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May 10, 2004

Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 5th Street, NW
Washington, D.C. 20549-0609

Via E-mail to rule-comments@sec.gov

RE: Release No. IC-26356; File No. S7-09-04, Prohibition on the Use of Brokerage Commissions to Finance Distribution; Proposed Rule

Dear Mr. Katz:

This letter is submitted in response to the above-referenced release ("Release"). We appreciate the opportunity to comment on certain aspects of the Release, as detailed below.

We commend the Commission for addressing these issues, but recommend a dramatic shift away from the current regulatory structure. No amount of disclosure can cleanse a system that is inherently conflicted.

Rule 12b-1 should be rescinded as it has outlived its original purpose. Originated as a means for start-up funds to expense marketing costs equally among fund shareholders, we fear that, in certain instances, the Rule has become a mechanism for allowing fund managers to take advantage of fund shareholders.

One of the most disturbing aspects of 12b-1 fees is their opaqueness. Investors do not know what they are being charged, nor do they know *what exactly the charges are for*. Enhanced disclosure is not the answer. Elimination may prove to be the best solution. The Commission needs to revisit this dated system and replace it with a process that shifts marketing costs to fund managers. Fund managers should -- and fund boards of directors are obligated to -- reduce costs to investors.

Under current authority, even after a fund is closed it is still able to charge marketing costs to its fund holders. It is difficult to comprehend why a closed fund needs to incur marketing expenses.

An alternative would be to allow 12b-1 fees only on those funds that do not charge any kind of front-end and/or deferred sales charges. This would provide more clarity to investors while also allowing no-load funds the ability to market their products. Even under this alternative, the Commission may wish to limit 12b-1 fees and prohibit them on funds closed to new investors.

If the Commission determines that it is appropriate to retain 12b-1 fees, it should define with specificity those items that are appropriate as marketing charges. The Commission also should

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ensure that its audit and examination program validates the appropriateness of the claimed 12b-1 expenses. Enforcement action should be taken in appropriate instances and moneys returned to investors.

Thank you for your consideration of NASAA's views on this issue. If you have any questions regarding the comments contained in this letter, please do not hesitate to contact me or Denise Voigt Crawford, Texas Securities Commissioner and Chair of NASAA's Corporation Finance Section.

Sincerely,

Ralph A. Lambiase

Ralph A. Lambiase
NASAA President and
Director, Connecticut Division of Securities