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Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **SEC Division of Investment Management Rule 12b-1 Roundtable (File Number 4-538)**

Dear Ms. Morris:

The SPARK Institute, Inc. ("SPARK")[1] appreciates this opportunity to comment on the U.S. Securities and Exchange Commission's ("SEC") initiative involving the review of Rule 12b-1. We also appreciate the fact that the SEC included a representative from the retirement plan industry[2] on one of the panels at the Rule 12b-1 Roundtable that was held on June 19, 2007.

Mutual funds play a significant role in the retirement plan industry. The revenue derived from mutual funds helps employers pay for some or all of the retirement plan products and services they provide to their employees. The SPARK Institute membership includes both retirement plan service providers who receive 12b-1 payments from mutual funds, as well as the fund companies whose funds make such payments. As such, The SPARK Institute and its members are keenly interested in the SEC's deliberations and potential decisions that will be made regarding 12b-1 programs and payments. We recognize however, that the SEC is in the early stages of this process and has not revealed what policies or approaches it may take. Accordingly, the following comments are brief

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[1] SPARK represents the interests of a broad based cross section of retirement plan service providers, including members that are banks, mutual fund companies, third party administrators and benefits consultants. SPARK members include most of the largest service providers in the retirement plan industry and the combined membership services more than 95% of all defined contribution plan participants.

[2] Charles Nelson, Senior Vice President, Great-West Retirement Services and Chairman of the Board of The SPARK Institute.

and are only intended as a high level summary of our views regarding the use of 12b-1 fees in connection with employer sponsored retirement plans.

I. Mutual Funds Should be Permitted to Continue to Make Payments to Retirement Plan Service Providers Under 12b-1 Programs for Distribution and Ongoing Services.

For well over a decade retirement plan service providers and mutual fund companies have worked with plan sponsors to provide participant investors access to a broad and diversified array of investment funds.[3] Access to mutual funds from multiple mutual fund companies through a single retirement plan service provider or record keeper, including funds managed by unaffiliated companies, has been made feasible and cost effective in part due to the payments, including payments under 12b-1 programs, made by mutual funds to plan service providers. Retirement plan service providers may receive payments from fund companies for services such as shareholder record keeping, trade consolidation and initiation through omnibus accounts, trade settlement, proxy voting related services, dividend distribution, investor support (e.g., meetings, phone representatives, automated phone centers, and web access), participant investor communication (e.g., fund literature) and education, fund distribution, and other similar services.[4] Payments from mutual funds can come from one or more sources, including 12b-1 programs, sub-transfer agency fees, shareholder services fees, and administrative services fees.

The payments received by plan service providers from unaffiliated mutual funds represent a significant source of revenue for many service providers. In fact, because of the competitiveness in the retirement plan industry, large employers frequently demand that their plan service providers derive all of their revenue in connection with their plans from revenue payments made by unaffiliated mutual funds and proprietary investment fund management fees. In such cases, the plan sponsor is not billed for any plan administrative expenses and a plan provider that wants to retain its plan customer must rely solely on the revenue generated by the plan's investments in order to be paid for servicing the plan. Payments under 12b-1 programs are an important component of such compensation that plan service providers depend on.

We note that in the event that such payments are disallowed or limited (e.g., via a maximum payment amount) by the SEC, the retirement plan providers would likely be forced to make up any shortfalls by accounting for and trading mutual funds on a unitized basis. In so doing, plan record keepers will be able to accrue additional asset-based fees against plan investments on a daily basis the same way they are accrued within mutual funds today. Although the forgoing "work-around" will generally allow plan providers to accrue the same gross revenue with respect to mutual funds, such work-around will create an undesirable consequence for plan sponsors and participants. By pushing the 12b-1 payment amounts outside of the mutual funds, such amounts

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[3] Today over $2 trillion dollars is invested in mutual funds by employer sponsored defined contribution retirement plans.

[4] We note that some retirement plan service providers may also receive payments attributable to a plan on behalf of another plan service provider. For example, a plan record keeper who is also a directed trustee for a plan that works with a broker may receive a 12b-1 payment that belongs to the broker. In such circumstances the 12b-1 payment is not revenue for the record keeper/trustee but is a payment it receives on behalf of the plan to pass along to the broker.

will not be reflected in the net returns of such funds. Consequently, it will become much harder to report and explain investment returns to plan sponsors and participants. This will create significant confusion and frustration among plan sponsors and participants, at best, and may cause participants to make mistakes when comparing the performance of funds, resulting in poor investment decisions.

Accordingly, The SPARK Institute urges the SEC to continue to allow mutual funds to make payments to retirement plan service providers under 12b-1 programs for distribution and ongoing services.

II. Any Person or Entity that Receives Compensation from a Mutual Fund Under a 12b-1 Program in Connection with Providing Services to a Retirement Plan Should Disclose the Receipt of Such Compensation to the Plan Sponsor/Fiduciary.

In order to address the concerns and perceptions regarding the use of 12b-1 fees as indirect compensation and the related potential conflicts of interest issues, The SPARK Institute believes that all plan service providers should be required to disclose to plan sponsors (1) the compensation they receive from third parties,[5] (2) provide a description of the services they provide for such compensation, and (3) clearly identify potential conflicts they may have. However, the forgoing requirements should not be limited to 12b-1 payments. Moreover, we recognize that this issue and any resolution is beyond the scope of the specific matters at hand, and that appropriate resolution of such disclosure issues will require coordination with, and action by, other regulatory agencies (e.g., the Department of Labor). As the SEC knows, the Department of Labor is working on several projects relating to fee disclosure. The SPARK Institute has shared its views on this topic with the Department of Labor.

We thank you for this opportunity to comment on this very important effort. Should you have additional questions or need additional information regarding this comment, please do not hesitate to contact us at (704) 987-0533.

Respectfully,

/s/

Larry H. Goldbrum
General Counsel

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[5] Any such disclosure rules should not require retirement plan service providers to calculate and provide to plan sponsors the actual dollar amount of fees and expenses they receive. Such information is not readily available and would require significant initial and ongoing efforts and resources to provide. Providing estimates, rate information or formulas should suffice. The costs associated with requiring service providers to calculate actual dollar amounts for millions of plans with multiple investment options would be more costly than could be reasonably justified.