Calvert INVESTMENTS

4550 Montgomery Avenue, Bethesda, MD 20814
301.951.4800 / www.calvert.com

November 5, 2010

Via electronic delivery: rule-comments@sec.gov

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

Re: **Mutual Fund Distribution Fees; Confirmations (File No. S7-15-10)**

Dear Ms. Murphy:

We are writing on behalf of Calvert Group, Ltd. ("Calvert")[1] to provide comments on the Securities and Exchange Commission ("Commission") Proposed Rules on mutual fund distribution fees, including amended rules that would replace Rule 12b-1 (the "Proposed Rules").[2]

Calvert supports the Commission's efforts in so far as they provide improved disclosure to investors regarding mutual fund distribution fees. We agree that greater clarity and transparency to enhance understanding of these fees, how they are used and their impact on investor returns would benefit investors.

We also support streamlining the role of a fund's Board of Directors in overseeing distribution expenses by eliminating procedural Board duties with respect to adoption of a Rule 12b-1 plan, annual approval of the plan's renewal and quarterly reviews of Rule 12b-1 fees. These changes will provide a more appropriate role for fund directors, who must concentrate on many critical responsibilities while they continue to oversee the use of fund assets, including distribution fees, subject to the Board's general fiduciary duties to the fund and its shareholders.

---

[1] Calvert Group, Ltd. is a financial services firm that offers mutual funds and separate accounts to institutional and retail investors, retirement plans, financial intermediaries and their clients. We offer more than 40 equity, bond, cash, and asset allocation investment strategies, a number of which feature integrated corporate sustainability and responsibility research. Founded in 1976 and based in Bethesda, Maryland, Calvert has approximately $14.8 billion in assets under management.

[2] See Mutual Fund Distribution Fees; Confirmations, SEC Release Nos. 33-9128; 34-62544; IC-29367 (July 21, 2010), 75 Fed. Reg. 47064 (August 4, 2010) (the "Release").

While Calvert has some real concerns regarding other aspects of the Proposed Rules which will be addressed at the end of this letter, we focus our comments on the impact of this proposal and its potential unforeseen consequences in the retirement plan context. The Commission must carefully re-examine its approach in this area. The impact of the Proposed Rules could be so onerous that the Commission must exempt from the Proposed Rules any mutual fund shares offered in retirement plans,[3] or it may need to leave Rule 12b-1 as is with respect to those shares.

Impact on Retirement Plans

As noted by the Commission, retirement plans have become major avenues by which investors buy mutual funds,[4] and participants often hold the shares indefinitely while awaiting retirement, receiving various services relating to their shares on an ongoing basis. Rule 12b-1 has provided to small, medium-size and specialty fund providers flexibility in the use of fund assets with respect to distribution of shares in retirement plans and has benefited the market by providing employers and participants with a wide variety of investment options from a large number of investment vehicle sponsors.

The Commission envisions that mutual funds would pay for distribution activities, including fund participation in retirement plan platforms, under the 0.25% marketing and service fee in proposed Rule 12b-2, and that under amended Rule 6c-10, any portion of a fund's Rule 12b-1 fee on shares offered in retirement plans in excess of 25 bps would be deemed an ongoing sales charge separate from the marketing and service fee.

We disagree with the Commission's assumption in the Proposed Rules that distribution fees applicable to mutual funds offered in retirement plans should be treated as the functional equivalent of a front-end sales charge and subjected to the same regulatory treatment as fund shares which are subject to a contingent deferred sales charge. In this respect we support the position of the Investment Company Institute that mutual funds should be permitted to provide ongoing compensation for ongoing services rendered in the retirement context, without having to treat that compensation as a form of ongoing sales charge.[5]

Moreover, to comply with the ongoing sales charge requirements where shares are held in omnibus accounts, a retirement plan administrator would be required to track and age all investor purchases by individual participant to be sure that they convert at the correct time. Moreover, if shares held in omnibus accounts are transferred to a new intermediary, the prior

---

[3] Limiting such an exemption to retirement class shares (Class R) would be cost-prohibitive for small fund providers which, unlike large fund groups, cannot bear the expense of creating multiple types of Class R shares (e.g., Class R1, R2, etc.)

[4] Release, p. 27.

[5] See comments of the Investment Company Institute in this proceeding with respect to funds used as investment options in retirement plans. For this reason the Commission could request FINRA to raise the amount of the maximum service fee permitted under NASD Rule 2830 for any mutual fund shares offered in retirement plans, permitting a higher marketing and service fee for those shares.

intermediary would have to transfer share lot histories to the new intermediary. However, as the Commission indicates, many retirement plan administrators currently do not track and age shares because the accounts are tax exempt and plans do not offer share classes that impose contingent deferred sales loads; plan administrators would either have to develop this capability or offer only share classes that do not impose an ongoing sales charge (i.e., carry only an asset-based distribution fee of 25 bps or less).[6]

The operational issues, complexity, disruption and costs for retirement plans to upgrade their systems to implement lot tracking and conversion of investor share purchases will likely be significant. Plan recordkeepers may need to maintain several share class variations for each fund in the plan (e.g., for grandfathered shares and new purchases after the compliance date), leading to difficulties in reporting performance and confusion for participants. Moreover, the system would have to accommodate infinite variations of the conversion period. In addition, the requirement to transfer share lot histories could adversely affect the capability to effectuate employee rollovers and transfers among fund options within a fund complex.

Someone will have to pay for the increased expenses that retirement platforms would face in implementing systems to comply with the Proposed Rules: the plan sponsor (i.e., the employer), the plan participant or the mutual fund or its distributor.

Calvert is concerned that, without significant modification, the Proposed Rules will have unintended consequences that result in a severely burdensome and negative impact on creation and provision of retirement plans by small businesses, particularly those with relatively low account balances, on current and potential retirement plan participants, and on small, medium-sized and specialty mutual fund providers and new funding vehicles that might be offered as investment options in retirement plans. These consequences may include the following:

- *Plan Sponsors*: sponsors faced with increased recordkeeping costs might impose additional charges on participants directly. Sponsors could also simply conclude that tracking and conversion are not technically feasible and/or cost prohibitive, and elect not to develop those capabilities, determining that mutual funds are not worth the effort. Plans could stop offering mutual funds as investment options, and plan sponsors and administrators might instead guide participants to other investment vehicles (such as bank collective trusts and variable annuity programs) which would not be subject to the burdens and expense of complying with the Proposed Rules. Sponsors might even drop their retirement plans entirely.

- *Plan Participants*: if the costs of compliance are passed on to them, many participants would likely exit from retirement plans. Additionally, if small retirement plans stop offering mutual fund shares as investment options, participants will be deprived of a valuable and proven tax-advantaged retirement investment method and may be redirected by plan sponsors and administrators to alternate investment vehicles at a higher cost to participants.

---

[6] Release p. 131.

- *Mutual Funds*: the Commission expressly states in a footnote in the Release that it is not addressing revenue sharing practices in connection with the Proposed Rules.[7] However, revenue over the 25 bps marketing and service fee that intermediaries currently receive with respect to funds offered in retirement plans will be lost when the shares eventually convert to another class. It is unrealistic to believe that intermediaries will not insist on preservation of that revenue stream, and fund providers will therefore be faced with paying increased revenue sharing costs with respect to shares held in retirement plans. An unfair disparity in regulatory treatment between other investment vehicles and mutual funds would result if retirement plans funnel participants to alternate investment vehicles not subject to compliance with the Proposed Rules. In the worst case, new fund providers may decide not to enter the retirement business, while small and specialty or even mid-sized mutual fund complexes unable to absorb the increased revenue sharing costs may be forced out of the business. The end result could be concentration of the fund industry in the hands of only the large fund complexes, limiting competition.

- *Plan Sponsors, Plan Participants and Mutual Funds*: small or mid size fund providers which desire to retain their existing small retirement plan business may also be forced, as a last resort, to create new investment vehicles for those plans, such as a new share class. This would impose a heavy financial burden on small or mid-size fund providers and would result in plan sponsors and/or participants bearing most if not all of the plan expenses.

If the Proposed Rules are adopted in their current form and these unintended consequences occur, the Commission will be promoting negative policy for employees, employers, retirement savings goals and the mutual fund industry, all in the name of reforming Rule 12b-1.

Other Issues

<u>Multiple and Potentially Conflicting SEC Proposals</u>

Also pending at the Commission are several important regulatory initiatives, including the proposed point of sale rules[8] and the regulatory standards of care for brokers, dealers and investment advisers.[9] Before finalizing its regulations on mutual fund distribution fees, the

---

[7] See n. 65 in the Release, which expresses concern that revenue sharing payments may give broker/dealers incentive to market particular funds or fund classes through preferred lists and that such incentives create conflicts of interest that may be inadequately disclosed, refers to proposed disclosure of revenue sharing in the point of sale rulemaking, and adds without elaboration that the Commission is continuing to consider further rule amendments related to revenue sharing.

[8] Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, SEC Release Nos. 33-8544; 43-51274; IC-26778 (February 28, 2005), 42 Fed. Reg. 10521 (March 4, 2005); SEC Release Nos. 33-8358; 34-49148; IC-26341 (January 29, 2004), 69 Fed. Reg. 6348 (February 10, 2004).

[9] Study Regarding Obligations of Brokers, Dealers and Investment Advisers, SEC Release Nos. 34-62577; IA-3058 (July 27, 2010), required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Commission should align the Proposed Rules with such other ongoing regulatory efforts to avoid potential conflicts. These inter-related regulations should be developed in tandem, share a consistent timeline and be designed to work together, providing the mutual fund industry with a clear, consistent and well-thought out framework for compliance.

Coordination with Other Regulatory Bodies

As a result of the Proposed Rules, retirement plan sponsors and administrators may direct participants from mutual funds to other investment vehicles such as bank collective trusts and variable annuity programs. Prior to adopting the Proposed Rules, the Commission should therefore coordinate with other regulatory bodies to ensure a "level playing field" and promote competition. Failure to do so simply drives plan participants into investment vehicles based on regulatory schemes which may not be in their best interest.

Maximum Sales Charge

In the interest of clarity, consistency and simplicity, Calvert suggests that the Commission establish the NASD 6.25% sales charge limit as the uniform reference load for ongoing sales charges in any applicable share class, whether or not the fund has a front-end load share class, and applying any discounts to that amount. This would not disadvantage fund complexes which currently have maximum sales charges below 6.25%.

Conclusion

The Proposed Rules will be harmful to investors, small employers offering retirement plans, and small, specialty and new mutual funds and their providers. It is not appropriate for the Commission to equate mutual fund distribution fees in the retirement plan market to a front-end sales charge; mutual funds should be permitted to provide ongoing compensation for ongoing services rendered in the retirement context, without having to treat that compensation as a form of ongoing sales charge. The extensive and complex operational changes and heavy costs that would be required to implement the Proposed Rules with respect to funds offered in retirement plans, particularly those necessary to provide share tracking and conversion capability, are likely to far outweigh any perceived regulatory benefits anticipated by the Commission. The end result could be elimination of many mutual funds as investment options in retirement plans and potentially forcing out of the business certain fund complexes that are unable to absorb the increased costs, leaving the retirement plan market to only the largest players in the fund industry or other funding vehicles.

The Commission should harmonize the Proposed Rules with its other pending regulatory efforts in this area, such as point of sale rules and the regulatory standards of care for brokers, dealers and investment advisers. Without modification of the mutual fund distribution fee proposal, an unfair disparity in regulatory treatment could result between mutual funds and other investment vehicles not subject to the Proposed Rules, and the Commission would need to coordinate its efforts with other regulatory bodies, such as banking and insurance authorities.

Calvert urges the Commission to step back from the Proposed Rules and re-examine their unanticipated impact on retirement plans and their participants and the mutual fund industry as a whole. If it decides to go forward with this rulemaking, the Commission should craft regulations that take into account the unique nature of mutual fund shares distributed in the retirement plan context, whether by providing an exemption for all mutual funds offered in retirement plans, or leaving Rule 12b-1 in place with respect to those shares.

* * *

Should you like to further discuss the points raised in this letter, please feel free to contact William M. Tartikoff or Jane B. Maxwell at 301-951-4881.

Sincerely,

/s/ William M. Tartikoff	/s/ Jane B. Maxwell
William M. Tartikoff Senior Vice President and General Counsel	Jane B. Maxwell Assistant Vice President and Assistant General Counsel