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July 19, 2007

Nancy M. Morris, Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

**Re: File 4-538**

Dear Ms. Morris:

I am responding to the request of the Securities and Exchange Commission for comments from the public respecting the Commission's consideration of possible revisions to Rule 12b-1 under the Investment Company Act of 1940. I am a lawyer in private practice, and comments in this letter do not necessarily represent the views of any of our clients.

The Commission has indicated that it may review the suggested factors for a fund governing board's consideration in approving or continuing a Rule 12b-1 plan. While I believe there is considerable merit in proposals to update or eliminate the factors suggested in the current rule, I am concerned that actual revisions to the rule might take the form of increased specificity or the addition of stated board duties, that would impair board functions and reduce the willingness of qualified individuals to serve on fund boards.

A friend in the retail securities business once referred to Rule 12b-1 payments to dealers as "renting a sales force." Explaining this, he said that securities dealers and others that sell fund shares and maintain accounts for fund shareholders have continuing costs to provide services to shareholders, and that a fund often must provide a continuing revenue to the firms that sell its shares, or it is likely to lose assets to other funds (or other investments) that satisfy the selling firms' revenue needs. Of course, funds and their boards do not make these payments to selling firms willingly, and would prefer to increase stated investment returns by paying the money to shareholders, but the firms that distribute fund shares nonetheless provide servicing and distribution that is valuable to funds and to investors alike, and most fund groups could not economically and practically distribute their shares otherwise.

The consequence of this circumstance is that the balance of power between funds, on one hand, and the selling firms, on the other, remains firmly with the selling firms. This uneven balance may also be reflected in the relative political and public influence of the parties. This, in my view, presents a risk that changes to Rule 12b-1 ultimately may focus less upon the more fundamental questions that have been raised about how mutual fund service and distribution costs are paid, and instead, may focus more upon increasing the responsibilities of the constituency that

is the least vocal and least able to influence the rulemaking process, the fund governing boards. Such a focus could result - as it has in the context of some other recent changes in fund regulation - in increasing excessively the responsibilities of fund governing boards, and particularly the independent members of those boards.

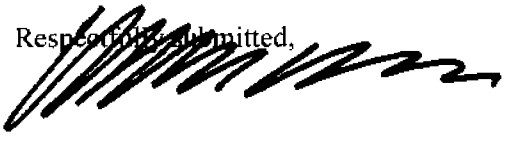
Such an approach would not affect the reality that most funds depend upon selling firms to increase and retain their assets. Such an approach could, however, place an excessive burden on fund governing boards if not carefully crafted. For example, placing an increased obligation upon boards to obtain and consider detailed information from selling firms respecting those firms' costs and use of Rule 12b-1 payments would present boards with the difficulty of obtaining the information in the first place, and analyzing it when (and if) it was received in intelligible form. Requiring boards to evaluate the inner mechanics and economics of fund shareholder servicing and share distribution would impose a difficult, expensive and time consuming process on boards, with a questionable likelihood that the exercise would yield clear or compelling results.

Would this benefit shareholders? It is difficult to see how it would do so. Most obviously, designing and transmitting information requests, obtaining usable responses from reluctant selling firms and analyzing the information received would divert board attention from portfolio management issues (which are a primary concern of shareholders) to analyzing topics of share distribution economics that are likely to be confusing and opaque to boards. One supposes that some boards would resolve the issue by enhancing or expanding the review process in greater or lesser degree, while continuing current plans at more or less the current fee levels. Other less sanguine boards, concerned that they cannot make the determinations that would presumably be required by an enhanced approval regime, might discontinue or cut back the fees paid under their funds' plans. It is unlikely that those funds will retain the interest of the selling firms, and those funds likely would experience a gradual asset erosion with potential adverse consequences to their shareholders.

Some members of governing boards, including particularly independent members, may arrive at an individual solution to this conundrum by simply resigning and applying their talents to resolvable problems. This would not be a good result for mutual funds, whatever view one may have of Rule 12b-1.

In view of these points, I strongly suggest to the Commission that, if changes to Rule 12b-1 are implemented at all, the changes not place the burden on the individuals least able to effect a meaningful resolution of the issues relating to this rule.

Respectfully submitted,



Charles W.N. Thompson, Jr.

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