American Bankers Association
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By electronic delivery

August 23, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Investment Company Advertising: Target Date Retirement Fund Names and Marketing; File Number S7-12-10; Release Nos. 33-9126, 34-62300; 75 Federal Register 35920, June 23, 2010

Dear Ms. Murphy:

The American Bankers Association (ABA) appreciates the opportunity to comment on the notice of proposed rulemaking issued by the Securities and Exchange Commission (Commission) to require new disclosures for target date mutual funds. The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. Our members include banks, savings associations and trust companies that offer directly or indirectly pooled investment products, including mutual funds and collective investment funds, as investment options to their retirement plan clients.

The proposal would amend Rules 156 and 482 under the Securities Act of 1933 and Rule 34b-1 under the Investment Company Act of 1940 to require, among other things, that a mutual fund's asset allocation at the target date be provided immediately adjacent to the first use of the fund's name in marketing materials; that the materials include a table, chart or graph depicting the fund's asset allocation over time; and that there be additional disclosures that would highlight the fund's final asset allocation.

The Commission is also proposing that marketing materials disclose, among other things, that a target date fund should not be selected by investors based solely on their age or retirement date, that a target date fund is not a guaranteed investment and that the fund's stated asset allocations may be subject to change. The Commission intends these proposed changes to address concerns regarding the potential for investor misunderstanding regarding target date fund names and marketing materials.

Target date funds are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically over time, saving individuals from needing to rebalance the portfolio on their own. Target date funds have become increasingly more prevalent in 401(k) plans in recent years, due in large part to the Department of Labor's designation of target date funds as an option for a qualified default investment alternative (QDIA) under the Pension Protection Act of 2006.

In the 401(k) context, target date funds can be organized and operated as mutual funds or as bank collective investment funds (CIFs). While the changes proposed by the Commission largely benefit self-directed IRA holders and other retail investors, they also have the potential to change the marketplace for 401(k) plans. In the 401(k) context, plan sponsors choose the investment options to be made available to plan participants under the plan. In so doing, the plan sponsor exercises its fiduciary authority to prudently select investment options appropriate for the particular plan. In selecting those options, the plan sponsor needs sufficient information to exercise its fiduciary obligations in constructing the investment menu. In turn, the plan sponsor makes available to plan participants the appropriate information to allow the plan participant to select among plan options.

CIFs are bank-maintained trusts that combine and collectively invest the assets of multiple qualified tax-exempt retirement plans. Unlike target date mutual funds, target date CIFs are not advertised or sold to the retail public. They are provided only to institutional clients, which includes employers and other plan sponsors and fiduciaries of 401(k) plans. And, unlike mutual funds, assets in CIFs are considered retirement plan assets, subject to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA). The bank as trustee and manager of the CIF is a fiduciary under ERISA and subject to ERISA's comprehensive set of fiduciary requirements, including prohibitions on self-dealing and conflicts of interest.[1] Because these are not sold directly to the retail public, it is appropriate to treat target date CIFs differently from target date mutual funds that are offered to the retail public.

Discussion of the Proposal

I. Statement about factors to consider for target date funds will help investors

The proposal would require advertisements and supplemental sales literature to include statements informing investors regarding certain risks and considerations that are important to an investor's decision to invest in a particular target date mutual fund. These statements would remind such investors to consider their risk tolerance, personal circumstances, and complete financial situation when selecting a target date fund. The Commission is concerned that an overemphasis is placed on retirement date by many retail investors, in part because of the prominence of the date in the fund's name. Advertising materials would also be required to disclose that an investment in the fund is not guaranteed and that it is possible to lose money investing in the fund.

We support this proposal to educate investors. Because target date funds often utilize a date within the name, concerns have been raised that retail investors may view the fund as providing a risk free investment as of the retirement year. Language in the advertisement and other

[1] CIFs are highly regulated under several other regulatory and statutory regimes, including federal or state banking laws and the Internal Revenue Code. Specifically, the IRC limits the eligible investors in CIFs to U.S. tax-qualified retirement plans and U.S. governmental retirement plans. In addition, CIFs must meet specific bank management standards and investor eligibility restrictions to qualify for securities law exemptions.

marketing materials to educate all investors about looking at their full financial picture may help investors to select a fund with the most appropriate risk and return characteristics.

The statements reminding retail investors about the risk of loss also could address any potential misunderstandings by investors regarding losses that result from the fund's investment allocation which adjusts over time. If the individual is reminded about the potential risks inherent in investing, it may help that individual to recognize that the investment allocation could be either more conservative or more aggressive over the life of the fund and that the investor needs to monitor the fund since it may experience losses due to those variances.

Consistent with our support to enhance investor understanding, we are concerned that the wording in proposed subparagraph (b)(4)(i) of Rule 156 may result in unintended consequences by deterring use of sales literature because of the uncertainty and ambiguity of its wording. Currently, the provision would deter emphasis of a single factor because it could be misleading. We believe the Commission's intent was to deter ***undue*** emphasis or ***over***emphasis of a single factor, and we recommend that the provision be clarified as such. Otherwise, there may be situations where an advertisement emphasizes a single factor, but includes appropriate disclosures and disclaimers, and still may be considered to violate the literal language of this rule provision and therefore be deemed misleading.

For example, if this rule were to apply in the context of a 401(k) plan, we would be concerned about how it could be interpreted. Plan participants need to understand what the date means in terms of how a fund's allocation will shift over time relative to their planned retirement date. While retail investors may need to consider a number of factors about their own situation, the plan participant's choice is limited to those investment options, including target date funds, selected by the plan fiduciary. In making their target date fund investment selections, plan fiduciaries typically conduct their due diligence through an RFP process, examining any number of relevant factors, including the fund's risk and return characteristics, its performance history, asset allocation and glide path. For those participants electing to invest in target date funds under the plan, the target date is the <u>most</u> important factor since the option is only from one target date fund family. The proposal to require language in the advertisement and other marketing materials to educate all investors about looking at their full financial picture more appropriately applies to those target date funds offered directly to the retail investor where they are making a choice among multiple different target date fund families.

II. <u>Target Allocation adjacent to the fund name may mislead investors</u>

The proposal in subparagraph (b)(5)(iii) of Rule 482 would require that a target date fund that includes the target date in its name must disclose the asset allocation of the fund at the target date. Under the proposal, this disclosure of the asset allocation must be provided immediately adjacent to the first use of the fund's name. In addition, this disclosure must be provided in a manner reasonably calculated to draw investor attention to the information.

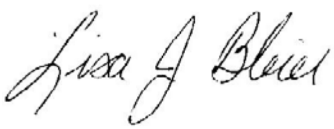
We are concerned that placing the asset allocation of the target date adjacent to the fund's name will unduly overemphasize that particular point, confusing investors about the ever changing allocation of the assets within a target date fund over the entire glide path. Since the allocation of stocks, bonds, and cash varies over the life of the fund, the allocation at any one point is not representative of the totality of the fund.

We believe a more appropriate approach would be to place a greater emphasis on education regarding how target date funds work and the changing allocations within the fund. In this connection, we support requiring disclosure that provides the intended asset allocation of the fund at its target date and asset allocation for the funds at the landing point[2] without any requirement as to the proximity of the Fund name. We do believe the asset allocation mix is important information for an investor. However, placing the allocation information for one specific point in time adjacent to the name could confuse and possibly mislead investors by making that point in time appear to be the allocation for the fund throughout the life of the fund. Ongoing information about adjustments to asset allocation should be provided in fund disclosure documents that are available each year.

In conclusion, we believe these proposals will help retail investors better understand the risks and rewards of investing in target date mutual funds.

If you have any questions on the foregoing, please contact the undersigned.

Sincerely,



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[2] "Landing Point" is the first date at which the asset allocation of a Target Date Fund reaches its final asset allocation among types of investments. Sec. 230.482(b)(5)(i)(C)