May 10, 2004

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

The "File Number" for the rule – S7-09-04.

Re: Request for Comment on Further Amendments to Rule 12b-1

Dear Mr. Secretary:

We appreciate the opportunity to comment on possible Amendments to Rule 12b-1. As a broker-dealer that specializes in mutual fund sales, we have dealt with share class issues at every level. We believe that the complexity of the equation to determine at which investment level, and in which share class, a customer is projected to pay less commissions, is inordinately high. It can be confusing for both the broker and the client.

We believe that fund share classes should be eliminated, and we fully support the following language in your Request for Comment:

One approach on which we would particularly like to receive comment would refashion rule 12b-1 to provide that funds deduct distribution-related costs directly from shareholder accounts rather than from fund assets. Under this approach, a shareholder purchasing $10,000 of fund shares with a five percent sales load could pay a $500 sales load at the time of purchase, or could pay an amount equal to some percentage of the value of his or her account each month until the $500 amount is fully paid (plus carrying interest).63 If the shareholder redeemed before the amount was fully paid, the proceeds of the redemption would be reduced by the unpaid amount.64 As with other sales charges, the account-based fees would be subject to NASD caps.65

This approach may have a number of advantages compared to current arrangements under which the fund pays fees pursuant to a rule 12b-1 plan approved by shareholders and overseen by fund directors. First, the amounts charged and their effect on shareholder value would be completely transparent to the shareholder because the amounts will appear on the shareholder's account statements. Second, existing shareholders would not pay the costs of selling to new fund shareholders-costs that often may yield them few benefits. Third, long-term shareholders would no longer, as a result of paying a share of 12b-1 fees over a lengthy period, pay amounts that exceed their fair share of distribution costs.66

A shareholder account-based approach to distribution payments would help to eliminate the substantial conflicts of interest presented by the use of fund assets to pay for distribution. As a result, the role of fund directors in approving methods of distribution could be eliminated (or substantially circumscribed), freeing their time to address other significant matters. Rule 12b 1's shareholder voting requirements could be eliminated, reducing fund expenses. The detailed regulatory requirements of rule 12b 1 and NASD rule 2830(d) designed to address these conflicts could be substantially reduced or eliminated, reducing related legal and compliance costs that fund shareholders have ultimately born.67

A shareholder account-based approach to distribution payments also could simplify investing in funds and eliminate many of the problems with fund sales practices we see today. Funds would no longer need to have separate classes of shares based on rule 12b 1 fees, which many shareholders have found very confusing.68 Fund prospectuses would be shorter and more understandable. Sales practice abuses associated with the existence of separate classes could also be eliminated.69

We do not believe that 12b-1 should be repealed. The 25 bps maintenance fee provides the broker with incentive to service the account long after the initial investment has been made. Without it, once the client became fully invested, there would be no monetary incentive for the broker to continue with the relationship. As a result, you will see a much higher client turnover rate because brokers would not have an incentive to service the account. Clients owning mutual funds will be the ultimate beneficiaries from a system that encourages long-term service relationships with their brokers.

We do believe that mutual fund investing must be simplified. We fully support the proposed "*shareholder account-based approach to distribution payments*".

We appreciate this opportunity to comment on these issues.

Sincerely,

Roger Ochs
President
H.D. Vest Financial Services