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June 1, 2007

Christopher Cox
Securities and Exchange Commission
SEC Headquarters
100 F Street, NE
Washington, DC 20549

Re: Mutual Fund 12(b)-1 Fees

Dear Mr. Cox:

Thank you for your thoughtfulness in recently addressing the fact that, "the SEC could consider ways for advisers to recoup expenses for servicing their customers' accounts if 12(b)-1 fees are abolished." Undoubtedly you had 401(k) retirement plans in mind, for it is difficult to find another area where 12(b)-1 fees are used more constructively.

Our purpose in writing is two-fold:

- Document the specific usefulness of 12(b)-1 fees to both plan participants and fiduciaries,
- Detail the practical difficulty in funding these activities from other sources.

<u>Uses of 12(b)-1 fees</u>

Currently, we use 12(b)-1 fees to assist both fiduciaries and participants of 401(k)s to fulfill ERISA 404(c) by providing the following: web sites, seminars, workshops, newsletters, individual counseling, educational materials, service center operations, and quality assurance (including participant involvement in service enhancements).

Additionally, we use the 12(b)-1 fees to address plan viability from other regulatory and liability perspectives, including (but not limited to) reviewing: plan documents, schedules for verifying participation and vesting, discrimination testing for consistency with plan terms, all service agreements, plan committee minutes, and back-up materials to verify compliance with prudent process requirements. Other areas that also require expenditures include: plan fund independent analysis, continuous investment monitoring with periodic summaries, and providing total fee transparency.

Fiduciary fulfillment has never been more crucial from both regulatory and liability perspectives. As co-fiduciaries in each plan with which we are affiliated, we at Bay Mutual Financial take both regulatory and liability responsibilities very seriously. Areas that funds from 12(b)-1 fees are expended include: fiduciary documentation and tutoring, a fiduciary self monitoring program, quarterly retirement plan fiduciary newsletters, and current events alerts (on a p.r.n. basis). Finally, we provide Department of Labor Audit assistance as requested, an annual review of retirement plan best practices, negotiations with retirement providers and other services customized to the individual plan's needs.

Alternative funding for participant and fiduciary support

In discussing alternative funding for the above activities, we find plan sponsors reluctant to pay the "hard dollar" costs, indicating that their current expenses for plans already impinge heavily on their budgets. Most plans seem comfortable with their matching, but indicate the following expenses are an increasing burden: administration, regulatory compliance (including Sarbanes-Oxley), and auditing.

Additionally, we have yet to convince a retirement provider to divert the Sub TA fees to be used for the purposes detailed above. Indeed, they indicate that the fees are fully earmarked for other purposes.

Considering that 12(b)-1 fees are derived from the plan and utilized for plan benefit (both participant and fiduciary) it properly aligns financial advisors on a contractual and fiduciary basis with participants as opposed to a third party. Indeed, this arrangement aligning the financial advisor's interest with that of the participant, may be even more desirable than those activities funded from "hard dollars" which have the potential to at least partially align the financial advisor with the sponsor and not the participants.

While 12(b)-1 fees were not originally designated for the services detailed above, this does not detract from the necessity of these services. Our experience confirms that, in the absence of personal contact, education and communication, plans exhibit a much higher rate of participants improperly allocating assets. Indeed, we have encountered one plan that had not had financial advisor assistance where nearly all the funds were allocated (for years) in the money market account. Additionally, our experience also supports that of others who report that informal electronic or other media counseling is much less effective in assisting participants to best manage their accounts.

We are not unaware of how seemingly small annual fees cut into the compound rate of return. However, the losses from participant inattention, improper asset allocation, or lack of fiduciary vigilance have (in our experience) a far worse negative impact. Thus, we believe these services are of extraordinary value to both participants and fiduciaries in that they are all designed to service the individual account, service the plan, provide plan continuity, and protect plan viability.

Thank you for your attention and continued thoughtful approach to the issue of 12(b)-1 fees.

Yours truly,

Martin W. Pernoll
Chief Executive Officer

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