different needs, objectives, levels of sophistication and competencies, therefore potentially requiring different levels of advice and counsel.
4) The SEC and FINRA have long been focused on assuring that the individual investor has access to advice and counsel to assist them in making investment decisions.

Before we discuss potential changes to the current system, we feel it is important to address the history and evolution of mutual fund sales charges. By reviewing the past and the changes made in the past three decades, we feel it is possible to avoid some of the potential unintended consequences of the commission's proposed rule changes.

In the beginning there were "A" shares. Many fund families required individual investors to pay a specified sales charge based on total assets invested within the fund family "up-front." This charge was to provide the individual investor access to the advice and counsel the SEC and NASD felt could be necessary to allow for informed investment decisions. For those individual investors who felt they were sophisticated enough to make their own decisions, some fund families did not require an "up-front" fee. Individual investors had a choice. They could "go it alone" or they could solicit advice and counsel from an appropriately trained investment professional.

A long-standing concern for the SEC and FINRA with the "up-front" system was the need for ongoing advice and counsel. Unfortunately, once the investment was made, the individual investor had no way to provide continuing compensation for ongoing advice and counsel. While some investors chose to pay an annual fee to a registered investment advisor for those services, a vast majority of individual investors did not have that opportunity.

This ongoing advice and counsel issue was one of the factors that drove the industry, with the approval of the SEC and the NASD, to create the 12b-1 fee. This fee was originally to be used for "marketing and servicing." However, these 12b-1 fees also provided a compensation stream for the individual investor to use when seeking a qualified investment professional to provide the advice and counsel both the SEC and NASD felt necessary. While some would argue this was not a perfect solution, it has served the individual investor well.

The second problem with the "up-front" system was the amount of the sales charge for investors with relatively small portfolios to invest. Many fund families charged up to eight percent on small purchases declining to zero for amounts exceeding $ 1,000,000. An individual investor with $ 100,000 to invest in 1984 paid between four and six percent of investable funds **BEFORE** any of their funds were invested, so only $ 94 – 96,000 was actually invested.

In order to provide the individual investor with an alternative approach to this "up-front" fee, the mutual fund industry, again with the approvals of the SEC and NASD, developed the "B" share category. These "B" shares were designed to allow 100% of the individual investor's money to be immediately invested in a fund. Individual investors seemed attracted to this type of system.

However, "B" shares created another dilemma. How could an individual investor provide compensation for advice and counsel when no funds were received directly from the individual investor?

With the blessing of the SEC and NASD, fund companies were allowed to do two things. First they were allowed to charge a higher annual 12b-1 fee to investors in "B" shares than investors in "A" shares. Second, they were allowed to charge the individual investor a contingent deferred sales charge (CDSC) should the individual investor liquidate their holdings in the fund family within a certain period of time. If an individual investor remained in a fund family for a specified period, the "B" shares were converted to "A" shares and the 12b-1 fee reduced.

Because the fund families were not getting their sales charge "up-front" the individual investor provided a reduced compensation structure for advice and counsel. While this system was not perfect and unintended compliance issues arose, the individual investor was well served when "B" shares were properly utilized.

Many of those unintended consequences drove the mutual fund industry to again work with the SEC and NASD to develop a third way for the individual investor to pay for advice and counsel. The "C" share was developed to address several issues.

Most importantly, the CDSC was reduced from up to seven (7) years to 12 months. This allowed the individual investor the opportunity to move from fund family to fund family in a reasonable period of time without incurring an additional charge. While many would argue a mutual fund is a long-term investment which should be held for more than 12 months, in today's environment there are legitimate reasons why that might not always be the case. Again, the SEC, NASD and mutual fund industry came up with a better way to serve the individual investor.

However, like the "B" share, the "C" share had a similar problem; how to provide the individual investor with a compensation package for advice and counsel. At the same time both the SEC and NASD realized the investment marketplace was changing rapidly and stepped up their efforts to provide education to the individual investor. Both the SEC and NASD realized advice and counsel were even more critical and encouraged the mutual fund industry to develop a way to deal with this issue.

The SEC and NASD knew while some individual investors still had the ability to directly compensate a registered investment advisor through an annual fee, a majority of investors using transaction-based providers had no way to do this. The SEC and NASD allowed the mutual fund industry to increase the 12b-1 fee on "C" shares to provide individual investors greater flexibility for the compensation arrangements they entered into. So while both the SEC and NASD were comfortable with some individual investors paying registered investment advisors annual fees of one (1) to two (2) percent of assets for advice and counsel, with the help of the mutual fund industry, they devised a way for even the smallest investor to provide compensation of only one percent for potentially similar advice. Again the SEC, NASD and the mutual fund industry provided a way for individual investors to receive advice and counsel on an ongoing basis.

This brings us to where we are today. In our opinion, there are five questions potentially confronting the SEC, FINRA and the mutual fund industry:

1) How can the individual investor, who desires access to advice and counsel, offer differing compensation methods to pay for that advice and counsel?
2) Is the SEC's role to tell individual investors how to provide compensation or should the SEC provide flexibility to allow each individual investor the ability to determine the best compensation option that addresses their specific situation?
3) How can the fund industry disclose in plain English the total actual cost associated with each choice?
4) How can the SEC, FINRA and the fund industry assure they do not go back to the situation created by the original "A" shares where after the initial investment the individual investor was often left to their own devices?
5) Is the system in place today so inadequate in terms of disclosure that it requires a complete restructuring?

The investment industry and all associated regulators know there are three ways for individual investors to provide compensation for advice and counsel: annual fees, commissions or a combination of the two. To debate the merits of these methods here is not appropriate. The ultimate fact is advice and counsel is a valuable commodity and there is a price each individual investor expects to pay.

It is our collective experience that when receiving advice and counsel, individual investors do ask how the provider gets paid and fully expect to pay. As previously stated, there are only three answers. The SEC and FINRA already have rules in place to assure that providers of advice and counsel are acting in the best interest of the individual investor.

Disclosure of how each of the various compensation systems affects the individual investor is the major issue we are attempting to deal with. In our view, a plain English disclosure of these options is the real objective of this exercise. We do not feel the SEC or FINRA want to recreate the situation individual investors experienced with the original "A" shares. Nor do they want to limit the individual investor's options to provide various compensation alternatives. Therefore, in our opinion, it seems to be in the best interest of the SEC, FINRA and the mutual fund industry to ensure appropriate timely disclosures and fair dealing.

Plain English disclosure, while seemingly impossible, could be easily attainable if the mutual fund industry itself could agree on the four options for the individual investor. With each of these options, a short summary of the major advantages and disadvantages could be developed and each investor could potentially make a more informed decision.

While there are four options available to the individual investor, only three of these provide compensation alternatives. These are: 1) an up-front "A" share type charge, 2) an ongoing "C" share type annual charge, 3) a fully disclosed annual fee and 4) a no charge/load option. We see no other options available for the individual investor.

With each option, a short list of the major advantages and disadvantages of each could be inserted into the prospectus.

For instance, with the ***up-front option***:

Advantages	**Disadvantages**
Pay fee one time based on the amount invested in a single fund family	Lose a portion of investible funds immediately upon investing
Fee is known and defined	Each time an investor moves from one fund family to another, they could incur another fee
	No way to provide compensation for ongoing advice and counsel

With the ***ongoing option***:

Advantages	**Disadvantages**
No up-front fee paid so 100% of the individual investors money gets invested	Like annual fees paid to registered investment advisors, the charge is ongoing for as long as the individual investor owns the investment
Compensation does not come directly from the individual investor's checkbook	The charge reduces the investment return the individual investor receives equal to the amount of the compensation available for ongoing advice and counsel
Compensation is provided for ongoing advice and counsel ***should*** the individual investors feel they need ongoing advice and counsel. If they feel they do not need ongoing advice and counsel, they should use another option	

With the ***annual fee option or advisory option***

Advantages	**Disadvantages**
Fixed fee paid quarterly based on an annual rate is totally disclosed and known	Annual fee could be larger or smaller than one of the other fee options available
No other charges are incurred as long as the investor utilizes the services of that registered investment advisor to invest their funds	Fee paid directly by the investor
As long as the fee is separate from any cost of execution, the fee is potentially tax deductable by the investor	The charge reduces the investment return the individual investor receives equal to the amount of the annual fee for ongoing advice and counsel
There is no incentive or disincentive to use funds from different fund families	

With the ***no charge/load option***:

Advantages	**Disadvantages**
No up-front fee, CDSC or any on-going fees are charged.	No advice or counsel is available with this option.
Investor should receive returns closest to the actual returns of the fund portfolio.	Fund family provides a toll free number for operational questions only concerning the investor's account. No advice is available.

In our opinion, while no plain English version of the advantages and disadvantages of the four compensation options available would ever withstand the legal barrage associated with the securities industry, at some point, common sense and good judgment must override legalese. While the Wall Street Journal and New York Times are said to be written for individuals with less than a high school level education, requiring the same individual investors to attempt to interpret the legalese of a prospectus, in our opinion, does not seem to be in the best interest of the individual investor the SEC is attempting to serve.

We question whether the current system is so broken or inadequate it cannot be fixed. However, we feel our current system requires changes to make it more investor friendly. Therefore we feel the SEC should work with investors and the industry to create these plain English disclosures and place them into the current summary prospectus format.

If the only remaining question is to make our current system potentially more individual investor friendly, how can we work within the existing system to achieve that goal?

With over 200 years combined securities industry experience working with individual investors in every aspect of the industry, we feel we have the experience and expertise to make some meaningful suggestions.

First, focus the entire exercise on assuring the individual investor retains the ability to decide how they wish to pay for advice and counsel. This is paramount.

We currently have four methods that provide the individual investor a choice and these seem adequate. Method number 1 is to pay an up-front sales charge via "A" shares. Method number 2 is to pay on ongoing sales charge via "C" shares. Method number 3 is to pay a Registered Investment Advisor an annual fee for advice and counsel and have them direct the investments the individual makes. Method number 4 is for individual investors to 'go it alone' and utilize some type of no-load shares.

Second is to assure Method number 2, the use of "C" shares (or other derivatives of "C" shares such as American Fund "R" shares) has full disclosure of the fees paid by the individual investor for advice and counsel. So language like "When investing in this class of mutual fund shares, the individual investor is providing compensation equal to 1% annually of the assets invested to whom ever provides the individual investor with advice and counsel. This compensation reduces the overall return of the mutual fund by 1% annually." could be inserted into the prospectus.

Third is to assure any transition to a new and improved system does not disrupt the individual investor's existing compensation choices but rather expands and clarifies them.

As experienced professionals in the regulatory process, the undersigned are excellent resources to be utilized by the regulators in their quest for new and improved individual investor safeguards. All of the undersigned are willing to accept an expanded role in assisting in the development of these additional investor protections and safeguards.

We thank you for this opportunity to comment. We look forward to assisting in any way possible.

Respectfully,

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