

October 25, 2010

VIA ELECTRONIC MAIL

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

Re: File Number S7-15-10, Mutual Fund Distribution Fees; Confirmation

Dear Ms. Murphy:

The American Bankers Association appreciates this opportunity to provide comments on the proposed new rule and rule amendments that would replace rule 12b-1 under the Investment Company Act. Rule 12b-1 has permitted mutual funds to use fund assets to pay for the cost of promoting sales of fund shares. In the proposal, the Securities and Exchange Commission (Commission) would rescind Rule 12b-1 and replace it with Rule 12b-2, which would permit funds to deduct a “marketing and service fee” from fund assets to pay for “distribution activities.” The term “distribution activities” would be defined the same as it is under the current Rule 12b-1. The new 12b-2 would cap this marketing and service fee at the service fee limit established under FINRA (NASD) Rule 2830, currently 25 basis points annually.

The American Bankers Association (ABA) represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its two million employees. Many of these institutions are corporate or institutional trustees providing trust or custody services. In 2009, banks managed \$3.4 trillion in 1.38 million fiduciary accounts and held \$57 trillion in 9.8 million custody and safekeeping accounts.¹

We are concerned about potential misunderstandings regarding the fees that would and would not fit within the new Rule 12b-2. It is important that the Commission clearly delineate what types of activities are within the scope of the service fee limit under FINRA Rule 2830, as well as those activities that are outside the scope of the service fee limit.

Clarify Excepted Activities in Body of Final Rule

The proposed Rule includes a discussion of the new “marketing and service fee.” To determine what services this fee would encompass, the proposal, in footnote 152, refers to Question 17 in the

¹ FDIC Quarterly Banking Profile, Table VIII-A (Fourth Quarter 2009).

NASD Sales Charge Rule Q&A.² Question 17 defines “service fees” as “payments by an investment company for personal service and/or the maintenance of shareholder accounts,” but not including charges for transfer agency, custodians, or similar fees. Question 17 also notes that the term does not include charges for the maintenance of records, record-keeping and related costs.

In addition, Question 17 contains a list of specific services which are not included in the term “service fee”:

- Transfer agent and subtransfer agent services for beneficial owners of the fund shares;
- Aggregating and processing purchase and redemption orders;
- Providing beneficial owners with statements showing their positions in the investment companies;
- Processing dividend payments;
- Providing subaccounting services for fund shares held beneficially;
- Forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, and updating prospectuses to beneficial owners; or
- Receiving, tabulating, and transmitting proxies executed by beneficial owners.³

Because they are excluded from the definition of “service fee,” all of these types of services would not be subject to the 12b-2 sales charge limitation according to the proposed rule. Given potential confusion on this point, we urge the Commission to make this clearer by including this explanatory language within the text of the final rule.

Focus on the Activities, Not the Titling

ABA members receive various fees that may be broadly denominated as “12b-1 service fees,” or similar wording referencing 12b-1, in contracts with mutual funds. Many of these contracts have existed for numerous years. While the term 12b-1 may be used in the contract, the services that banks provide pursuant to those contractual arrangements should be viewed as services provided under the applicable rules. This may mean these services are 12b-2 services, or alternatively, may be part of the specific services which are not included in the term “service fee” as referenced above.

Accordingly, to avoid the lengthy process of amending numerous existing contracts, ABA requests that the Commission make it clear in the final rule that the service provided, as opposed to the title, is the determining factor as to whether or not the fee is covered under 12b-2 or outside the scope of 12b-2.

² See NASD Notice to Members 93-12 (1993)(“NASD Sales Charge Rule Q&A”)

³ Id at n.17

Conclusion

Our concerns are limited to clarifying within the body of the rule the services that are intended to be covered by the new 12b-2. This clarification will help banks and other service providers implement service arrangements to fit within the new limitations.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lisa J. Bleier".

Lisa J. Bleier

Vice President and Senior Counsel
Center for Securities, Trust and Investments
American Bankers Association