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Via Electronic Filing

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

RE: Release No. 33-9309; File No. S7-12-10 (Rule Proposal Relating to Target Date Retirement Fund Names and Marketing)

Dear Ms. Murphy:

The Cornell Securities Law Clinic ("Clinic") submits this comment letter in support of the proposal ("Rule Proposal") to amend Rule 482 under the Securities Act of 1933, Rule 156 under the Securities Act of 1933, and Rule 34b-1 under the Investment Company Act of 1940. The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see: http://securities.lawschool.cornell.edu.

As explained in greater detail below, the Clinic supports the amendments contained in the Rule Proposal as an important step in providing prospective retirees with the information they need to make informed decisions about purchasing target date funds ("TDFs").

On June 16, 2010, the Securities and Exchange Commission opened the comment period on Securities Act Release No. 9126 (June 16, 2010) ("First Release").[1] The First Release proposed amendments to Rule 482 under the Securities Act of 1933, Rule 156 under the Securities Act of 1933, and Rule 34b-1 under the Investment Company Act of 1940 that would regulate TDFs.[2] If adopted, the proposed amendments would have required TDFs that included

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[1] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, 75 Fed. Reg. 35920 (June 16, 2010) (amending 17 C.F.R. pt. 230, 270), *available at* http://sec.gov/rules/proposed/2012/33-9309.pdf.

[2] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, 77 Fed. Reg. 20749 (Apr. 3, 2012) *available at* http://sec.gov/rules/proposed/2010/33-9126.pdf.

their target dates in their names to disclose several additional pieces of information.[3] This information would have included graphical depictions of a fund's asset allocations and a statement that the TDF was not a guaranteed investment.[4] The SEC believed that graphical disclosure would particularly help purchasers distinguish between a fund's "target date" (the date when the TDF's holder retires) and its "landing date" (the date when the TDF's asset distribution reaches its most conservative level).[5]

The First Release's comment period closed on August 23, 2010.[6] After the end of the comment period, the SEC engaged a consultant to conduct empirical research on customers' understanding of TDFs and the marketing materials related to them.[7] The report was submitted on February 15, 2012.[8] On April 3, the SEC reopened the comment period on the Rule Proposal, designated Securities Act Release No. 9309 (Apr. 3, 2012) ("Second Release").[9]

The Clinic accordingly submits this letter for your consideration.

I. Investors Do Not Understand The Risks Inherent In TDFs, And Investors' Need For This Information Justifies The Proposed Amendments

TDFs permit unsophisticated investors to invest money for retirement without spending large amounts of time learning about the stock and bond markets. Instead, an investor can rely on the TDF to invest in a way that meets his or her retirement goals.

Unfortunately, TDFs' designs vary widely. They differ in asset allocations, management styles, and the relationships between their target dates and landing dates, among other factors.[10] While investing in a TDF avoids one potential source of complexity, trying to understand the difference between TDFs creates another.

The February 15, 2012 report submitted to the SEC suggests that customers often misunderstand two important points about TDFs. First, customers often fail to distinguish

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[3] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, 75 Fed. Reg. 35920 (June 16, 2010), *available at* http://sec.gov/rules/proposed/2012/33-9309.pdf.
[4] *Id.*
[5] *Id.*
[6] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, 77 Fed. Reg. 20749 (Apr. 3, 2012) *available at* http://sec.gov/rules/proposed/2010/33-9126.pdf.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Larry W. Beeferman & Matthew B. Becker, *Going On Automatic: The Right Path Toward Retirement Income Security For All?*, 19-20, 29-30, 33, 39 (2010), *available at* http://sec.gov/comments/s7-12-10/s71210-58.pdf.

between a fund's target date and its landing date.[11] A fund might not reach its most conservative asset allocation (its "landing date") until long after its target date has passed. Second, customers may also incorrectly believe that target date funds are a guaranteed investment.[12] Consequently, many investors who have either invested in TDFs expecting a guarantee or passed their TDF's target date may incorrectly believe their accounts to be safer than they actually are.

At the same time, few financial decisions carry greater weight than retirement planning. Investors who commit money to unsuitable retirement plans may put themselves at risk. Some 2010 target date plans, for instance, suffered serious losses during the financial crisis of 2008.[13]

This combination of the importance of retirement to the investor, the investor's reliance on a TDF's expertise, and the complexity of the TDFs themselves creates the need for more disclosure. Even though an investor might not understand all of the details of a TDF, the TDF should provide the investor with whatever information he or she can understand to gauge the product's suitability. Although the new regulations would impose costs on TDFs, they would also help prevent the far greater costs imposed on investors who risk their retirement funds on products they might not understand.

II. These Proposed Amendments' Disclosure Requirements In Particular Strike A Balance Between Complexity And Useful Information, And Should Be Adopted

The empirical research showed that individuals who viewed graphics of a hypothetical TDF's asset allocation over time better understood the difference between a target date and a landing date. [14] While the new disclosures did not demonstrate a similar effect on the belief that TDFs guarantee investments, they do give investors the opportunity to discover that TDFs do not guarantee their investments if the investors read the documents carefully.

The proposed amendments' requirement that companies provide investors with an easily understood graphic depiction of their asset allocation would reduce these effects and give investors greater control over their investments.

Disclosing a distribution of assets might not completely reflect the risks involved. While asset classes might not provide a perfect proxy for riskiness, though, the amendments must balance this consideration against excessive complexity. The proposed amendments are designed

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[11] Larry W. Beeferman & Matthew B. Becker, *Going On Automatic: The Right Path Toward Retirement Income Security For All?*, 28-30 (2010), *available at* http://sec.gov/comments/s7-12-10/s71210-58.pdf.
[12] Siegel + Gale, *Investor Testing of Target Date Retirement Fund (TDF) Comprehension and Communications*, 15 (2012), *available at* http://sec.gov/comments/s7-12-10/s71210-58.pdf.
[13] *Id.* at 17.
[14] *Id.* at 15-17

to assist unsophisticated investors. Too much technical information might obscure the risks rather than disclose them.

Conclusion

The complexity of TDFs and the high stakes that investors face when planning their retirements both urge greater disclosure. These amendments in particular fulfill this need for disclosure. The graphics have been shown to improve investor understanding of the product, while the disclaimer of guaranteed investment – although less successful at changing behavior – at least provides investors with the opportunity to notice that TDFs do not guarantee an investment.

The Clinic appreciates the opportunity to comment on the amendments contained in Securities Act Release No. 9309 (Apr. 3, 2012), and for the foregoing reasons, the Clinic supports the amendments

Respectfully Submitted,

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Gerry Scott
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