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March 29, 2004

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In Re: **Special Request for  
Comments From Investors  
File No. S7-06-04**

Mr. William H. Donaldson, Chairman  
and  
Mr. Jonathan G. Katz, Secretary  
**U.S. Securities and Exchange Commission**  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

One Copy to Chairman Donaldson

Three Copies to Secretary Katz

Dear Messrs. Donaldson and Katz:

The Wall Street Journal, Wednesday, January 21, 2004, Page D17, in an article entitled "**SEC Seeks Input on Fund Reports**" stated that the SEC hopes to hear from a lot of the 91 million mutual-fund investors. The article stated that "the SEC will post sample reports on its Web site, [www.sec.gov](http://www.sec.gov), and investors can give their reaction online".

I am a retired small investor with a portion of my life's savings invested in mutual funds. I visited the SEC's Web site and reviewed the pages entitled "New Proposed Mutual Fund Disclosure Forms", "Special Request for Comments From Investors" and "Proposed Rule: Confirmation Requirements...". I attempted to access the Proposed Forms (in PDF) on the Internet but, after several unsuccessful attempts, was unable to view the Proposed Forms online. Nevertheless I am providing my comments below. I request that you give my comments thoughtful consideration as you consider the changes you are contemplating for the mutual fund industry.

**PRIOR TO PURCHASE OF ANY FORM OF SECURITY OR INVESTMENT THERE SHOULD BE FULL AND COMPLETE DISCLOSURE OF ALL LOADS, FEES, EXPENSES, COSTS, CONFLICTS OF INTEREST, COMPENSATION AND ANY OTHER FACTS AND CIRCUMSTANCES MATERIAL TO ANY INVESTOR'S INFORMED DECISION TO MAKE ANY INVESTMENT IN A MUTUAL FUND OR OTHER SECURITY**

The Wall Street Journal article referenced above indicates that the reports planned by the SEC would be a point-of-sale document showing **costs** and **conflicts** in broker-sold funds prior to purchase and a second confirmation report. The article also indicates that the reports would show whether the broker receives **compensation** and whether the broker is paid more to sell that firm's funds rather than those of other fund families. The question, stated simply, is **should those disclosures be made? The answer is a very obvious and resounding "Yes"**,

The answers are so basic, so simple and so obvious that one need not necessarily even refer to the Proposed Forms. The answers are also so basic and so simple that I am surprised that the SEC is even requesting comment on the topic. Surely the SEC would not consider concluding that there should NOT be full and complete disclosure, prior to purchase, of all costs and conflicts of interest material to any investor's decision to make a mutual fund investment. Further, any such material disclosures should not be limited to "brokers", but

should apply to any person or entity selling mutual funds, or any other investment, to investors. It seems to me that the SEC is unnecessarily spending a lot of taxpayer dollars asking such simple questions with such obvious answers when they should seize the initiative and implement rules designed to protect the investors whose interests they are duty bound to protect.

**THE COMPLEXITY OF THE SEC'S PROPOSED RULE EFFECTIVELY PRECLUDES MOST SMALL INVESTORS FROM COMMENTING**

The SEC's Proposed Rule is embodied in 119 pages of legalistic jargon. The complexity of the Proposed Rule is inconsistent with your hope "to hear from a lot of them" (mutual-fund investors). The Proposed Rule may be fine for review by an attorney; however, I believe very few small investors will read the Proposed Rule; fewer will understand them, and fewer will comment. I venture to say that a large proportion of mutual fund investors is not even aware that the SEC is seeking their comment.

The SEC's approach to obtaining mutual-fund investor comments, in my opinion, is another good example of "inept lassitude" (last paragraph in the Friday, November 14, 2003, Wall Street Journal article, page C1, "*Ahead Of the Tape*") by the SEC. I do not believe the SEC understands just how unsophisticated most small mutual fund investors really are. Nor does it appear to me that the SEC is attempting to effectively provide many of the protection(s) that such investors so seriously need. The comments I am providing below address some of the needs that I perceive.

**MUTUAL FUNDS SHOULD NOT BE ALLOWED TO PASS COSTS OF ASSESSMENTS, FINES AND PENALTIES FOR WRONGDOING ALONG TO MUTUAL FUND INVESTORS**

If mutual funds are allowed to pass the cost of any assessments, fines and penalties along to investors, such costs, assessments, fines and penalties are no deterrent for wrongdoing. They are a further injustice to innocent mutual fund investors the regulators are duty bound to protect. The regulator(s), such as the SEC, Attorney Generals, etc. become another party inflicting further wrong upon the innocent investors if they allow mutual funds and/or brokers to pass such costs along to investors. The mutual fund and/or the perpetrator(s) of the wrongdoing should bear 100% of such costs if those costs are expected to be an effective deterrent for wrongdoing.

As a small investor and I want you to know that the SEC's recent settlement with Putnam has strengthened my opinion that the SEC has little or no willingness to protect the small investor. The SEC's actions, including the Putnam settlement, have eroded my confidence in the SEC whose duty it is to protect small investors who cannot protect themselves.

Just as many of the mutual funds have violated the trust of their investors, I believe the SEC has violated the trust of small investors with the Putnam settlement. With their mutual fund redemptions investors are loudly proclaiming their displeasure to the SEC; yet the SEC apparently chooses to ignore investors' voices. The SEC cannot expect investor confidence in our markets to improve when the SEC fails to punish those responsible for such reprehensible conduct and significant violations of duty and trust.

The last paragraph in the Friday, November 14, 2003, Wall Street Journal article, page C1, "*Ahead Of the Tape*", sums it up very well: "...*the SEC's solution to years of inept lassitude*

*seems to be precipitous haste.*" The SEC fully deserves the criticism of Messrs. Eliot Spitzer and William Galvin for the Putnam settlement – they are right on the mark.

**The SEC cannot be viewed as part of the solution when the SEC is a significant part of the problem.** I request that the SEC consider withdrawing the Putnam settlement.

In addition, I offer the following suggestions for the protection of small investors:

- **MANDATORY JAIL TIME FOR BREACH OF FIDUCIARY DUTY:** Mandatory (years) of jail time should be imposed for those who violate their fiduciary duties to stockholders and mutual fund shareholders in any manner.
- **SIGNIFICANT FINES AND RESTITUTION OF DAMAGES FOR BREACH OF FIDUCIARY DUTY:** Significant fines and full restitution (personally fine the mutual fund managers, mutual fund company owners', CEOs and/or Board of Director members responsible for the wrongdoing) of all damages to mutual fund investors or stockholders of all ill gotten gains resulting from breach(es) of their fiduciary duties. Consider **triple damages** for breach of fiduciary duties. Any fines and damages recovered should be awarded to mutual fund investors. As I said earlier, mutual fund company owners should not be allowed to recover such costs from the mutual fund investors.
- **DO NOT ALLOW INDEMNIFICATION TO THOSE WHO VIOLATE FIDUCIARY DUTY:** Do not allow mutual fund companies or corporations to pay the legal fees, or any other form of indemnification, of those accused of violation of their fiduciary duties.
- **CAP MUTUAL FUND FEES AND EXPENSES:** high fees and expenses are unnecessary – look to Vanguard's funds for your examples of reasonable expense ratios. The mutual fund owners are simply not going to curtail their expenses if they are allowed pass them own to their mutual fund investors – they have no incentive to keep costs at a reasonable level if they are guaranteed recovery of all those fees and expenses from mutual fund shareholders. Mutual fund companies can grossly overpay costs and still remain highly profitable if they are allowed to pass unwarranted and unreasonable costs along to their investors.
- **REQUIRE SEC APPROVAL OR RECOMMENDATION OF FEES & COMPENSATION:** Require SEC approval, or recommendation(s), for all mutual fund fees and mutual fund managers' compensation.
- **REQUIRE MUTUAL FUND MANAGERS TO INVEST IN FUNDS MANAGED:** Require mutual fund managers to "eat their own cooking"; i.e., mutual fund managers should be required to maintain a specified percentage, say a minimum of 15% to 25%, of their assets available for investment in the mutual fund(s) they manage. Further, they should be required to pay all loads and other costs and expenses the small mutual fund investor must pay to own shares in their fund. No loads or fees should be waived for the mutual fund managers' required investments in the funds they operate – they should pay the same costs the average investor must pay. If mutual fund managers are required to hold significant investments in the funds they manage, they will exercise a greater degree of care in managing mutual fund assets. Otherwise they have no incentive to effectively manage the investments the fund holds.

- **STANDARDIZE RATE OF RETURN CALCULATIONS:** Standardize the method of calculation, and time frame used in the calculation, of rates of return published or advertised by mutual funds.
- **REQUIRE REPORTING RATES OF RETURN AFTER FEES AND EXPENSES:** Require that all published rates of return reflect deduction of all fees and expenses in the calculations published by all mutual fund companies. Otherwise, published rates of return bear no relationship to reality. Published without deduction of fees and expenses, such rates of return are a misrepresentation of to mutual fund shareholders.
- **REQUIRE REPORTING OF FEES & EXPENSES, DOLLARS & PERCENTAGES:** Require mutual funds to report all fees and expenses ("soft dollars", "hard dollars", all forms of costs, fees and expenses) in terms of dollars and percentages to all mutual fund investors, clearly showing mutual fund investors the costs involved.
- **REQUIRE MUTUAL FUNDS REPORT THEIR FEES & THE LOWEST FEES:** Require mutual funds to report their fees and expenses together with the lowest fees and expenses for comparable funds in order that the mutual fund investor will have a benchmark against which to gauge the fees and expenses they are paying to their mutual fund company.
- **DO NOT ALLOW PUBLICATION OF HYPOTHETICAL RATES OF RETURN:** Do not allow mutual funds to publish "hypothetical" rates of return. Hypothetical returns are a misrepresentation of facts and, I believe, very few mutual fund investors read the materials closely enough to realize that the rates of return published are hypothetical and many do not understand their effects of such returns.
- **INVESTORS SHOULD NOT BE REQUIRED TO PAY ADVERTISING FEES:** Do not allow mutual funds to pass advertising fees (12 b-1) along to mutual fund investors. Mutual fund investors receive no benefit from the fees; the only parties benefiting from such fees are the mutual fund owners (e.g., the Johnson family – Fidelity Investments' owners). The SEC should redefine all costs and expenses mutual fund companies are allowed to pass along to mutual fund investors and, needless to say, such costs and expenses mutual fund investors pay should be reasonable.
- **DO NOT ALLOW "WINDOW DRESSING":** Do not allow mutual funds to engage in the practice of "window dressing" – that practice unnecessarily increases the costs mutual fund investors must bear and misrepresents the funds' usual investments and operations. Window dressing may result in:
  - + Gains upon which mutual fund investors must pay taxes that they otherwise would not be required to pay,
  - + The realization of a loss on investment that the mutual fund would not have realized if they had held the investment longer; or,
  - + Artificial influence on the value of securities available for purchase or sale by other investors.
- **REQUIRE MUTUAL FUNDS TO REPORT INVESTORS' REAL RATES OF RETURN:** Require all mutual funds to report each individual investor's real rate(s) of return on their investments after all fees and expenses (together with comparisons to relevant benchmark returns), and the dollars paid in fees and expenses (at least annually), on their periodic mutual fund statements. Because the timing of investment may differ, and investors may elect not to reinvest dividends, investors' real rates of return will differ from returns

published by mutual fund companies under current procedures. Each investor should be told exactly how his or her investments performed, based upon that investor's elections.

- **REQUIRE MUTUAL FUNDS TO REPORT INVESTORS' GAIN / LOSS POSITION:** Require all mutual funds to report the investor's gain/loss position (market value vs. cost) on their periodic mutual fund statements.

I firmly believe most small mutual investors have no idea where they stand relative to their original investments and do not know whether the mutual fund company is doing a good or a poor job for them. Most do not know how to calculate the returns on their investments and/or do not take the time to make the calculations. The mutual fund companies should be required to tell the investors how their fund investments are performing, based upon the investors' investments.

- **PUNISH DEVIATION FROM STATED INVESTMENT STRATEGY:** Punish mutual funds managers who deviate from the fund's stated investment strategy. Fidelity Investments' practices in this respect are extremely poor; they frequently change mutual fund managers and an investor in many of their funds never knows, from one manager to the next, how their investments will be handled. Each new "gunslinger" who arrives on the scene has his or her own ideas about which securities should be held by the fund makes the changes to suit himself or herself. The result is a churning of investments, increased costs, deviations in performance and an inability, on the part of the mutual fund investor, to plan their investment strategies.
- **IMPOSE SIGNIFICANT FEES ON RAPID TRADES:** Regulators should impose significant fees upon rapid trades. The fees imposed should be significant enough to effectively discourage the practice of rapid trading; e.g., at least 5% on any shares sold within 30 days of purchase. Any such fees should go to reimburse fund shareholders and should not go to mutual fund managers or brokers.

The fees could be waived for one, and only one, \$5,000 transaction per year; or, the fees could be waived for one, and only one, transaction up to \$50,000 for medical emergency, education or other stated worthy causes. A person or entity unwilling to hold their investment for at least 30 days is not an investor – they are a trader, a market timer.

- **LIFO SHOULD DETERMINE SHARES INVOLVED IN RAPID TRADES:** LIFO, not FIFO, should be used to determine which shares involved in "rapid trades". Any rule(s) implemented by the SEC should discourage market timing and should minimize the ability of the market timer to achieve rapid trades. LIFO will tend to have that effect.
- **REQUIRE U.S. MAIL & SIGNATURE GUARANTEE FOR RAPID TRADES:** The SEC should require that any redemption of shares sold within five days of purchase be done by U.S. Mail with signature guarantee by an authorized institution. Methods of redeeming shares should be the same for all investors within any mutual fund. Alternatively, that requirement could be imposed upon any redemption in excess of \$5,000. That would definitely discourage market timers and should reduce the hardship imposed upon investors who typically hold their investments much longer. That is particularly true if the investor is aware of that requirement when they make their initial investment in the fund.
- **REQUIRE MUTUAL FUND COMPANIES TO REPORT PRACTICES TO SEC:** Require all mutual fund companies to report, to the SEC, all their practices of buying, selling and

trading investments. The SEC should review the practices of all mutual funds to determine whether the mutual fund companies are engaged in practices detrimental to mutual fund investors.

- **REQUIRE MUTUAL FUND COMPANIES AND BROKERS TO "CERTIFY":**
  - + that all their operations are in their investors' best interests;
  - + that there are no operations within their company inconsistent with their investors' interests;
  - + that there are no violations of fiduciary duty; and,
  - + that their costs and fees are all reasonable and justifiably charged to their investors.All costs of such certifications should be borne by mutual fund owners and brokers and not charged to their investors. If they can easily and honestly make those certifications, their costs should be minimal and their operations, with respect to investor interests, should be able to withstand any scrutiny.
- **REQUIRE MUTUAL FUND COMPANIES TO JUSTIFY COSTS & EXPENSES TO SEC:** Require all mutual fund companies to report and justify, to the SEC, all costs and expenses charged to mutual fund investors. The SEC should require all mutual fund companies to obtain at least three bids from any organization or entity to whom they pay fees; the SEC should ensure that all fees paid by mutual funds are reasonable. Any fees recovered by the fund should be credited to mutual fund investors.
- **SEC SHOULD INVESTIGATE EXCESSIVE COMPENSATION:** The SEC should investigate those mutual fund managers and corporate CEO's who are presently receiving excessive compensation (all forms) to determine whether they are overcharging or looting the mutual fund or corporation – you have heard the saying, 'where there's smoke, there's fire' – there is a lot of "smoke" within easy view of the SEC.
- **REQUIRE DISCLOSURE OF MUTUAL FUND MANAGER COMPENSATION:** Require mutual fund companies to disclose their mutual fund managers compensation packages and their investment(s) in the mutual fund(s) they are managing to all investors in their mutual funds.
- **REQUIRE SHAREHOLDERS APPROVE MUTUAL FUND MANAGER COMPENSATION:** Require mutual fund companies allow shareholders to vote on mutual fund managers' compensation packages.
- **LIMIT MUTUAL FUND MANAGER COMPENSATION CHARGED TO INVESTORS:** Limit mutual fund managers' compensation that can be charged to the fund to a reasonable amount not to exceed \$500,000. The mutual fund owners should be able to (over)pay the managers as they see fit, but the amount that can be charged to mutual fund investors should be limited to a reasonable amount of compensation for managing the fund.
- **DEVELOP REASONABLE COMPENSATION STANDARDS:** Develop and impose standards for reasonable brokerage, mutual fund manager and corporate CEO compensation and
  - + require mutual fund companies and corporate boards of directors to justify all forms of manager and CEO compensation to the SEC;
  - + require clear and bold publication of all forms of mutual fund managers' and CEO compensation in annual reports together with board of directors' justification;
  - + require mutual fund companies and corporations to include a comparison, in their

annual reports, of their managers' and CEO's compensation with the standards developed.

- **CEO RETIREMENT BENEFITS & COMPENSATION SHOULD BE REASONABLE; GOLDEN PARACHUTES SHOULD NOT BE ALLOWED:** Require CEO retirement benefits to conform to those of all other employees within the corporation; i.e., do not allow CEO's to unjustifiably enrich themselves to the detriment of the stockholder's. Golden Parachutes should not be allowed.
- **REQUIRE SIMPLIFICATION OF LANGUAGE & "PLAIN ENGLISH" FOR VOTING:** Require simplification of the language used for shareholder and stockholder voting – the language should be highly summarized "plain English" which clearly and simply explains the issue(s) to be voted upon.
- **REQUIRE SEC RECOMMENDATION ON FEES, EXPENSES MANAGER OR CEO COMPENSATION AND BOARD OF DIRECTOR MEMBERS:** Require that any prospectus for voting on any fees, expenses, manager or CEO compensation, members of board of directors to be elected, etc. report the SEC's position on each such item to be voted upon. Do not allow mutual fund company or corporation management to make recommendations for or against any item to be included in the prospectus.
- **SEC SHOULD SOLICIT INFORMATION FROM INVESTOR FRIENDLY PERSONNEL:** **The SEC should solicit input from people like John C. Bogle, former Chairman and Chief Executive Officer of The Vanguard Group.** Mr. Bogle has long been criticized by most of the mutual fund industry when, in fact, his views have been a lone voice in favor of the small mutual fund investor. Mr. Bogle's books should be required reading for all SEC staff members involved in mutual fund regulation. He could undoubtedly give the SEC some valuable advice on effective and reasonable management of the mutual fund industry.
- **THE SEC MUST MAKE UNPOPULAR DECISIONS:** The SEC must be willing to make some decisions that will be very unpopular with the mutual fund and brokerage industries and in favor of small investors who must place their trust in the SEC.
- **THE SEC SHOULD CONSIDER INTERESTS OPPOSED TO INVESTORS INTERESTS:** The interests of the mutual fund companies and brokers and the small investor are directly opposed. **The mutual fund and brokerage industries are interested only in**
  - + **passing all costs** directly to mutual fund or other investors;
  - + **maximizing profits** to mutual fund owners and brokers;
  - + **minimizing investor information** on costs, rates of return, gain or loss position;
  - + **overstating the real returns** of mutual funds and investments offered;
  - + **confusing and disguising their operations and the costs** their investors must bear;
  - + **complicating their voting processes** so much that investors must rely too heavily on management's recommendations in casting their votes.The small (mutual fund) investor has little choice and very little effective representation.

The SEC must be willing to look at the way mutual fund owners and brokers operate and ask themselves whether small investors' interests are being adequately protected. Where that is not the case, **the SEC must be willing to act to protect the small investors' interests.**

- **THE SEC CANNOT SERVE TWO MASTERS – THE SEC MUST REPRESENT THE SMALL INVESTOR:** The SEC cannot “rubber stamp” the recommendations made by the brokers and mutual funds industry and protect the small investor at the same time. The violations of trust and confidence and the breaches of fiduciary duty by many mutual fund companies have been reprehensible, significant and motivated solely by greed and self-interest. Many mutual fund companies have betrayed their investors by allowing rapid trading in violation of their own rules and regulations. They agreed “to look the other way” when it was financially beneficial for them to do so – damn the interests of the small investor.

The small amount of damages to each of the many individual investors harmed by the wrongdoing does not, and should not, diminish the significance of their heinous acts. They have “stolen” millions of dollars from those who trusted them with their hard-earned savings and who relied upon them to manage their money honestly.

The mutual fund industry has clearly and emphatically demonstrated that they cannot be relied upon to police or regulate themselves. They have proven themselves to be unworthy of the trust of their investors. Thousands of mutual fund investors have been robbed by some mutual fund companies just as surely as if they had done so at gunpoint. Their crime should be dealt with accordingly. The SEC can no longer allow the “fox to guard the hen house”. The actions of several mutual fund companies have been corrupt and have so tainted the remainder of the industry that many investors have completely lost faith in them. The SEC cannot allow the brokerage and mutual fund industry to run roughshod over the small investor. The SEC must tailor their regulations of the brokerage and mutual fund industry toward the protection of the small investor.

If the SEC and our Attorneys General are sincerely interested in protecting the small investor, do something (more) about it! Do something that will begin to protect the small investor from the uncontrolled greed and self-serving actions and abuses of mutual fund company owners, managers, brokers, corporate CEOs and boards of directors. Thank you for your patience and the opportunity to provide my comments. It is my hope that the SEC and the regulatory bodies governing the brokerage and mutual fund industries will hear voices like mine.

Yours truly,



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