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Melanie S. DiCenso CFP
Certified Financial Planner

October 11, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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Dear Ms. Morris:

RE: SEC Review of Rule 12b-1

I am pleased to submit these comments in connection with the recent Securities and Exchange Commission (SEC) roundtable convened to examine issues presented by Rule 12b-1 (Rule or Rule 12b-1) under the Investment Company Act of 1940 (Investment Company Act). The Rule allows fees to be deducted from mutual fund assets to pay distribution and shareholder service expenses. Rule 12b-1 was designed to enhance the value of fund ownership by attracting more investors into mutual funds. The Rule is of utmost importance to millions of investors, their financial advisors and the broker-dealers that serve them.

The Rule's important role in supporting mutual fund distribution, along with significant changes in the U.S. securities markets since the Rule was adopted some 27 years ago, justifies its re-examination. The Commission is, therefore, to be commended for initiating this comprehensive review of Rule 12b-1 and hosting the excellent roundtable session on June 19. However, as the clear majority of the roundtable panelists indicated, the Rule's purpose has been ably served by the use of 12b-1 fees to facilitate mutual fund distribution and shareholder services. Therefore, I belive that any potential changes to the Rule should relate solely to improving their effective disclosure to clients and reinforcing the Rule's important achievements.

The Independent Broker-Dealer (IBD) community has been an important and active part of the lives of the American consumers for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice with little, if any, proprietary product bias, while avoiding some of the pitfalls to which other financial services business channels have been susceptible in recent years. They also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products, by "check and application"; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment advisor firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially

Equitas America, L.L.C.
Securities Broker/Dealer Member NASD/SIPC
624 W. Nepessing St., Ste. 205
P.O. Box 755
Lapeer, Michigan 48446
Phone (810) 664-1326 Fax (810) 664-1327
E-Mail: mdicenso@equitasusa.com
Website: www.melaniedicenso.com

well positioned to provide middle class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives. In the U.S., approximately 110,000 independent financial advisors – or approximately 20 percent of all registered representatives – practice in the IBD channel. These financial advisors are independent contractors, rather than employees of the IBD firms. They provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically "main street America" – it is, in fact, almost part of the "charter" of the independent channel. The core market of advisors affiliated with IBDs is clients with a net worth of $250,000. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence. Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings – oftentimes over the client's kitchen table. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

The SEC's re-examination of Rule 12b-1 is of particular interest to me. As financial advisors to middle-class Americans in small towns throughout the U.S., independent financial advisors can attest to the fact that 12b-1 fees provide a tax efficient means to support the continuing service that these Americans need for successful investing. Middle class Americans need the continuing service, guidance and support that are provided by these independent financial advisors to achieve their investment goals. 12b-1 fees subsidize these efforts. As a result, I believe that the consequences of eliminating or drastically altering Rule 12b-1 would be disastrous to investors and, therefore, should trump all academic discussions of the relative merit of the Rule.

<u>Specific Investor Benefits of Rule 12b-1</u>

Rule 12b-1 provides the following important benefits to investors:

1. Expansion of Investor Choice – Mutual fund companies have responded to the Rule by creating share classes with a variety of fee structures. In addition, the ability of small fund companies to assess 12b-1 fees has enabled them to remain competitive by allowing them to gain access to a wider array of distribution channels. The innovation and specialization offered by smaller fund families increases the choices available to mutual fund investors. The proliferation of fund families and share classes provides financial advisors with the tools necessary to tailor a portfolio to their client's specific needs. More importantly, however, it provides investors with choices by providing them a greater variety of mutual fund options and a variety of choices in how they pay for distribution services and financial advisor support.

2. Supporting Financial Literacy - Mutual funds send their investors monthly statements, confirmations, prospectuses, annual reports, and other materials. Financial advisors serve the vital role of educators by helping investors to make

sense of these essential materials. It is clear that investors value this support as 82% of investors who own funds outside defined contribution retirement plans reported that they invest in funds through a financial advisor. 12b-1 fees are the compensation these financial advisors receive for their support services and offer the ongoing incentive to continue these efforts beyond the initial transaction.

3. Managing Client Expectations – Investors make several common mistakes; buying high and selling low, chasing past performance, failing to adequately diversify and harboring unrealistic expectations. These mistakes can lure unwary investors into financial disasters from which it can be difficult to overcome. Investors need the help and support from experienced independent financial advisers to avoid falling into these common investor traps. 12b-1 fees provide financial advisors with the incentive to promote intelligent investment decisions and manage client expectations rather than encouraging trading activity. As a result, they play an important role in facilitating the achievement of investors' financial goals.

4. Insuring Small Accounts Receive Service – The sale of mutual fund shares should not be viewed as a one-time transaction event. Instead mutual fund sales through the IBD channel involve the creation and fostering an ongoing relationship of trust between the investor and his chosen financial advisor. These relationships involve the giving of support and service relating to changes in the client's personal circumstances, the performance of the recommended mutual fund, developments in the securities market, and other factors. 12b-1 fees provide the mechanism to insure small investors receive the support and service they need to achieve their financial goals. Alternatives, such as investment advisory services, are simply out of the reach of many small account holders. Financial advisors must have another means of being fairly compensated for servicing these accounts. 12b-1 fees are an appropriate and necessary method of subsidizing the personal services provided by independent financial advisors to middle-class Americans.

5. Subsidizing Additional Services – Independent financial advisors offer their mutual fund clients a variety of additional services including: consolidated account statements, periodic portfolio review meetings, quarterly newsletters, cost basis research, preparation of tax returns, consulting on other financial decisions. These essential services are made possible by the subsidy 12b-1 fees provide. Externalizing the fees for such services would do small investors significant harm by imposing the full cost of such services upon them rather than allowing larger accounts to subsidize these costs as occurs under the current system. In addition, externalization would impose invoicing and collection costs on financial advisors. These costs would be passed on to investors through higher fees. The result would be the reduction of services or a significant increase in their cost in the name of protecting investors. Rule 12b-1 simplifies the payment for essential support services.

<u>Conclusion</u>

In conclusion, while it is commendable for the SEC to review the investor benefits of 12b-1 fees,

it is obvious that the repeal of Rule 12b-1 has the potential to cause great harm to thousands of individual investors who need the support and service of a trained financial advisor. Therefore, I urge the SEC to allow Rule 12b-1 to continue to support financial advisors' efforts to provide needed financial services to middle class American investors pursuing their financial goals. I agree with many of the roundtable participants that more effective disclosure of the fees and services associated with 12b-1 plans would be a positive development. However, any such effort should be coordinated with the SEC's current point-of-sale rule proposal and prospectus simplification project with the emphasis on simplifying and improving the effectiveness of all mutual fund disclosures. I am committed to constructive engagement in the regulatory process and, therefore, would welcome the opportunity to work with you to find solutions to these disclosure concerns.

Again, thank you for the opportunity to comment on the SEC's review of Rule 12b-1. Should you have any questions, please contact me at 810-664-1326.

Respectfully submitted,

Melanie S. DiCenso, CFP

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