



November 5, 2010

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

Re: Mutual Fund Distribution Fees; Confirmations - Release Nos. 33-9128; 34-62544; IC-29367; 75 FR 47064; File No. S7-15-10

Dear Ms. Murphy:

Morgan Stanley Smith Barney LLC (“MSSB”) is pleased to provide its comments to the Securities and Exchange Commission (“Commission”) on recently proposed rule changes regarding mutual fund distribution fees and confirmations (“Proposal”).

MSSB is dually registered with the Commission as a broker-dealer and an investment adviser. With over 17,000 Financial Advisors located across the United States, MSSB provides services to approximately 7.25 million client accounts representing over \$1.6 trillion assets.

MSSB supports the Commission’s goal of increasing investor awareness of the various fees and expenses incurred when purchasing and holding mutual fund shares. The proposed rules and amendments will increase transparency about the nature and extent of these charges and provide investors with the information in a more readily understandable format.

As an initial matter, MSSB expresses its support for the views advanced by the Securities Industry and Financial Markets Association (“SIFMA”) in its comment letter on the Proposal. We also wish to emphasize the following points:

I. Rule 6c-10(b)

MSSB supports the structural changes that the Commission has proposed to decouple distribution and service fees (under proposed Rule 12b-2) from asset-based sales charges (under proposed Rule 6c-10(b)) and believes this will dramatically improve transparency and investor understanding of the fees and charges associated with mutual fund investing.

MSSB also supports the Commission's desire to protect shareholders from incurring excessive fees by holding certain share classes (e.g., Class C shares) over the long term. However, we question the need to adopt an automatic share class conversion feature in light of the costs to develop the system functionality when only a limited population of mutual fund investors will be impacted. Financial Advisors are already obligated when recommending a mutual fund purchase to ensure that the share class is suitable based on the available facts, including the estimated holding period (e.g., Class C shares are most appropriate for shorter-term investors). To assist Financial Advisors with this process, MSSB and other firms utilize share class order entry calculators, purchase limits, share class blocks and compliance surveillance monitoring systems. These mechanisms have helped limit the number of investors who may be paying open-ended asset-based charges due to their purchase of inappropriate share classes.

As the Commission notes in the Proposal, "Based on average holding periods for funds generally, we expect that only a limited portion of outstanding class C shares would be held long enough for any asset-based distribution fees on class C shares to exceed the proposed ongoing sales charge limit."¹ Using the Commission's own examples, as proposed, share class conversions will not occur until a time that is more than double the typical holding period for a fund.² Consequently, we do not believe that the cost of implementing the proposed share class conversion (which ultimately will be borne by all fund shareholders) is warranted in light of the steps taken by firms to address share class suitability and holding periods today and the evidence that suggests that very few clients hold class C shares long enough to benefit from a share class conversion feature.

II. Grandfathering of Existing Mutual Fund Positions

We ask that the Commission reconsider its intention to apply the share class conversion rules to fund shares issued prior to the rule's compliance date. The systems development work necessary to implement proposed Rule 6c-10(b) for new share purchases is daunting, and we do not believe there is a compelling reason to require additional development work to allow for conversion of existing fund positions. As noted above, the typical fund shareholder only holds fund shares for approximately 3-4 years. To the extent the proposed grandfathering provision would become effective five years after the date on which proposed Rule 6c-10(b) is in effect for new share purchases, conversion of existing shares would not occur for at least 6.5 years from

¹ Proposal at 75 FR 47120

² Proposal at 75 FR 47102, footnote 504.

the effective date of the rule. Mandating that a separate conversion process be built at a considerable expense for what will likely be an extremely limited population of clients who are still holding those shares is simply not a good use of limited resources, particularly in light of the other priorities in the Proposal that firms must address.

III. Rule 6c-10(c)/Account-Level Sales Charge

We appreciate the Commission's desire to increase competition in the mutual fund marketplace with the proposed amendments to Rule 6c-10 and the introduction of the "account level sales charge" concept. However, we respectfully suggest that robust competition already exists. Today, investors can invest in mutual funds through multiple share classes and pricing options, including access to no-load funds through fund supermarkets, fee-based advisory accounts as well as a growing market in exchange traded funds. We are concerned that the introduction of a new share class designed solely for account-level fee clients could result in those clients receiving more limited services, having fewer funds available to them and potentially struggling to understand yet another, entirely unique, fund class structure.

As noted in the proposal "dealers could impose their own sales charges based on their own schedules and in light of the value investors place on the dealer's services."³ In practice, however, it is unlikely that firms will support multiple platform pricing options due to operational issues and potential client conflicts. Rather, it is more likely that firms will effectively be obliged to utilize a single pricing option and eliminate the other options. For investors, this outcome could result not only in a loss of share class choices, but also diminished services if competitive pricing pressures drive down account-level fees below levels necessary to cover expenses.

The proposed changes to Rule 6c-10 would, if adopted, fundamentally change the long-established and effective mutual fund share class structure. Indeed, while other aspects of the Proposal have been thoroughly studied and debated for several years, the Commission's assumptions with respect to this aspect of the Proposal and the potential market impacts have not been subjected to rigorous study or industry scrutiny. As a result, the practical implications of disrupting existing share class structures have not been fully analyzed. Furthermore, the potential ramifications of a possible fiduciary standard on broker-dealers must also be considered in order to fully evaluate the potential impact of the change on investors. In light of these facts and for the reasons noted above, we urge the Commission to defer this aspect of the Proposal for further study.

³ Proposal at 75 FR 47088.

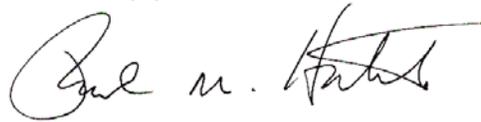
Elizabeth M. Murphy

November 5, 2010

Page 4

We appreciate the opportunity to provide comments on the Proposal and look forward to a continuing dialogue with the Commission and SEC staff on this important rulemaking initiative.

Sincerely yours,

A handwritten signature in black ink that reads "Paul M. Hatch". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke extending to the right.

Paul M. Hatch
Managing Director
Morgan Stanley Smith Barney LLC

Cc: Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Robert Cook, Director, Division of Trading and Markets
Andrew J. Donahue, Director, Division of Investment Management
Robert E. Plaze, Associate Director, Division of Investment Management