

VIA ELECTRONIC MAIL

May 10, 2004

Jonathan G. Katz, Secretary
U.S. Securities & Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: File No. S7-09-04 – Prohibition on the Use of Brokerage Commissions to Finance
Distribution

Dear Mr. Katz:

The Financial Services Institute¹ (“FSI” or “the Institute”) appreciates the opportunity to comment on the Proposed Rules that would prohibit funds from paying for the distribution of their shares with brokerage commissions (Release No. IC-26356). In particular, the Institute offers these comments on the Commission’s request for input on possible additional changes to Rule 12b-1.

A very positive development has occurred over the years since the adoption of Rule 12b-1 which we believe is of substantial benefit to fund shareholders, particularly those shareholders with relatively smaller mutual fund investments. The receipt by broker-dealers and their representatives of 12b-1 fees has enabled these shareholders to receive ongoing professional services which would otherwise not be available to them or only available at additional costs to these shareholders. These services include not only administrative services, such as providing, changing or correcting account information, but also substantive assistance through the provision of analysis and financial planning for these shareholders.

We note that the Commission has received numerous comment letters from brokers indicating that, without the 12b-1 Fees they receive they would not be able to provide these services to their fund shareholder clients at all or without imposing charges for these services. The incentive to receive commissions on transactions in the absence of Rule 12b-1 fees also likely would result in reduced attention paid to fund shareholders after the sales as well as possible increases in transactions in accounts.

FSI believes that the interests of fund shareholders are best served by aligning the interests of the broker with the interests of their fund shareholder clients. This is best achieved through the receipt

¹ The Financial Services Institute, Voice of the Independent Contractor Broker-Dealer, was formed on January 1, 2004. Members of the Institute are broker-dealers and registered investment advisers that serve representatives who are independent contractors. As of April 30, 2004, the Institute has 88 member firms, with more than 96,000 registered representatives and over \$7 billion in Total Revenues. FSI was formed with the support and assistance of the Financial Planning Association (FPATM). Our vision is for independent contractor broker-dealers to be recognized as the preeminent providers of comprehensive financial services in America through their growing networks of highly competent independent financial professionals.

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of Rule 12b-1 Fees as opposed to incentives for transaction based commissions or the need for additional charges to fund shareholders for these valuable services.

Again, thank you for the opportunity to comment on the Proposed Rules. Should you have any questions, please contact us at 770 933-6846.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale E. Brown". The signature is fluid and cursive, with the first name "Dale" being the most prominent.

Dale E. Brown, CAE
Executive Director & CEO