

re: SEC File Number 4-538

Shawbrook is a fee-only advisor, based in Alexandria, VA, that has invested money for individuals and trusts for over six years. Only 20% of the funds that Shawbrook has placed client assets in charge a 12b-1 fee. However it is questionable whether clients receive any value for that fee and, for that reason, Shawbrook has decided to file comments on behalf of its clients as their fiduciary.

1) If you want to talk about numbers, look at the whole picture.

This round table will undoubtedly hear much talk about the need for mutual funds to cover their "distribution costs." First of all, the choice to use a high-cost distribution channel, i.e., the brokerage channel, is exactly that, a choice, that many funds choose not to make and no fund is required to make. Secondly, I'm not aware of any rules that say every single discrete cost item on the expense side of a fund's ledger has to have a designated offsetting source on the revenue side of the ledger to "cover" it. The important thing is that overall, asset managers are an enormously profitable businesses. A report two years ago on asset managers from consultant, McKinsey & Co., said "Industrywide profitability has remained attractive, and remarkably stable, over a full market cycle. In 2004, asset managers generated an average pretax margin of 28% - an enviable profit level in the financial services sector." In 2005 the average profit margin was 31% and Shawbrook does not believe the intervening months have substantially altered that assessment.

As long as we're talking about costs, don't forget that investors who choose to select mutual funds based solely on merit rather than be sold an investment product by a broker have their own costs, either the cost of time and money involved in researching funds on their own, or the cost of paying an advisor who in turn does the research for the investor. Shawbrook clients, for instance, pay for my due diligence in selecting funds for their portfolios, and my costs include more than \$1,000 in annual subscription fees that Shawbrook pays to a statistical database on mutual funds. Asking my clients to absorb those costs and

then to pay an extra fee to pay another investor's broker via the 12b-1 fee is simply wrong and serves no pressing public policy purpose, as evidenced in the SEC's 12b-1 own 2004 study, authored by Lori Walsh.

2) Shawbrook clients and other investors should not be assessed fees without a value provided in return.

Advisors and brokers are governed by distinct regulatory regimes, as the U.S. Court of Appeals for the District of Columbia recently reminded us. This distinction also applies to the choices made by investors; many of them make a conscious choice between having an advisor or having a broker. Shawbrook, for instance, counts roughly half of its current clients as having previously chosen to leave their broker and the system of product sales for commission. It is not right therefore to now take assets from those clients and use those assets to pay broker commissions by way of an SEC sanctioned 12b-1 fee.

Note that this is not an argument against the 12b-1 fee per se. Rather it says that whatever system is already used, for instance, to track the account-level application of short-term "redemption fees" could presumably also be applied at the account level to remove the 12b-1 fee from the accounts of investors who manage their own investing or who use an advisor, such as Shawbrook, that does not accept commissions. Alternately the Commission could decide to let fund companies, who have proven quite adept at creating extra share classes when it suits their purposes, create a share class for the above investors that does not expropriate money to pay broker commissions, brokerage office overhead, sales seminars, and other brokerage "channel" costs.

3) Shawbrook clients and other investors need principled decision making from the Commission, not more 8 point type.

There has been some commentary urging the Commission to avoid changing anything regarding 12b-1 fees and instead to simply change or increase the disclosure about those fees.

Shawbrook knows from experience that there is little, if any, incremental benefit to investors by creating yet more small type. Already few investors, for instance, ever look at the statement of additional information [SAI] for a mutual fund, despite the fact that the SAI is legally deemed to be part of the prospectus.

In general it is an unfortunate development that some policymakers have the strange notion that printing boring and technical language in small type, often describing a policy that is not in the interests of the average investor, is a substitute for making principled decisions on behalf of investors. Well, it's not.

4) Shawbrook clients and other investors expect and hope the Commission will encourage price competition among mutual funds, reward fund performance on behalf of investors and encourage innovation.

The Commission could perhaps assist one segment of the mutual fund industry, and its investors at the same time, by assisting small independent start-up mutual funds, say, those with total assets under \$5 or \$10 million. It is Shawbrook's impression that, given the size of today's mutual fund industry, the number of new funds generated by independent start-up entrepreneurs is pitifully small [and may have actually declined over the past 10 years]. The Commission will hopefully, if it has not done so recently, look in detail at the health of independent start-up mutual funds.

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