CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC.

1425 K Street, NW, Suite 500, Washington, DC 20005 P: 800-487-1497 F: 202-379-2299 E: mail@CFPBoard.org W: www.CFP.net

BY ELECTRONIC MAIL

November 5, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549–1090

Re: Mutual Fund Distribution Fees, File No. S7–15–10

Dear Ms. Murphy:

Certified Financial Planner Board of Standards, Inc. (CFP Board) appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC) mutual fund distribution fee rule proposal.[1] CFP Board commends the SEC for recognizing the need to revisit Rule 12b-1's utility in the current mutual fund marketplace. Rule 12b-1 was adopted thirty years ago in a specific market environment that no longer exists, and some of the legal guidance the SEC provided at that time is no longer relevant. We believe there is general agreement that 12b-1 fees are confusing to investors, who generally do not know what a 12b-1 fee is or for what purpose it is used. This confusion is entirely understandable, because as the Proposing Release explains, 12b-1 fees are used for several different purposes, both among different share classes of the same mutual fund family and between different mutual fund families. For these reasons, CFP Board supports the SEC's effort to rescind Rule 12b-1.

CFP Board believes it is necessary to allow for investor choice, and that the SEC's proposal is a reasonable approach to providing choices among mutual funds. To this end, we support permitting funds to deduct a marketing and service fee, subject to an annual limit, as well as ongoing sales charges, subject to a cumulative limit. In connection with the proposed changes, we urge the SEC to encourage better "up-front" disclosure at the point of sale.

I. Background on CFP Board

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP® certification. Our mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. We currently oversee more than 62,000 CFP® professionals who agree on a

[1] Mutual Fund Distribution Fees, Securities Act Release No. 9128, Exchange Act Release No. 62,544, Investment Company Act Release No. 29,367, 75 Fed. Reg. 47,064 (proposed Aug. 4, 2010) (to be codified at 17 C.F.R. pts 210, 239, 240, 249, 270, 274).

voluntary basis to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

Financial planning professionals provide services that integrate knowledge and practices across the financial services industry. Financial planning typically covers a broad range of subject areas, including investment, income tax, education, insurance, employee benefits, retirement, and estate planning. Financial planners work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources. CFP® professionals advise clients on a broad range of securities and investment products, including mutual funds, and as a result, CFP Board has a strong interest in the rules governing the distribution of these products.

II. The SEC's Proposal Appropriately Provides for Enhanced Investor Choice

CFP Board supports the SEC's decision not to eliminate any mutual fund share class structures. We believe that investors should have the ability to obtain investment advice and purchase securities in different ways, whether by paying an explicit investment advisory fee, by paying for advice as part of the sales charges for a mutual fund or other security, or by choosing mutual funds from a supermarket or other platform. As the SEC learned from the RAND Institute Report in 2007, many investors have difficulty obtaining financial advice, often because they do not have the level of assets they believe necessary to make their business worthwhile for advice providers.[2] We believe it is important to make available as many choices as possible for investors to receive quality investment advice. For many investors, no-load or load-waived mutual funds are an appropriate investment, and those investors typically pay for investment advice in other ways (through commissions or investment advisory fees). However, many investors seek ongoing advice from investment professionals and need the discipline of an investment professional to remain focused on a long-term investment plan. Some of these investors do not want to, or cannot, pay an out-of-pocket fee to obtain the services of an investment professional. It is often most financially practical for these investors to pay their investment professional through the ongoing service fees charged by mutual funds.

While some mutual fund share classes have from time to time been subject to sales practice abuses, we do not believe any share class structures are inherently abusive. In fact, when used in the right way with the right clients, they all can serve valuable purposes.[3] We believe the way to protect against inappropriate sales practices is to sanction those sales practices, not to ban mutual fund share class structures altogether. At the same time, the SEC should continue to revisit existing share class structures to determine whether

[2] RAND INSTITUTE, INVESTOR AND INDUSTRY PERSPECTIVES ON INVESTMENT ADVISERS AND BROKER-DEALERS 108, 113 (2008), *available at* http://www.sec.gov/news/press/2008/ 2008-1_randiabdreport.pdf.

[3] The share class structure that historically has been the subject of most sales practice concerns, B shares, has largely disappeared in the marketplace. The primary sales practice problem with A shares—failure to provide breakpoints or other applicable discounts—was addressed by SEC and Financial Industry Regulatory Authority (FINRA) enforcement and regulatory initiatives earlier this decade. As discussed further below, the Proposing Release addresses the most significant concern with C shares, which is that they are sometimes sold to investors who intend to hold those shares for an extended period of time, and for whom another share class therefore might be more appropriate.

changes should be made to protect investors. We believe the SEC's mutual fund distribution fee proposal appropriately provides for enhanced investor choice while also enhancing investor protection.

III. Marketing and Service Fee

As we understand the proposal, Proposed Rule 12b-2 would permit funds to deduct a fee up to the FINRA service fee limit (currently 25 basis points) from fund assets to pay for distribution activities. The SEC has proposed establishing 25 basis points as the limit because it is currently the limit that a fund may deduct and still call itself a "no-load" fund. Any charge above 25 basis points per year would be considered an asset-based sales load and subject to the overall sales load limit in the proposed rules, for any class of fund shares. The fee could be used for any distribution cost, including service fees, trail commissions to broker-dealers, and fees paid to fund supermarkets. The marketing and service fee would be specifically identified and disclosed in the fund prospectus fee table as an operating expense.

CFP Board supports Proposed Rule 12b-2 as a reasonable means of allowing mutual funds to pay for distribution activities. There are some ongoing services that broker-dealers, banks, retirement plans, and other distribution participants perform that would otherwise fall on the mutual fund (or its transfer agent), such as the cost of providing transaction confirmations, account statements, prospectuses, and periodic fund updates to investors; providing record-keeping services; and maintaining offices, call centers, and Web sites to handle information requests from and transactions by investors. These services benefit investors in the funds. As a result, we believe it is appropriate for the SEC to adopt Proposed Rule 12b-2 to allow funds to pay for these activities out of fund assets. However, we do not express an opinion about whether 25 basis points is the appropriate amount for this fee.

Further, CFP Board supports the SEC's proposal to require the marketing and service fee be separately disclosed as an operating expense in the fund prospectus fee table. As discussed in greater detail below, providing enhanced disclosure and comparability of the costs of investing in mutual funds is necessary to enhance competition and reduce costs in the mutual fund industry.

IV. Ongoing Sales Charge

The SEC has proposed amending Rule 6c-10 to permit funds to deduct asset-based distribution fees in excess of the fee permitted under proposed Rule 12b-2, provided that the excess amount is considered an "ongoing sales charge" subject to sales charge restrictions, including an automatic conversion feature. A fund would be permitted to 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 does not exceed the highest front-end load the investor would have paid if he had invested in another class of shares of the same fund. If no class of shares in the same fund charges a front-end load, the cumulative amount of sales charges cannot exceed the cap established by FINRA (currently 6.25%). The cap would be determined at the investor level, not the fund level. The SEC has not proposed specifying the annual maximum rate at which a fund could deduct annual ongoing sales charges, to provide funds flexibility to design different sales loads that meet the needs of fund investors, funds, and distribution systems.

CFP Board supports the proposed amendments to Rule 6c-10. The existing practice of some, but not all, mutual funds to have a class of shares pay a sales load indefinitely (e.g., C shares) is not in the best interests of investors. There are currently share classes available (usually A shares) that are more appropriate for those investors who intend to hold their mutual funds for a long period of time. However, as explained above, we support giving investors choices regarding how to pay for mutual funds and the associated advice, so we do not favor entirely eliminating C shares. For an investor who needs advice about mutual funds, but intends to hold the mutual fund for a defined medium-term objective, a C share class of a mutual fund may be more appropriate than an A share class of the same fund.[4] CFP Board believes the SEC's proposed amendments to Rule 6c-10 are an appropriate means of addressing the situation in which an investor holds a C share class mutual fund for a longer period of time than was anticipated at the time the investor first purchased that mutual fund. We do not express an opinion about exactly what that fee cap should be, or how it should apply to asset growth or dividends.

V. The SEC Should Reconsider Enhancing Up-Front Disclosures

The SEC has proposed requiring that broker-dealer trade confirmations disclose (1) the amount of any sales charge, in percentage and dollar terms, along with the net dollar amount invested in the security and the amount of any applicable breakpoint; (2) the maximum amount of any deferred sales charge the customer may pay in the future; (3) the annual amount of any ongoing sales charge or marketing fee, the aggregate amount of such a fee, and the maximum period of time the customer will incur the fee; and (4) a statement that the customer will incur additional fees and expenses (such as management fees) as disclosed in the prospectus. We support this proposal to the extent it would permit funds to track ongoing sale charges for purposes of conversion.[5] However, we do not believe that trade confirmation disclosure is the most effective means of communicating with investors. CFP Board believes that the key to enhancing competition and reducing costs in the mutual fund industry is to make it easier for investors to compare the products available from different financial services providers and the cost of purchasing those products. It is important for investors to be able to evaluate potential conflicts of interest before they purchase an investment company security. Therefore, we believe the transaction confirmation disclosures contained in the Proposing Release, which would not be received by an investor until after his or her transaction is completed, are not sufficient to provide full protection to the investor.

Rather than requiring additional disclosure as part of the trade confirmation after the transaction has already occurred, CFP Board believes the SEC should encourage better "up-front" disclosure at the point of sale. CFP Board, as part of the Financial Planning Coalition, has strongly supported the adoption of a strong and

[4] We recognize that in some instances, a financial services professional provides ongoing investment advice after the initial purchase of a mutual fund, for example concerning the client's asset allocation among different investments. However, we believe an ongoing sales charge that is capped at the maximum amount of an up-front sales charge is sufficient to pay for this continuing advice, rather than allowing a sales charge that continues indefinitely, as is currently possible with some C share class mutual funds. The original sales charge for a mutual fund, plus the ongoing Rule 12b-2 service fee, plus any new sales charges on new purchases (or reallocations) of mutual funds, should be sufficient to compensate the financial services professional for ongoing asset allocation advice.

[5] We agree that trade confirmations would have to contain enough information to allow investors to monitor the conversion of their shares as required under Rule 6c-10. Providing this information on trade confirmations should be less costly than the more expansive requirements suggested in the Proposing Release, with corresponding savings to investors.

uniform fiduciary duty for all investment professionals who provide personalized advice to retail investors.[6] The Rule 12b-1 initiative should reflect as a basic assumption that every investment professional who recommends an investment company security to a retail investor will have a fiduciary duty to act in the best interest of that investor without regard to the financial or other interest of the investment professional providing the advice. This duty should include an obligation to disclose compensation and any conflicts of interest. We believe that up-front disclosure, either at the time of account opening or at the point of sale, provides more effective choices to customers than the transaction confirmation changes suggested in the Proposing Release.

The SEC proposed "point-of-sale" disclosures for mutual funds in Proposed Rule 15c2-3, which was released for comment in 2004[7] and 2005.[8] The comments of investors in response to the original SEC point-of-sale disclosure proposals indicate that most investors want to know their "all-in" costs. For this reason, we believe an up-front disclosure of sales charges should be included together with a breakdown of all other charges, such as management and service fees (e.g., the new Rule 12b-2 fee or sub-transfer agent fees). In addition, revenue-sharing arrangements between fund advisers and distribution participants also should be broken out in these up-front disclosures so that investors can understand any potential conflicts of interest that the distribution participants may have. We urge the SEC to move forward with up-front disclosures that allow investors to make more informed decisions before they invest, rather than after they have already completed their transactions.

The SEC should consider and coordinate the Rule 12b-1 initiative together with related SEC initiatives. Section 919 of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the SEC authority to require point-of-sale disclosure for mutual funds and other investment products and services. FINRA has also proposed up-front disclosure for mutual funds. First, Notice 09-34 would require broker-dealers to make disclosures about their relationships with mutual funds at the time of account opening, and effectively would require mutual funds to include related disclosures in their prospectuses.[9] Additionally, FINRA recently proposed (in Notice 10-54) an account-opening disclosure that would address a broker-dealer's relationships with product providers, differential compensation to registered representatives, and other potential conflicts of interest.[10]

The SEC's original point-of-sale disclosure proposal would have required that the disclosures be provided in paper form or read out to the investor over the telephone before any order could be accepted. The

---

[6] Letter from the Financial Planning Coalition to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission (Aug. 30, 2010) (on file with author), *available at* http://sec.gov/comments/4-606/4606-2593.pdf.

[7] Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, Securities Act Release No. 8358, Exchange Act Release No. 49,148, Investment Company Act Release No. 26,341, 69 Fed. Reg. 6438 (proposed Feb. 10, 2004) (to be codified at 17 C.F.R. pts. 239, 240, 274).

[8] Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, Securities Act Release No. 8544, Exchange Act Release No. 51,274, Investment Company Act Release No. 26,778, 70 Fed. Reg. 10,521 (proposed Mar. 4, 2005) (to be codified at 17 C.F.R. pts. 239, 240, 274).

[9] FINRA Notice 09-34 (June 2009), *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p119013.pdf.

[10] FINRA Notice 10-54 (October 2010), *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122361.pdf.

comments in response to the original point-of-sale proposal indicated that the cost of this paper-based disclosure was so high that it would have priced some investors out of the market because, ultimately, those costs are borne by investors. Moreover, reading the disclosures over the telephone to every investor could have had the result that in a market emergency, when many investors need access to their financial professionals, access to those financial professionals would be severely restricted. Therefore, in light of the increased levels of Internet usage by investors, the SEC should consider having broker-dealers and other distribution participants make available a Web-based disclosure of mutual fund costs. A Web-based disclosure requirement would be consistent with the SEC's recent "access equals delivery" rules for prospectus delivery and with the mutual fund summary prospectus rules. In both cases, the SEC decided that Web-based disclosure (with that information available in paper form at no charge at an investor's request) was sufficient to make that information available to investors. We urge the SEC to implement a set of comprehensive, Web-based up-front disclosures for investors so that investors can evaluate different financial services firms before they purchase mutual funds or other securities products or services. Other securities comparable to mutual funds, such as REITs, UITs, direct participation programs, 529 plans, and closed-end funds, should be subject to similar disclosure requirements.

VI. Account-Level Sales Charges

The SEC has also proposed amending Rule 6c-10 to allow funds to establish a share class that could be offered through broker-dealers who could set their own sales charges. Under the current rules, broker-dealers have been unable to reduce the sales charge to compete for sales. The SEC believes that allowing competition on the basis of sales charges and services may provide a more level playing field and place downward pressure on sales charges. A fund could only be sold in this way if its board agrees to allow variable sales charges, and it is unclear whether funds would agree; implementing this alternative would require significant up-front capital expenditures by brokerage firms.

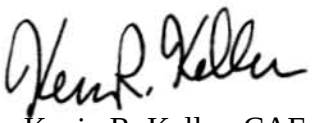
CFP Board supports the concept of increasing competition on the basis of sales charges and services. We agree that no one today would support adopting current Rule 22d-1, which effectively prohibits that competition. We have questions whether, in light of the fact that a majority of new fund flows are to no-load and load-waived funds and share classes, this proposal will in fact result in substantial additional competition. It is unclear whether fund boards would authorize new share classes that would permit account-level sales charges, either because this alternative would require significant up-front capital expenditures by brokerage firms or because it may result in fund boards alienating their existing distribution partners. It is also unclear whether the cost of implementing this portion of the proposal (particularly in light of its uncertain benefits) might have the unanticipated effect of forcing some advice providers out of the market, with a potential negative impact on investors. For these reasons, we urge the SEC to study the impact of this new share class, including likelihood of adoption by fund boards and potential costs and benefits to investors.

* * *

CFP Board appreciates the opportunity to comment on the SEC's mutual fund distribution fee rule proposal. We would be happy to meet with the Commission or its staff to discuss these important issues

further. If you should have any questions regarding this comment letter, CFP Board, the financial planners it certifies, or the CFP® marks, please contact Marilyn Mohrman-Gillis, Managing Director, Public Policy and Communications, at (202) 379-2235, or visit CFP Board's Web site at www.CFP.net.

Sincerely yours,



Kevin R. Keller, CAE
Chief Executive Officer

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