May 5, 2004

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

Comment to File No. S7 09-04

Dear Mr. Katz:

Please let this letter serve as additional comments to my prior comment letter of Feb. 26, 2004. Having reviewed the comments received so far and upon further inquiry, I wish to clarify my comments regarding Rule 12b-1.

Regarding 12b-1 fees, it is important to note that the bulk of the fees pay for advice that investors receive from their individual brokers and investment advisers. This advice and the ongoing fee-based nature of 12b-1 fees offer large benefits to shareholders. An objective financial adviser can keep investors from trying to second-guess the market, which often causes even sophisticated investors to miss significant returns. Studies by Morningstar and Dalbar, for example, show that *shareholder* returns are oftentimes drastically lower than mutual fund returns. Fund returns are typically skewed by periods of above-average performance before many investors have come aboard. Good performance attracts money, and then returns typically *decline.* This pattern repeats over and over. Or, conversely, funds with certain investment styles and asset classes that are out of favor attract few investor dollars on their own, except via brokers who follow disciplined allocation plans. It is in these “beaten down” sectors that patient investors can achieve significant upside.

Good brokers set up asset-allocation plans that prevent clients from chasing the “hot dot.” And they provide myriad services on top of that. It is 12b-1 fees that pay brokers and financial advisers for this ongoing advice—advice that is perhaps most critical when investors are best off making no changes in their investments. In other words, ongoing fees allow brokers to give honest advice, rather than simply recommend a transaction.

Indeed, trail fees have helped change the industry's culture by letting stockbrokers service and advise clients, rather just sell them new product to generate commissions. Brokers report that in the days before 12b-1s, many investors were abandoned by brokers who made a large upfront commission on a mutual fund investor, then moved on to the next prospect.

Therefore, the Commission must exhibit extreme care before upsetting the 12b-1 “apple cart” that has worked so well for both consumers and financial services professionals. It is worth noting that, while good arguments can be made against using assets to pay 12b-1s, these fees have for some time (although not initially) been fully disclosed in fund prospectus fee tables and explained in detail by the financial press. Many brokers have been diligent about explaining the fees as well. Investors have always had the choice of buying non-12b-1 funds, but when they seek advice from a financial adviser/broker, they have an option of paying for that help through 12b-1 fees.

An advisory fee or installment-type load that is paid directly by the investor may well be a purer way to pay for financial advice than paying for such advice out of shareholders assets. However, given the rush of reforms that funds and broker-dealers must now deal with, it would be unwise for the SEC to force a new, convoluted system that could impact the broker-client relationship. Given the industry's inability to track something as straightforward as breakpoints, forced implementation of an installment load could be highly risky and damaging to investors.

That said, an installment load system where the 12b-1 “bill” is paid directly by the individual shareholder is an idea worthy of consideration.

In any event, nothing should be done to risk the very vital payments being made to the financial advisers that a majority of investors rely on. In this regard, I respectfully refer the Commission to the more than 700 individual brokers/advisers who sent comment letters supporting 12b-1s. These advisers say that they have built a business based on trails, that the fees allow them to focus on client service and problem-solving instead of just new sales.

Other important points made by these financial professionals: 1) If 12b-1 fees are banned, clients could end up paying more under “wrap” fees; 2) these fee accounts often require $100,000-plus minimum investments, so without 12b-1 trails smaller clients will have nowhere to go, and; 3) while 12b-1 fees may essentially be tax-deductible, advisory fees may not be deductible for many investors.

Sincerely,

Dan Jamieson