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Elizabeth Murphy, Secretary
Securities and Exchange Commission, Mary Schapiro, Chair
100 F St. NE
Washington, D.C. 20549-1090

File number S7-15-10 Mutual Fund Distribution Fees

Comments from Robert W. Brimmer, CFP ™ CRD # 837190
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Introduction

Thank you for requesting comments from the public, Registered Representatives, Certified Financial Planner™ practitioners, Investment Advisers, Broker/Dealers and Investment Companies regarding proposed changes concerning 12(b)-1 fees. In this comment letter I shall refer to the S.E.C. as "you" for sake of brevity. My comments are my own, not those of my Broker/Dealer, National Securities Corporation. My comments are drawn from my 35 years of experience selling and servicing financial products to middle-income Americans. In my professional opinion the average investor is at a disadvantage because of the confusing quantity and varying quality of mutual funds available in the market today. For over thirty five years I've worked with my clients to help them plan, save and invest for their future needs and insure against life's contingencies. I'll discuss the value of retaining some portion of the 12(b)-1 fee structure as it currently exists, especially in class 'C' shares. I will make several recommendations for other share classes supported by my understanding of client behavior. Many Americans have lost confidence in Social Security. They know that they need to save and invest more for the future. They know mutual funds can serve their needs. I help them in the selection process and, most importantly, in the holding process.

I work with investors of modest means, not large institutions or the very wealthy. My clients have annual incomes in the $50,000 to $75,000 range and net worth values usually less than $500,000 including personal residence. They are the owners and employees of small businesses and retirees who are trying to save and invest enough to survive during their retirement years. Those retirement years are now threatened by an unfathomably large national debt and potentially high inflation. Fixed incomes will not serve my clients in an inflationary climate. They and millions of other bewildered investors need professional financial advice now more than ever.

Premise Flawed

I read Proposal S9-15-10 in its entirety, footnotes included. I believe the premise of this proposal is seriously flawed because it: 1) focuses on buying and holding shares of mutual funds at the lowest possible cost and 2) under-appreciates or ignores negative investor behavior and the value of on-going professional investment advice to help investors avoid self-defeating behavior.

"Investors who cannot master their emotions are ill-suited to profit from the investment process." – Benjamin Graham, considered the father of value investing.

Comments

1). Cheaper is not always better. Certain clients need and want help with their investments. I believe in the value of this help. Of course the cost of providing help must be disclosed and explained in clear language in the prospectus. The Commission's assertion that registered reps will be able to provide those who need help with on-going portfolio monitoring and account servicing for 0.0025% per year per dollar under management does not reflect the realities of the marketplace. Registered reps new to the business will not be able to support themselves on this tiny sum. Some veteran reps might recommend changes to their client portfolios, which may not be in the best interests of the clients, for no other reason than they will try to maintain their own income.

2). In my professional opinion this proposal will give an enormous **competitive advantage** to so-called **no-load funds** over **broker-sold** funds. The Siren call of "Buy no-loads because you'll save lots of money" will draw many do-it-yourself investors into a whirlpool of buying high when they're optimistic and selling low when they're pessimistic. It won't matter how much they saved each year in fees if they continue to buy and sell at the wrong times. The assumption that people buy and hold on to their investments for a very long time contradicts the evidence. Many investors, seeking performance, get discouraged when their strategy doesn't meet their expectations. They move from fund to fund looking for what's hot. And it's usually not. They chase yesterday's story. Unsophisticated do-it-yourself investors who have no personal relationship with a professional to guide them during the difficult years are at a disadvantage. Investors void of professional guidance are apt to act emotionally, not coolly and rationally. Also, many investors, new to the markets, have little or no knowledge of market history and the cycles that lead and follow economic events and trends. Reference: ***Quantitative Analysis of Investor Behavior*** by Dalbar, Inc. (March 2010). This study demonstrated that the average stock fund returned 8.8% from 1990-2009 while the average stock fund investor gained 3.2% during the same time period. The differential is called the <u>Investor Behavior Penalty</u>. Dalbar computed the "average stock fund investor" by using industry cash flow reports from the Investment Company Institute. Please refer to the report for more detailed information.

3). Professional advice is not free or cheap nor should it be. Toward the end of the proposal you mention the estimated costs of legal fees to make changes to comply with the proposal. Lawyer fees aren't cheap. If lawyers won't work for minimum wage, why should qualified financial professionals? Concentrating on only lowest cost when purchasing mutual fund shares could be compared to buying a car at an auction at the lowest cost hoping that it won't need service until you sell it. All cars need service eventually. Similarly, unsophisticated investors need on-going professional investment advice and account service. That's why there are investment advisers. You may be surprised to learn how little our public schools have done to educate my clients about economics, investments, markets, etc. Today the American Public enters the marketplace ill-equipped to make informed decisions about many financial matters. Investors can seek advice from their no-load mutual fund organizations, but the issuers of those funds cannot act as fiduciaries. Fiduciaries act in the best interest of their clients. Fund companies sell products. It's up to the do-it-yourself customer of a no-load company to decide which mutual funds to buy. ***Caveat emptor*** is the order of the day for the do-it-yourself investor. Price is a factor only in the absence of value.

4). I believe that there should be several options available to buyers and holders of mutual funds. For those underserved millions who own small to mid-sized investment portfolios, financial professionals are available. However, many of these people may not be able or willing to pay for professional financial advice out-of-pocket. The 'C' share fund class was initially designed for investors who might not hold their shares for a long time. It also allowed mutual fund companies to stretch out the costs of selling these shares during a time of high net redemptions. 'C' shares have grown in the industry because they filled a niche that needed filling. They are now used ***de facto*** in place of wrap fees in many cases. The 12(b)-1 trail fee is usually 100 basis points annually. Trail fees from 'C' shares allow registered reps and broker/dealers to economically serve the vast American Middle Market. The Middle Market defines people who are **not** part of the approximately 6,000,000 American millionaire families. Middle Market investors are often referred to as the Middle Class. I prefer Middle Market. All my clients have class.

5). I believe that 'C' shares should remain exactly as they are now. Their use has morphed, therefore the disclosures in the prospectus must make clear that this fee is an on-going service fee paid to the broker/dealer and the registered rep providing ongoing service and monitoring of client portfolios. 'C' shares can be less costly than wrap fee accounts. 12(b)-1 fee distributions from 'C' shares are more tax efficient than selling shares in a wrap account to generate management and service fees.

Background: My Practice

6). I can best compare my financial services business model, now used by a substantial number of financial professionals, to the average independent insurance agency. On-going insurance policy renewals keep the doors of the insurance agency open so that agents can give timely service to those who need it when they need it. There's no waiting eight weeks to see your insurance agent when you've just had an auto accident or need answers about your health insurance policy. My office works the same way. Trail fees keep my doors open. Ours is a friendly neighborhood office. Whenever a client walks in with or without an appointment they are attended to by me or my assistant. Can you do that with your doctor, dentist, lawyer, regulator or CPA? Not unless there's a great emergency. Instead you will be assigned an appointment time that suits your doctor, dentist, etc. For their time and skill you will pay a fee. My recurring 12(b)-1 fees makes it possible to give attention routinely and as needed. Please open ***DST Vision*** to visit my client and asset list. Contact ***National Securities Corporation's*** Commission Dept. if you'd like to confirm my 12(b)-1 run. If you don't have access to this information I'll print copies and forward them to you. Please let me know.

My Beliefs

7). A great many investment decisions made by the do-it-yourself investing public are more emotional than cerebral.

8). Fear and greed feed the shark pool of our public media. Ever has it been so. A running stream of news reports almost always focuses on day-to-day movements in the securities auction markets. This incessant media drum beat of optimism to pessimism back to optimism is confounding. The howling cacophony of diverse market opinions from every side has the effect of turning those who should be long-term owners of mutual funds into short-term traders and speculators. Without the help of calming financial professionals who can remind clients that long-term investments can only perform if they are held long-term, they buy during periods of optimism then sell during periods of pessimism. And they often say: "This time it's different."

9). Many, if not most, investors underperform their own mutual funds due to emotional decisions. Reference: Dalbar as above in ¶ 3.

10). Some people want help. Many need help. Few want to pay for help. 12(b)-1 fees offer an efficient method of compensating financial professionals who are available long after the sale is made to guide and encourage clients. I help them to stay the course during both good and bad years. During the past decade I spent approximately 60% of my time trying to convince my clients to stay invested - not to jump in and out of their mutual funds and other securities. I believe in **time in the market** not **timing the market**. The time I spent keeping my flock together meant that I could not spend much time gathering new clients. It's been a miserable ten years for my country, for my clients and for me. Through it all I lost a few clients and gained a few, even though at one point most accounts were down 30% to 40%. I was loyal to them. They were loyal to me and believed that things would eventually improve.

11). The terms **load** and **no-load** should be dropped. Load is negative. Load is heavy. No-load is light. Load vs. no-load qualitatively implies that the no-load fund is better than the broker-sold fund because it can be purchased without paying a commission. Promoting the term **no-load** gives such shares a competitive advantage over **broker-sold** shares because of the perceived tacit opinion of the regulators that they are superior, even though every prospectus states that regulators do not endorse any particular fund. More accurate terms might be **full service** and **self service** funds instead of **load** and **no-load** or perhaps **help funds** and **no help funds**. The elimination or reduction of commissions or on-going service fees does not guarantee superior investment performance.

Mutual Fund Share Class Proposal

12). SELF SERVICE mutual funds would be purchased by do-it-your-self investors or by money managers who charge a fee to the client, usually by deduction from the investment portfolio account.

13). FULL SERVICE mutual funds would have several fee schedules to accommodate the needs of different groups of investors. The Registered Rep will be obligated to explain the several types of share classes before the completion of the sale. These share classes will be divided into:

EQUITY MUTUAL FUND SHARES

14). Traditional "A" shares will remain for those who plan to buy in quantity thus take advantage of quantity discounts. The usual full commission will be paid at time of purchase; break-point schedules for A shares that now exist will be retained; trailing service fees of 25 basis points will be paid starting in the 13^{th} month to the Broker/Dealer for the life of the account.

15). "B" shares will be phased out.

16). Traditional "C" shares will be purchased with: No front-end sales charge to client; a sales commission to the registered rep of up to 100 basis points; a 1% one-year CDSC will be retained; annual continuing service fees of up to 100 basis points payable to the Broker/Dealer starting in the 13^{th} month for the life of the account. When the dollar amount invested reaches $200,000, all new purchases will have no sales charge to the client as before; the sales credit will be 100 basis points to the B/D; new money would carry a CDSC, but with this one change: All additional shares purchased above the break-point of $200,000 will carry an annual service fee not less than 25 basis points which will be paid to the B/D for the life of the account as above. This class of shares will serve those who have relatively modest sums to invest **and** who need the most attention from their financial advisers. The length of holding will not be considered. This paragraph is based on the following concept: "If I am expected to discount my compensation what part of my service am I supposed to eliminate?"

17). Class R shares will remain available for retirement plans requiring on-going portfolio monitoring and asset allocation advice from a financial professional. Today many R share accounts carry a service fee of 25-50 basis points annually to compensate for the labor-intensive nature of working with a retirement plan and its participants. Less than 50 basis points could make serving the small business retirement market unprofitable. A plan with 15 participants means 15 people want and deserve help. Plan sponsors are getting away from the fiduciary responsibility of giving their employees advice about their 401(k) and other company-sponsored retirement plans. Where would the small businesses go for retirement plan service? A 1-800 telephone number? Shares of these small business retirement plans would be purchased with a 50 basis point sales charge and carry up to a 50 basis point annual trailing service fee paid by the fund company to the B/D for the life of the account starting in the 13th month.

DEBT MUTUAL FUND SHARES

18). Bond Funds of the A share class will pay ongoing service fees that are competitive with the market but not less than 20 basis points.

19). Bond Funds of the C share class will pay ongoing service fees to the B/D an amount no less than 40 basis points annually.

INTERNAL EXPENSES CHARGED BY MUTUAL FUNDS

20). Why can an agency of our Government limit the prices mutual fund companies can charge to run their businesses? If the reason is to protect the public welfare, is it possible that the cure could be worse than the perceived, but as yet un-diagnosed illness? Inefficient mutual fund operations will lose business. Those who are allowed to play on a level field will rise or fall on the merits of their performance. (Load vs. no-load). I do understand that full disclosure in simple clear English is needed. The prospectuses are too long and lawyerly. Investors are given them but most don't read them. A prospectus should come right to the point in the early pages with the ensuing pages for supporting documentation and footnotes. All mutual fund prospectuses should follow the same template for at least the first several pages, those with all the significant information. Today every fund company writes their prospectuses in ways that differ from all others it seems. Here's where uniformity could be helpful.

21). I believe that more harm than good will come from the proposed changes in the 12(b)-1 rule. The harm will come to the very people you are trying to protect in your proposal - the small, less sophisticated investor, those people for whom mutual funds were first created. If your proposal is adopted, the Law of Unintended Consequences will control events. Many investors with modest mutual fund accounts will be told by their registered reps that they will have to change to a wrap-fee program, pay an hourly fee to the RIA or Associated Person of the RIA for investment advice or account service – just like a CPA or attorney, or get dropped by the registered rep as an unprofitable small account. What Rep would want the fiduciary responsibility (and we are going to a fiduciary standard of practice) of holding on to an account that was producing little or no income? We who have earned our CFP™ designations are directed by CFP Board to practice as fiduciaries. The liability of holding small accounts without compensation would be too great a business risk for most of us to assume, I think. Our E & O insurance policies have huge deductibles, up to $100,000 per incident. Anyone in the private sector can be sued at any time for any reason. Mediation is very expensive.

22). One ugly unintended consequence of enacting this proposal might be this: Some number of registered reps might begin trading in and out of the mutual funds of different fund families for new up-front commissions. This will create a nightmare for Compliance departments throughout the industry.

23). Some reps might liquidate open-end mutual funds, creating a run on funds' assets and sinking stock/bond prices held in these broker-sold open-end funds. They would then begin buying and trading EFTs and UITs to garner greater commission revenue. Most reps, in my opinion, are less skilled as money managers than the full-time professional CFAs of the major mutual fund firms. Skilled or not, they will struggle to protect their income. We're talking about people here, not just concepts. Human nature must be considered before a policy can be successfully implemented.

24). We who serve our clients have only 2,000 hours of work time per year if we are to have a family life and not put our health in jeopardy. I suspect that many of us in the financial services industry put in longer hours than 9 AM to 5 PM, fifty weeks a year. Those of us who have chosen the **Middle Market** that is, average Americans, will have to switch from serving many people of modest means to concentrating on fewer people of greater means – those who can keep us in business. We can't survive on a 50% to 70% pay cut (from 100 basis points to 25 basis points in the case of C Shares). Thus, the very people whom you seek to protect will have to pay more to get the same level of service they get through the current 12(b)-1 program (100 basis points) or pay for service out-of-pocket or pay us by selling shares of the funds thus incurring needless taxation. Upsetting this working apple cart will further discourage financial professionals from working with young families, small businesses and retirees who are not wealthy.

25). Too many people already believe Wall Street is a rigged game post-Madoff, Enron, etc. Regulators missed Bernie Madoff's scam for years. Now it feels like the Commission is coming after me. If this Proposal is enacted America will have gone full cycle regarding the small investment account. Almost ninety years ago the first American mutual fund, Massachusetts Investors Trust, was created to give ordinary people of modest means access to high quality investment management talent. In the 1920s the best investment talent was only available to the wealthiest Americans. If this proposal is enacted small investors will again be ignored by a number investment professionals, or worse, abused. At best they'll be left to the rookies.

SUMMARY

26). Thousands of financial service professionals operate much like independent insurance agents who collect annual renewal commissions for business on the books. He or she probably does not spend an equal amount of time with each individual, family or business client. But, by having a steady annuity-like repeating income, the agent can serve those who need attention when they need attention. We who serve the middle market currently operate our businesses in a similar way. We are available to our clients whenever they call. They don't have to wait eight weeks to schedule a time to meet with their financial guide. Try that with a legal or medical specialist. I built my business by helping people with small to mid-sized portfolios. The recurring income I collect from 12(b)-1 trail fees allows me to serve my clients without charging them extra whenever they require help.

27). I agree that certain changes in how Investment Companies compensate themselves and their sales people may be appropriate. In 1975 I entered the financial services industry by becoming licensed to sell life and health insurance. Over the next few years I added Series 1, 7, 63, 24 and 65 plus CFP™ to my credentials. For thirty-five years I've been on the front lines engaged in a day to day effort to convince people to save, invest, insure and plan for their futures. Refer to my U-4 and my website, www.brimmerfinancial.com. Take away my 12b-1 income and I would have to begin charging my clients for my time. Many would leave. My business would suffer – badly.

28). If it isn't broken, don't fix it. A famous Washingtonian, whom I had the honor to have known personally when I lived and worked in the Washington, D.C. area, Dr. W. Edwards Deming, once told me that adjusting a statistically balanced system is called tampering, which was usually bad. During the 1970s I was the choir director in a large church in Bethesda, MD. One of my choir members asked me if I would look over a composition that her dad had written. It turns out that her dad was none other than Dr. Deming. We performed the piece. I still retain an original copy of the work and a lovely letter from him thanking us for our performance. The experience of meeting and getting to know this genius was one of the highlights of my life.

> "Overadjustment of a stable system invariably makes things worse. This deserves a special name –
> tampering." Quoted from Page 75: ***Dr. Deming, The American Who Taught the Japanese About***
> ***Quality*** by Rafael Aguayo © 1990 Simon and Schuster

29). Many thousands of financial professionals have built their business models using 12b-1 fees to keep client costs low. Eliminating or otherwise tampering with 12b-1 fees will adversely affect my clients, and the clients of many thousands of financial professionals in the country. Inevitably it will mean that people with small and modest means will not have access to financial services without paying more for them. Investment advisers' income and tax bases will decline dramatically until adjustments to our businesses can be made. This may lead to more tampering.

30). I know there are others who disagree with me. They may have wealthier clients. For those of us who serve the vast middle market, changing the existing 12b-1 model would be very bad for us and our clients. Some of us will go out-of-business, unable to afford our rents, salaries and business expenses. The result: higher unemployment.

Please call or otherwise contact me regarding this important issue if you would like more of my thoughts.

Thank you.

Sincerely,

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