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November 4, 2010

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-1090

Re: File No. S7-15-10; Release Nos. 33-9128; 34-62544; IC-29367  
Mutual Fund Distribution Fees; Confirmations (the “Release”)

Dear Ms. Murphy:

Massachusetts Financial Services Company (“MFS”) appreciates the opportunity to comment on the Securities and Exchange Commission’s proposed new rule and rule amendments that would replace Rule 12b-1 under the Investment Company Act. MFS is the investment manager for 114 funds with 12b-1 fees, with aggregate assets in excess of \$87 billion.

MFS commends the Commission and its staff for the careful deliberation undertaken in crafting the proposed rule and rule amendments. MFS views the proposal taken as a whole as positive for fund investors. We respectfully offer comments, outlined below, that we believe will make the proposal more effective in achieving the Commission’s goals.

By way of background, MFS makes its funds available through investment professionals such as broker dealers, banks and independent advisors who provide investors with assistance in understanding their tolerance for risk, developing realistic long term financial goals, creating a plan and a disciplined process to execute that plan. MFS believes that investors are best served if they are educated both about a particular fund and about their investment portfolio as a whole. MFS believes that the investment professionals who sell MFS funds add value to fund shareholders by focusing on the entirety of a shareholder’s investment portfolio as well as on each individual component. These investment professionals are compensated in a variety of ways, including the current use of 12b-1 fees.

*Ongoing Sales Charge*

Amendments to Fee Table

MFS supports the proposal to replace the current fee table reference of “12b-1 fees” to “Ongoing Sales Charge” and “Marketing and Service Fee”. MFS agrees that these captions will more clearly describe to investors the types of activities for which these fees are used than the current nomenclature.

#### Substantive Limitations on Ongoing Sales Charges

As proposed, a fund could deduct an Ongoing Sales Charge to finance distribution activities at a rate established by the fund, provided that the cumulative amount of sales charges the investor pays on any purchase of fund shares does not exceed the amount of the highest front-end load that the investor would have paid had the investor invested in another class of shares of the same fund charging a front-end load (if no such class exists, the proposal would effectively cap Ongoing Sales Charges at the highest rate allowed under NASD Conduct Rule 2830). We note several likely adverse consequences, intended or otherwise, that the Commission should consider when finalizing the proposal:

- Level load share classes (Class C) will become the better/best option for small investors who do not qualify for sales charge breakpoints on Class A shares. Depending on the length of the investment, the cumulative Ongoing Sales Charge will be less than, the same as, but never more than the maximum applicable sales charge for the front-end load class of the fund, depending on the length of the investment. This will likely drive sales to Class C shares as the best choice for small investments.
- Investment professionals and their clients who have preferred the ease with which they could use Class C shares to provide for on-going investment advice in lieu of the complexity and potentially higher on-going costs of a fee-based advisory account may modify their business model. In some instances, a fee-based account may be more expensive than Class C shares as currently constituted.
- The proposal would effectively make Class B shares *per se* unsuitable, as there will always be another share class (A or C) that carries lower total expenses under all circumstances.
- Retirement plans, especially small plans, may find fewer broker-dealers and investment professionals who are willing to address that market segment.
- MFS supports the recommendation of the Investment Company Institute that the maximum amount of the Ongoing Sales Charge be capped by reference to the maximum sales charge permitted by FINRA for the reasons expressed in the ICI's letter and in addition adds that to the extent the FINRA maximum is higher than the maximum amount charged by a fund, the higher amount is justified by the time value of money and the market risk for a fee based on the value of the investment over time.

#### Retirement Share Classes

MFS offers a choice of retirement share classes for use with various sizes and types of retirement plans. For example, MFS' Class R1 and Class R2 shares, which currently carry 12b-1 fees of 1.00% and 0.50%, respectively, are often used by small plans. The Commission's proposal to require conversion to a lower fee share class once the maximum Ongoing Sales Charge cap has been reached may make it difficult for retirement plan providers to service the small plan marketplace, particularly for those plans that cannot afford to, or choose not to, pay for the cost of servicing the plan on behalf of their employees. Small plans take years to grow in size, and the proposal's mandatory conversion to a share class with less compensation over time may make it harder for plan providers to justify the upfront investment of time and resources to a market segment that would have diminishing value over time.

Nor is the proposal to permit retirement share classes to utilize administrative fees in lieu of ongoing sales charges an effective method of permitting a share class that is suited to the small plan market. MFS believes that one positive aspect of the proposal is the ability to utilize marketing and service fees for distribution, shareholder servicing or administrative activities, without having to engage

in detailed analysis regarding whether an activity is primarily intended to promote distribution. If funds instead elect to characterize payments as administrative in nature, the marketing and service fee will, contrary to the Commission's intention, be limited to activities intended to promote distribution while administrative service fees will be limited to administrative or shareholder servicing activities. MFS believes that the difficulty of making the judgment as to what services are primarily intended to promote distribution will likely severely limit the funds willing to pay for administrative services outside of the Marketing and Service Fee safe harbor.

To the extent that a fund pays more than 25 basis points to a plan and the board does not determine that the amount in excess of 25 basis points is not primarily intended to promote distribution and therefore must utilize an Ongoing Sales Charge, retirement plan record keepers will be required to track share lots so that the shares can be converted to a share class that does not have an Ongoing Sales Charge. This will be particularly challenging in the retirement plan space because plan providers today are generally not able to track share lots for conversion purposes. Plan sponsors will need to expend time and resources to develop technology to track share lots within the plan to track the Ongoing Sales Charge of each previous contribution and, as appropriate, convert share lots to another share class. Long-term plan participants will receive potentially confusing statements identifying fund holdings in two different classes for each fund in their investment portfolio. For a retirement share class for example that has a 25 basis point Sales and Marketing Fee, a 25 basis point Ongoing Sales Charge, and a maximum Class A load of 5.75%, shares of such class will be subject to mandatory conversion 23 years after purchase.

MFS suggests that if the Commission caps Ongoing Sales Charges, it should permit the creation of a third fee category restricted to retirement share classes in order to alleviate the issues described above as they apply to retirement plans. This "Retirement Plan Support Fee" would be in lieu of the Ongoing Sales Charge, with an annual maximum of not less than 0.50%, with no limit on the cumulative total.

The Retirement Plan Support Fee would permit continuation of the fee structure for many (but not all) retirement class shares without disrupting the business assumptions for the small retirement plan marketplace. This provides an important option for small business, 403(b) plans and similar plans that otherwise may not be able to afford, or choose not, to offer a retirement plan to their employees.

Plan sponsors and plan providers are obligated to review many aspects of a plan on a regular basis, including participant costs. These reviews do result in entire plan conversions to lower cost share classes based in part on growth of the plan, as opposed to individual participant contribution conversions. Administration of retirement plans is subject to ERISA and other relevant regulation which can best oversee plan participant costs from a macro level, rather than a participant level, including the use by any particular plan of fund share classes with retirement plan support fees.

If mutual funds are not allowed to be a competitive product in the small retirement plan space, sponsors will turn to other products which are likely to be more expensive overall than mutual funds.

#### Board Approval

The Proposing Release states that the Board needs to determine whether the Ongoing Sales Charges and Marketing and Service Fees are fair and reasonable. Under *Jones v. Harris*, the Board is required to determine if the fees are disproportionately large. The proposal provides no explanation for the change and MFS believes that the so disproportionately large standard should continue to apply. If the Commission elects to change the Board's standard for review of Marketing and Service Fees and

Ongoing Sales Charges to fair and reasonable, the Commission should clarify that fair and reasonable is not the standard of liability under Section 36b of the Investment Company Act for a shareholder to establish a breach of duty by an adviser or affiliated distribution company in receiving such payments from a fund.

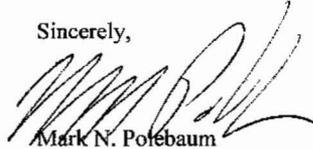
Transaction Confirmations

The proposal will require confirmations to set forth information regarding front-end and deferred sales charges, as well as Ongoing Sales Charges and Marketing and Service Fees associated with transactions involving mutual fund securities. MFS supports full disclosure of sales charges to investors. However, disclosure of this important information in the confirmation is not helpful to investors as it is duplicative of information clearly disclosed in the prospectus which is delivered at the same time as the confirmation. There is no improvement to the information the shareholder receives by the proposed changes to the confirmation rules yet there would be material costs to change the confirmation process applicable to sale of mutual fund shares. In addition, because mutual fund transfer agents frequently prepare confirmations on behalf of broker-dealers who sell fund shares, the proposal would effectively negate the Commission's desire to facilitate the offering of classes with negotiated sales class structures, as transfer agents would not be privy to the sales charges assessed. In any event, disclosure of information concerning Ongoing Sales Charges and Marketing and Service Fees should be addressed in the Commission's yet to be published point of sale disclosure rule. Therefore, MFS urges the Commission to delay implementation of this portion of the proposal until it can be aligned with other fee disclosure initiatives.

For the reasons set forth above, we respectfully request that the Commission consider modifications to the proposed rule and amendments in order to make the proposals even more effective in achieving the Commission's goals.

We appreciate the opportunity to comment on the Commission's proposed rule and amendments. MFS would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Sincerely,



Mark N. Potébaum