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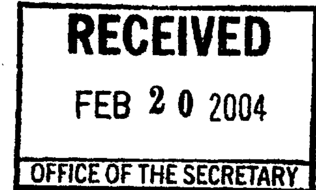
02/19/04



Susan Ferris Wyderko, Director
Office of Investor Education and Assistance
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Proposed Mutual Fund Disclosure Forms- SEC File No. S7-06-04

Dear Susan,

I hope this note finds you and your family in good health and in good spirits!

It was a pleasure spending time with you and exchanging ideas. I've taken the liberty of enclosing a copy of my July 1999 complaint letter. (Please read pgs 4-6) I'd like your comments and thoughts in regards to what a licensed person can do when they see the issues and conflicts in their industry, but have no avenue to address policy that affects their daily dealings with the public.

I believe that fees have certainly become an issue and it's directly related to the public becoming more educated and in return they can compare costs. With all the uproar and all the publicity look at the way people have to learn about what not to do with their investments!

Just because my company requires me to have a prospectus receipt signed by the client to prove that they received it, doesn't mean when I leave they actually read and understand the damn thing. It's my job to discover suitability, disclose the cost to buy, the risks, and a myriad of other details so they will have a successful result. Now that is a very important point but this next one is the essence of what it's all about. It's not the 12b1 it's what you do with it. A client who makes a purchase 10 years ago, who ten years later still needs to be serviced i.e.: address changes, systematic withdrawals/investment problems, amendments, changes of name, marital status, life event transitions (death), IRA RMD calculations are just some that come to mind, would not be possible if I'm not here, 12b1 pays me to service my client long after the sale is made.

Many of the changes you have on attachment 1 are already in place at the better fund companies, at American Funds the commission is already on the client confirm with the discount level and notification, in regards to LOI/ROA they are sent in a separate letter to the client. The extended costs are broken out in the prospectus with the 12b1 for each class of share. I do like attachments 4&5 because they are clear and it's easy to compare costs.

What I would ask you to consider is very simple, the better advisors who are very good at what they do have no problem with more disclosure. All this negativity in the press has allowed me to differentiate what my clients do with their investments as opposed to what has happened to the general public.

The better companies have already adopted disclosure protections to diffentiate them selves to those advisors who seek protection for their clients. I would ask you to work with these advisors and the fund companies to incorporate the information we need to disclose without another form or process. There is lots of room on the statement and if there is one thing I can tell you after almost twenty years in this business is that even if a client doesn't read the prospectus.... they always read their statements!

The other issue, which I don't see addressed here at all, is that not all broker/dealers are alike. My broker dealer would not allow a contest, or a premium to paid to induce a representative to sell a particular product or even the appearance of a conflict of interest we would find unseemly. To use an example, they are thousands of mutual fund companies but only a few traded after the 4 pm deadline. But now the public believes all companies are guilty, and we all have to deal with the regulatory oversight even though we had nothing to do with it.

You don't want the public to believe that all advisors are full of conflicts and make them too frightened to seek advice they desperately need.

There are worse conflicts of interest in this industry that the SEC has not even addressed and the potential for investor loss is greater because it goes un-checked.

To sum up more disclosure is good, more paper bad. Punish bad broker/dealers good, punish good broker/dealers bad.

12b1's used to service the client (.25bp-.50bp) and provide ongoing education to the representative good, sales contest, proprietary products, and golf outings bad.

If you decide to indict GE/CNBC for massive fraud and conflict of interest, part of the remedy would be for me and a team of the best advisors to produce a remedial course for average investors. CNBC would have to broadcast the education series over and over and the consumer would be able to access the advisors with questions. This would lead to discovery and also be able to uncover corruption. Then the consumer will learn what questions to ask and what we do to protect our clients from the very activity that these entities promote.

The SEC needs to form an advisory council of informed and concerned advisors who can educate and guide the regulatory agency on local issues that effect investors, rather than engage local prosecutors who are looking to advance their limited issue careers at the expense of investor sanity.

I hope my thoughts have been helpful, and I thank you for the opportunity to express and vent. You see the last thing any of us wants is for Americans to loose hope that our process only operates to enrich the quick and the slick. Because if the process fails, we all fail.

All the best and God bless!

Frank Congemi

The Absence of Regulatory Oversight in the Securities Industry

Regulatory Oversight for Electronic Commerce

As most advisors will tell you, there are just so many life events that can occur or they can occur all at the same time. When it comes to the securities markets or the marketing of securities the absence of power (enforcement) will create changes. The securities industry thrives because of its regulatory structure, because of its no nonsense approach to protecting investors.

Who is in charge of planning to protect investors when a new mode of delivery is to be made available to the public? If I sell you an investment and use a bicycle to deliver the certificate and now, one year later, the technology has changed and an automobile is used to deliver the certificate, the securities law has not varied and the public is protected.

Why is the SEC allowing certain groups of wealthy individuals to circumvent existing securities laws because a new method of delivery has emerged?

Where was the SEC in developing an investor education and suitability program for providers in relation to the public's use of the Internet?

How can you introduce institutional type services to the uninformed public and not have a suitability disaster? These suitability requirements that I mention are just like the ones that any large licensed financial firm and myself must adhere to by law.

Going back to the automobile analogy the SEC has given the kids the keys to the car with no driver's education and, in my opinion; Arthur Levitt is negligent and asleep at the wheel. Prospective investors need to be warned, not unlike other dangerous or hazardous industries, that they give up certain rights and protections using electronic commerce.

Was the SEC's intent to create a two tiered compliance and suitability system, because that is what they have created. If any advisor was involved in any of the activity, such as what takes place on the internet they would be brought up on compliance charges and or loose their license. In my opinion, based on this issue alone, Arthur Levitt should resign and the SEC should immediately modify securities sales on the Internet for all investors who do not have a basic working knowledge of securities. The SEC should form a commission where all the investor protection issues are dealt with and a security technology act, which will preserve the integrity of our markets, and the protection of investors can be enforced.

The omission of precaution, in light of such a heavy bias in the promotion of such a volatile venue to the public shows, grave violation of fiduciary responsibility by the chairman of Security Exchange Commission and other regulatory agencies.

FCC, FTC, SEC

Imagine if you could create business news and then get it printed in a business newspaper, and that paper had a strategic relationship with a television show that everyone believed was business news. In addition to some other strategic relationships, you could use the newspaper story and the television broadcast as a basis to do an evening news story that hundreds of millions of prospects around the world would believe and buy.

Just as a cable news station sees its rating increase when a war or some other event breaks out, people get excited, they want to know what to feel. People also become excited and enthralled with the stock market and it's possibilities. The public is looking for the answers to their future and is receiving news manipulation. Certain media companies manipulate the market forces; other people are making big dollars and playing a lot of golf off the sweat of average Americans. The public is being sold that they can do it themselves; they believe when they trade stocks and derivatives, that this is how they participate; this will make them feel in control. Nothing could be further from the truth. The Wall Street Journal has promoted systematically in a pattern of articles "the Success of the Individual Doing it Themselves." The emphasis of these articles and with extreme bias to electronic providers and discount delivery.

By creating a business funnel GE has been manipulating the securities market and keeping regulatory oversight off balance for years. GE receives or produces 40 or 50% of its bottom line from Financial Services. By harnessing GE, NBC, CNBC, MSNBC.Com, MBCi, which all in turn promote Instanet and 24 hour trading. GE is able to create enough products for its perpetual delivery pipeline through a myriad of interlocking companies involved in electronic commerce. Then they plow this marketing model down our throats. The promoting of pre-hour and after-hour trading sessions to the public began with CNBC. Those who would profit from the public's ignorance are promoting these sessions, which are essentially an institutional venue. The public needs to be protected from promoters in the investment markets. The claim that access to these sessions is an inalienable right of investors is promotion that provides cover for the promoters.

When you read structured stories or editorial content that is meant to promote a particular industry's company or a new industry's way of doing business, you must also look at the strategic relationships that can telegraph your message to the masses. The Wall Street Journal has that relationship with NBC et al.. When a news anchor delivers a news story you want to know, be informed so you can prepare or protect yourself and your family. You want to believe and trust the news. When a TV show masquerading as a business news program has an effect on people, much like a favorite character on a comedy show or soap, you have got a recipe for disaster.

An industry that exists only for low cost trades, fees, transactions, and only promotes companies that either process trades or the technology to process trades is inherently dangerous. Couple that strategy with a heavy bias to "Do it yourself" using institutional services, that is a recipe for disaster. We certainly can not allow a NASDAQ stock market to be owned by companies who trade an engage in these practices, It would be wiser to let the public own and decide what is in the public's best interest. The FCC, FTC, and SEC should be actively involved in a joint investigation to protect our commerce communication and security laws from this prostituting of capital markets by identifying and delineating certain activities as a conspiracy to manipulate the market.

Promotion of Low Cost - No Fee
Classic Bait and Switch to Hide Fees

When I began my career in this business, many years ago, I believed as I do today that people need to own good quality companies with good management over a long period of time and they will do well. As I look back to each and every client history, I see that is the case. So then why is it that people in our industry promote the following?

- Money management for a fee, with many hidden costs not disclosed to the consumer, constant trading and switching.
- No load funds with fees and costs that is higher than full commission funds or products that provide service. This price structure allows advisors to circumvent the rights for discounts to their clients, and lower cost to own.
- Brokerage accounts/trading accounts, which do not provide involvement with the client to insure the consumer have a positive experience. These types of accounts are only interested in how many hits, website fees, and how many trades they can produce. Some Internet companies that are untested, unreliable and circumvent securities laws are being promoted in an orchestrated way.

Money management for a fee and fee based asset management were suppose to be an alternative way for an advisor to offer their management expertise to a sophisticated client. A client owns low cost products in a wrap account and is charged a fee based on the value of a portfolio or the performance of the portfolio. In my opinion, it has turned out to be a great way to increase compensation by hiding fees for the companies who promote this activity. The marketing charge "are you getting ripped off by your broker by paying to much in commissions" is misleading. These ads can best be described as disingenuous, devoid of integrity, credibility, and are inherently false. Since very few people ever read the multiple paragraphs with the very small type (smaller then 10 point) at the bottom of the pages, how would you know? The advisors and the companies that promote this claim want you to use their service, pay their fees, and their commissions. Many of these fees you can't see or the ones you can see they give it another name to mask the true intent. Financial institutions and financial advisors hide fees from clients.

Financial advisors who want to differentiate themselves from the masses say they are fee only. These advisors are inherently more expensive because of the two layers of fees. The advisor earns the fees regardless of the performance of the portfolio, plus there is the expense ratio of the portfolio. Many times the true cost is only partially disclosed. The most important aspect here as far as I am concerned is that licensed people are not allowed to make representations as to guarantees in relation to the investments they recommend. But a small minority of financial advisors has discovered a way for their income to be guaranteed and grow no matter what happens to the market or their client's portfolio. The SEC needs to have a look at all the non disclosure agreements that Charles Schwab and other brokerages have with their approved independent fee only advisors, and take a look at what value is really being created for the consumer. These agreements are inherently a conflict to the consumer. When the mainstream press learns

how to do the math, these companies will run for cover. The more light that is focused upon the many ways revenue is generated in our industry will end the mushroom effect for investors and promote a healthy growth of the financial services industry.

No load funds with a fee are actually higher than a commissioned product without. The structured finance market is an interesting arena not too many people are aware of. This pattern of practice by some mutual fund companies allows the fund companies to get paid up front, by selling a no load, back end load fund, which the client believes they are getting at no cost. This is pure bullshit. By creating different classes of shares (cost to own) within a fund you can hide expenses, distribution costs, management expenses, and other fees and of course, commissions. This arrangement is perfect for an advisor who does not want to disclose or discuss their true fee or cost to purchase a product. And the mutual fund companies are running all over each other trying to meet the demand for product. When investors want to exchange their class of shares of a fund within a fund the contractual nature of these deals between the structured finance companies and the mutual fund companies are a conflict of interest to the consumer.

Now that the consumer is getting education, now that the consumers want to lower cost, they are prevented from exchanging their shares. Everyone recognizes A shares, a commission share as the lowest cost to own. The fund company already "got paid" up front, the structured finance company needs to collect their income stream and the consumer is screwed again. Additionally, unlike A shares (commission) many classes of shares of the same fund have no discounts on purchases and those higher fees go on forever. So in a case where someone invests a large amount of money in a fund, they would have a choice of a discounted A share or a no load with no discounts. Now when I give a choice to a client, and say "do you want to pay me 2% now on the purchase or 2% of the value of your account for as long as you own it, what decision would you make?" Any advisor that does not offer that choice to their client is committing financial malpractice, and in my opinion is a criminal.

The more assets that go into these funds should produce lower expense ratios. If you compare the promotion of fee only wrap accounts over the last twenty years, with the growth of fund expenses over the last twenty years you will see that these expenses have grown in direct proportion to these new multiple classes of shares. These new distribution costs represent a hidden net cost to <u>all</u> investors, even if you don't by the shares of a fund through a supermarket. The overall cost is passed on to all consumers who buy those classes of shares in a fund. Not the case with A shares. It's financial advice like this, which is ruining commission planning and making it appear to the media and the public as though <u>anyone</u> who accepts commission is only looking out for themselves. When in <u>fact</u> the opposite is true. A recent DALBAR study concludes that a buy and hold strategy outperforms the individual investing 3:1 over ten year rolling periods. So who is promoting constant trading and why?

Another DALBAR study reported that referrals (new business) with affluent clients were 80% more likely to choose an advisor not by designation, but by referral from a friend or business associate. The investors believe they are empowered by trading on the Internet, or with Charles Schwab because that is the representation made in all of the ads. Now you are a "sophisticated" investor using institutional venues to trade. When sophisticated investors loose money they are told, "you should have known all the forces stacked up against you." Because you do it alone, because you have no advocates of your own to run interference for you, or explain the forces of the market, you will pay dearly for that experience or lack of advice. As far as legal recourse, you can't complain because you the investor signed or accepted all of the risk without any of the knowledge. For me the quintessential bate and switch of all times began recently with Charles Schwab. For an entire industry that started out promoting "you don't need an advisor" and then does an 180° and now says, you should have an advisor. I am willing to bet there must have been a very large suitability lawsuit and settlement that Chuck isn't telling us about and for sure the Wall Street Journal is not reporting.

This classic bait and switch, "low cost, low fee, no advice" flies in the face of reason to protect potential investors. Suitability for the investor is now merely an afterthought; education for the prospective investor conveniently is an afterthought. Clearly this industry's behavior shows its true intent, which is market share, fees, and website hits. Where is the FCC, FTC, and SEC with their effort to protect by leading these companies with laws that guide, identify, and restrict behavior, no where on the radar screen.

How can you turn loose institutional formats to the unsophisticated investor and promote trading? Most industry leaders will agree with me, it is a recipe for financial suicide. Unlike other financial downturns in the past, where the investment companies bore the brunt of the losses, the trend to shift the risk to the public is a dangerous one. In my opinion, Charles Schwab is the Jim Jones of financial services and now that the public has begun to drink his brand of Cool-Aid we can all sit back to wait for the effects. Personally speaking all of my business comes from referrals. Clients have good results and they tell a friend or associate. The advisor who pay Charles Schwab a fee so they can have more clients, so they can charge more fees and collect more hidden commissions, make me want to throw up. Advisors who recommend constant buying/ selling, sophisticated trades and money management, sophisticate technology with sophisticated fees should be regulated and policed at a sophisticated compliance level. As opposed to an advisor who uses the money management of a mutual fund company whose costs are transparent, and has transparent fees and practice. Sophisticated regulators and enforcement people should police sophisticated advisors who sometimes have unsophisticated clients who are being abused.

Let's suppose you only had two classes of shares, A share which equal commissions plus trails and a B share which is rock bottom cost with no extras. Now to the rock bottom cost, the advisor could then add the Charles Schwab advisor fee, the advisors own fee, and distribution fees and or management fees and most importantly the aspect of various

taxes and capital gains on all the trades and switches. The client could add up all the costs to own and then decide how to proceed. Our industry needs a truth investing law where all the fees are broken out and listed just like commissions in the prospectus. Additionally there needs to be disclosed of all the supermarket relationship with advisors, and financial intermediaries. Recently, Congress reported that 30 million Americans lose $50 billion on legalized gambling. We need such a congressional investigation in the investment community because now there are more than 30 million people investing and the propensity for loss is greater than gambling. This is the single greatest threat to our country today, which lies within our own borders. To quote Warren Buffet "Risk comes from not knowing what you are doing."

There is a future for the Internet; what it will be no one knows for sure. The folks who envision the possibilities must have had sharing and information in mind not shameless hucksters. I do know relationships built on performance suffer when the market corrects. When the advisor's performance frames the relationship with the client, the advisor can lead a client through a down market based on experience. The difference between real professional advisors vs. the sales people/promoters is that the professional advisors follow their conviction founded on expertise. Sales people take the path of least resistance and give people what they think they want or what they have to sell.

When the justice department goes after the Mafia they use ever tool and trick of the trade available, which leads to indictments and jail time. There are other groups involved in what I would consider crimes that are organized in the investment community. Where is the enterprise corruption investigation under the Rico statute for these individuals and their companies? I believe that an industry that telegraphs discriminatory policies and practices to the public is actually being protected by regulatory agencies that are supposed to protect the public.

Ask not what your clients can do for you; ask what you can do for your clients.

Frank Congemi
Registered Rep Extraordinaire