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Merrill Lynch

December 21, 2007

Ms. Nancy Morris
Secretary
Securities and Exchange Commission
100 F St. N.E.
Washington, DC 20549-1090

Re: File No. 4-538: Roundtable Discussion Regarding Rule 12b-1

Ladies and Gentlemen:

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") appreciates the opportunity to respond to the Securities and Exchange Commission's (the "Commission") request for comments on the Rule 12b-1 Roundtable held on June 19, 2007 (the "Rule 12b-1 Roundtable").

I. BACKGROUND

A. Merrill Lynch

Merrill Lynch is a registered broker-dealer under Section 15 of the Securities Exchange Act of 1934 (the "1934 Act"), and a registered investment adviser under Section 203 of the Investment Advisers Act of 1940 (the "Advisers Act").[1] Merrill Lynch has selling and/or servicing arrangements with over 200 mutual fund companies and currently offers over 17,000 individual mutual fund share classes to its clients. Merrill Lynch has over 12 million client positions in retail brokerage accounts that are invested in mutual funds and serves over 8 million additional retirement plan participants who have mutual fund investments. In 2006, Merrill Lynch executed over [130] million fund transactions (excluding money market transactions) for these clients. Currently, Merrill Lynch supports the transactions of over $300 billion in mutual fund assets. Merrill Lynch employs over 16,000 Financial Advisors who provide advice and guidance to Merrill Lynch clients relating to a variety of financial products and services, including mutual funds.

[1] Merrill Lynch is a wholly owned subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."), one of the world's largest financial services firms.

B. Current Rule 12b-1 and Related Investor Disclosure

The Commission's Rule 12b-1 requires that any payments by an open-end management investment company in connection with the distribution of its shares must be made in accordance with a written plan. The plan must provide, among other things, that it may be terminated at any time by a vote of a majority of the independent directors or a majority of the fund's outstanding voting securities. In addition, Rule 12b-1 requires that (1) a fund's board and independent directors annually approve the fund's 12b-1 plan so long as they determine that there is a reasonable likelihood that the plan will benefit the fund and its shareholders; (2) the directors review quarterly the amounts spent under the 12b-1 plan and the reasons for the expenditures; and (3) the board, the independent directors, and fund shareholders must approve any material increase in the fund's 12b-1 fee. In addition, a fund's prospectus is required to disclose distribution and shareholder services fees under a fund's 12b-1 plan as a percentage of assets, and a fund's annual and semi-annual reports are required to state separately the aggregate expenses incurred by a fund under its 12b-1 plan.

C. Rule 12b-1 Roundtable

When the Commission adopted Rule 12b-1 in 1980, it resolved to monitor the operation of the rule, and be prepared to address the rule if the circumstances or experience warranted. On June 19, 2007, the Commission hosted a roundtable discussion regarding the need for a re-evaluation of Rule 12b-1. We set forth below our thoughts on certain aspects of discussions held at the Rule 12b-1 Roundtable from the perspective of client benefits and client impact.

II. DISCUSSION

A. Rule 12b-1 Benefits Mutual Fund Investors

We believe that Rule 12b-1 provides substantial benefits to mutual fund investors. These benefits include:

- financing important shareholder services;
- providing an alternative to front-end sales charges;
- facilitating a processing and tax efficient method of paying for distribution and shareholder services; and
- enabling the creation and maintenance of alternative distribution channels (e.g.,401(k) platforms and "fund supermarkets").

First, 12b-1 fees finance a wide range of important shareholder services, such as regular communication with clients, fund information, client education and guidance, and the handling of ongoing client requests and inquiries regarding their mutual fund investments. These services are particularly important to the large numbers of mutual fund investors who rely on the personal assistance of Financial Advisors like those employed by Merrill Lynch. Merrill Lynch Financial Advisors make available to their clients a broad array of funds from a diverse group of fund families each with its own unique shareholder privileges, expense structure, style and

performance. It has long been understood that clients investing in mutual funds require a greater amount of assistance than those investing in corporate stocks or bonds given the multitude of unique shareholder privileges offered by such funds. Of course, clients may select those funds that best meet their investment needs at the time, often relying on the information and other assistance given to them by their Financial Advisors.

Second, 12b-1 fees provide mutual fund investors the flexibility to choose how to pay for the distribution and shareholder services rendered to them. For instance, investors may desire to: (1) put their entire investment to work immediately without the reduction of front-end sales charges; (2) more efficiently allocate and re-allocate their assets among more than one fund family's products; and (3) compensate their Financial Advisor on a current value asset-based arrangement rather than on a purchase date based arrangement.

Third, 12b-1 fees provide mutual fund investors with an efficient means to pay the costs of distribution and shareholder services. By bundling payment for ongoing services at the fund level, mutual fund investors receive the benefits related to: (1) the single process of deducting those costs from the fund; (2) leveraging the bargaining power of the entire fund in negotiating fees and service levels with the various service providers; and (3) having the expenses born by the fund and the tax benefits of such structure as further discussed below.

Finally, 12b-1 fees provide a mechanism for fund participation in alternative distribution channels such as retirement plans and so called "fund supermarkets." These alternative channels provide benefits to those investors who elect to be serviced using such platforms and distribution channels, including the ability to research funds, obtain fund literature, and purchase fund shares. Moreover, 12b-1 fees may facilitate the development of new and other beneficial distribution channels to meet mutual fund investors' needs.

Merrill Lynch receives few client complaints about the 12b-1 fees deducted from fund assets to support distribution and shareholder services. The wide acceptance by shareholders of funds that finance, in whole or in part, distribution and shareholder services through 12b-1 fees, we believe demonstrates the benefits realized by funds and shareholders from current Rule 12b-1 practices. If that were not the case, we further believe that funds charging such fees would have disappeared from the marketplace long ago, but to the contrary, according to research by the Investment Company Institute, almost 70% of all mutual funds today have 12b-1 plans.[2]

B. Client Impact of Externalization of 12b-1 Fees

Much of the Rule 12b-1 Roundtable involved a debate regarding whether 12b-1 fees should continue to be internalized or whether they should be externalized. We believe that additional transparency of 12b-1 fees can be accomplished without externalizing those fees, which we discuss further below in Section C. We further believe that externalization of 12b-1 fees would be harmful to mutual fund investors for many reasons, including the following:

- loss of pooled vehicle efficiency and shareholder confusion;

[2] *See Report of the Working Group on Rule 12b-1,* Investment Company Institute (May 2007) at 4, available at http://www.ici.org/pdf/rpt_07_12b-1.pdf.

- impact on tracking performance;
- tax treatment consequences; and
- impact on calculations, correctness and transparency.

By way of background, we take "internalized" to represent the current practice by which a fund deducts from its assets the financing amounts set forth in the fund's written 12b-1 plan. Accordingly, the fund and its directors have direct responsibility for and oversight of the 12b-1 plan pursuant to their fiduciary duties under state law and Section 36 of the Investment Company Act of 1940. In the Rule 12b-1 Roundtable discussions it was not clear how the advocates of the externalization of 12b-1 fees would change, if at all, the current fiduciary oversight regimen by the independent fund directors set forth in Rule 12b-1. However, we will assume that they contemplated that the fund and its directors would continue to have a fiduciary responsibility, but that the fund service providers and/or financial intermediaries, as the case may be, would be responsible for charging each investor's account with respect to the 12b-1 fees owed at a share lot level.[3] We believe that any benefit from enhanced transparency resulting from such a change would be far offset by the costs and adverse impact on our fund shareholder clients.

We believe that externalization of 12b-1 fees belies the very essence of a mutual fund – a registered collective investment vehicle that pools many investors to obtain and realize a multitude of efficiencies not otherwise available to small individual investors without the pooled vehicle. Distribution and related shareholder services are just two of the many services fund shareholders directly or indirectly receive and benefit from for which the costs are deducted from fund assets. Others include investment advisory, administrative, custody, transfer agent services, accounting, and legal services, all of which are paid directly out of fund assets to the various service providers. Accordingly, we believe it will be difficult for mutual fund investors to understand why certain expenses are absorbed by the fund and others are deducted from their accounts, particularly if deducting those expenses at the account level would be economically less favorable.

In addition, we believe that if 12b-1 fees were externalized fund performance reporting would be confusing to mutual fund shareholders. By deducting distribution and related shareholder service costs directly from client accounts rather than from fund assets, fund performance per share would not match account performance. Thus, mutual fund shareholders would have no way to compare their investment performance with the account performance of any similarly situated shareholder.

Furthermore, as discussed at the Rule 12b-1 Roundtable, for many mutual fund investors, externalization of 12b-1 fees would convert a deductible fund expense into a non-deductible individual expense. Given this fact, we question whether externalization could ever be accomplished, or why it should be.

[3] We note that if the advocates of externalization intend the elimination of the current fiduciary practices such a change would, in effect, result in the elimination of Rule 12b-1. The numerous other implications attendant to the elimination of Rule 12b-1 are beyond the intended scope of this comment letter.

Lastly, the costs of creating and implementing the systems necessary to support the deduction of 12b-1 fees directly from client accounts would be significant for both mutual fund transfer agents, who typically maintain a fund's direct accounts, and other financial intermediaries that carry the accounts in which fund shares are held. Presently, 12b-1 fees are accrued for and deducted from fund assets in essentially one process at the fund level by the fund's accounting agent. Deducting 12b-1 fees from each client's account would require the daily calculation of individual amounts for specific share lots and the processing of individual fees to these specific share lots monthly (and daily in the case of redemptions). This externalized process would increase the one calculation currently conducted by the fund's accountant to literally millions of calculations by the fund's transfer agent and other financial intermediaries. As a result, these activities likely would burden mutual fund investors with inadvertent increased calculation errors and costs associated with creating and maintaining the required systems.

C. Client Benefits of Additional Prospectus Disclosure

As discussed above, we believe that the current practices under Rule 12b-1, including deducting 12b-1 fees from fund assets, have provided important benefits to mutual fund investors. Some Roundtable participants and others have suggested that greater transparency is necessary with respect to 12b-1 fees.

In that regard, we support the proposal by the Investment Company Institute Working Group on Rule 12b-1 to cease making reference to "Rule 12b-1" by name in the prospectus fee table (as required by Item 3 of Form N-1A) and to require simple descriptive terms for the services currently provided under that rubric.[4]

We also believe that mutual fund investors may benefit from additional prospectus disclosure of the actual annual amount deducted on a per share basis in addition to the current percentage disclosure requirement. This could be accomplished with additional disclosure in the expense table. For instance, if a fund has annual returns for at least one calendar year, the additional disclosure could state the annual amount deducted per share under the fund's 12b-1 plan for the prior year based on the average net asset value per share for the prior year. We believe this additional disclosure would be straightforward and give our mutual fund shareholder clients further useful information on the costs of distribution and shareholder services annually for share classes subject to a 12b-1 plan.

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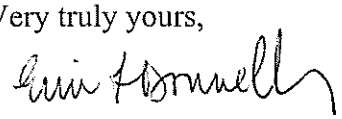
[4] *See* ICI Working Group Report, *supra* note 1 at 8.

We appreciate the opportunity to share our thoughts with the commission regarding the Rule 12b-1 Roundtable. We look forward to working with the Commission with regard to these matters. We would be happy to discuss any issues relating to Rule 12b-1 with the Commission at its convenience.

Very truly yours,



Erin F. Donnelly
Managing Director

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Annette L. Nazareth, Commissioner
The Hon. Kathleen L. Casey, Commissioner
Andrew J. Donohue, Director, Division of Investment Management
Erik R. Sirri, Director, Division of Trading and Markets