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August 27, 2010

**Via e-mail to: rule-comments@sec.gov**

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, DC 20549-1090

Attention: Elizabeth M. Murphy, Secretary

**Re: File No. S7-12-10**

**Release Nos. 33-9126, 34-62300, IC-29301**

**Investment Company Advertising: Target Date Retirement Fund  
Names and Marketing**

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities (the "Committee" or "we") of the Section of Business Law (the "Section") of the American Bar Association (the "ABA"), in response to the request for comments by the U.S. Securities and Exchange Commission (the "Commission") in its June 16, 2010 proposing release referenced above (the "Proposing Release"). The Commission proposed amendments to Rules 156 and 482 under the Securities Act of 1933 and Rule 34b-1 under the Investment Company Act of 1940 that would impact how target date funds ("Target Date Funds") are marketed. The proposed amendments are intended to provide investors with enhanced disclosure regarding these funds.

The comments expressed in this letter (the "Comment Letter") represent the views of the Committee only and have not been approved by the ABA's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, this letter does not represent the official position of the Section.

**Overview**

The Committee strongly supports the Commission's initiative to address the concerns that have been raised regarding the potential for investor misunderstanding to

arise from Target Date Fund names and marketing materials. We also share the Commission's goal to educate investors regarding the risks associated with, and the differences among, Target Date Funds. The Committee's comments are intended to further that goal. With this in mind, the Committee recommends:

- Modifying the proposed definition for Target Date Funds;
- Clarifying the extent to which percentage allocations may be changed;
- Modifying the disclosure related to the presentation of intended percentage allocations;
- Requiring amendments to Form N-1A to provide specific disclosure requirements for Target Date Funds; and
- Addressing collateral liability concerns.

### **Definition of "Target Date Fund"**

Based on the definition of Target Date Funds in proposed new sub-paragraph (b)(5) of Rule 482, it appears that the sub-paragraph is not intended to apply to a fund that has an investment objective with Target Date Fund characteristics, unless a target date is part of the fund's name or is identified in the fund's prospectus or summary prospectus. However, the proposed definition does not clearly limit the application of the sub-paragraph to funds that either have a target date in their name or describe a date in their prospectus or summary prospectus that is the approximate date that an investor is expected to retire or cease purchasing shares.

The Committee recommends amending the definition of Target Date Fund as follows to clarify that even if a fund's asset mix changes as a function of an investor's age or life expectancy, it is not a Target Date Fund unless its strategy is based on a disclosed date:

- (A) *Target Date Fund* means an investment company that has ***a Target Date and*** an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.

### **Variations to Glide Path Allocation**

#### *"Extent to Which" Percentage Allocations May be Modified*

The proposed rules would require advertisements that place a more than insubstantial focus on one or more Target Date Funds to include a statement that advises an investor whether, and the extent to which, the intended percentage allocations of the Target Date Fund(s) among types of investments may be modified without a shareholder vote.

We respectfully request that the Commission clarify that the reference to "the extent to which" is not intended to require disclosure of a specific percentage variance that limits an investment adviser's flexibility. Many Target Date Funds may employ a dynamic investment strategy that provides the investment adviser with latitude to make asset allocation decisions based on a variety of factors consistent with the Target Date Fund's investment objective. This investment flexibility is necessary and appropriate, particularly for Target Date Funds with extended terms (such as a 2050 Fund).

We also believe that the focus on potential changes to *percentage allocations* could result in investor confusion. Many Target Date Funds can be expected to change not only allocation percentages, but also asset classes themselves, over time. It is not possible for a fund to know in advance what investments or asset classes may be available or selected in the future.

The Committee recommends that the Commission clarify that a response to this item could include, for example, a statement that the current allocations represent the fund's current expected strategic allocation, and that percentage allocations and asset classes may change over time based on current market conditions and tactical views of the investment adviser.

#### *Disclosure of "Intended" Percentage Allocations*

The proposed rules would require certain advertisements that place a more than insubstantial focus on one or more Target Date Funds to include disclosure regarding the intended percentage allocations of the fund among types of investments.

We also believe that the reference to an "intended" percentage allocation could imply that a glide path should reflect an investment adviser's intent. Certain investment advisers may view the glide path as, for example, an expression of current expectation rather than an expression of fixed intent of what the investment adviser *will* do in the future. The Committee respectfully recommends that the Commission modify the language to protect against giving investors a false understanding of the glide path, and allow Target Date Funds to accurately describe the purpose of the glide path.

#### **Prospectus Disclosure**

The Committee believes that target date information is material to investors and should be required to be disclosed as part of a fund's principal investment strategies and principal investment risks contained in the prospectus. As a result, the Committee believes that Form N-1A should be amended to provide specific requirements for Target Date Funds.

The prospectus disclosures made by a number of Target Date Funds in their registration statements currently contains much of the information required by the proposed amendments. However, the level and form of disclosure varies from fund group to fund group. For example, many Target Date Funds disclose the fund's current asset allocation in the summary section of the statutory prospectus while the target date allocation, if disclosed, does not appear until further

back in the statutory prospectus. In addition, some Target Date Funds disclose their landing point while other funds do not.

We believe that all investors should receive the same information regardless of the Target Date Fund they chose to invest in. Therefore, the Committee recommends that the current, target date and final asset allocations be disclosed in the summary section of the statutory prospectus. In addition, the Committee recommends that the fund's landing point also be disclosed in the summary section.

### **Collateral Liability Concerns**

Notwithstanding that the Proposing Release relates exclusively to Rules 156 and 482, the proposed rules could have the unintended consequence of establishing the standards necessary to avoid material misstatements or omissions by parties other than mutual funds and their affiliated persons. For example, retirement plan sponsors or other fiduciaries may feel constrained in preparing educational materials and other documents (*e.g.*, offering memoranda for bank collective trust products) by the potential for liability for falling short of the proposed disclosure requirements even though Rules 156 and 482 do not apply to them.

The Committee requests that the Commission include in any adopting release, a statement that it does not intend to imply, much less set, disclosure standards for persons other than those subject to these rules either with regard to Target Date Funds or other similar investment products.

\* \* \*

The Committee appreciates the opportunity to comment on the Proposing Release and respectfully requests that the Commission consider the comments and recommendations set forth above. Members of the Committee are available to discuss these comments should the Commission or the staff so desire.

Respectfully submitted,

/s/ Jeffrey W. Rubin

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Jeffrey W. Rubin, Chair of the Committee  
on Federal Regulation of Securities

U.S. Securities and Exchange Commission

August 27, 2010

Page 5

Drafting Committee:

Robert A. Robertson, Drafting Coordinator

Jay G. Baris

David Goldstein

Chip Lunde

Ed Zaharewicz

Joseph P. Kelly

Lori Schneider

Marc Bryant

Jennifer Juste

cc: Mary L. Schapiro, Chairman  
Luis A. Aguilar, Commissioner  
Kathleen L. Casey, Commissioner  
Troy A. Paredes, Commissioner  
Elisse B. Walter, Commissioner  
Andrew J. Donohue, Director, Division of Investment Management