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CHAIRMAN'S
CORRESPONDENCE UNIT

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April 3, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
2205 Rayburn HOB
Washington, DC 20515-0507

Dear Mr. Chairman:

I am writing in response to your letter to SEC Chairman Christopher Cox about the SEC's proposal to create a new mutual fund summary prospectus. The Institute wholeheartedly agrees that a streamlined, focused mutual fund disclosure document will be more helpful to mutual fund investors and that the SEC's goal should be to develop a document that is useful in both the retail and retirement markets.

We are concerned, however, about several statements and recommendations in the letter and want to highlight our key concerns here.

First, the letter seems to assume that retirement investors are quite different from other mutual fund investors. In fact, individuals who invest in mutual funds inside and outside defined contribution plans are very similar in age, education level, marital status, race, household assets, and the year in which they first purchased a mutual fund.[1] Furthermore, most individuals who invest in a mutual fund outside an employer-sponsored plan (including IRA owners) rely on the help and advice of financial advisers. This is not dissimilar from 401(k) mutual fund investors. Individuals investing through an employer-sponsored plan benefit from their employer's selection of funds and, often, employers also make this selection with the assistance of a financial adviser or plan consultant. Employees typically also have access to information and educational materials that plans provide to assist their decision-making. Therefore, if the summary prospectus meets the needs of the average mutual fund investor (and our research suggests that it will), it will meet the needs of a retirement market investor.[2]

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[1] Investment Company Institute, *Profile of Mutual Fund Shareholders*, Fall 2004, Appendix B, pp 99-111; and Investment Company Institute, *Profile of Mutual Fund Shareholders*, Spring 2008 (forthcoming).

[2] Investment Company Institute, *Investor Views on the U.S. Securities and Exchange Commission's Proposed Summary Prospectus*, March 2008.

Second, your recommendation to make mutual fund disclosure plan-specific is troublesome. You state that plan sponsors may negotiate "special terms and conditions with providers". While a mutual fund may offer different share classes to different classes of investors, including retirement investors, under the Investment Company Act of 1940 or Subchapter M of the Internal Revenue Code it is not allowed to negotiate special terms and conditions with a particular investor.

It also is important to recognize that not all information of interest to plan sponsors can or should appear in mutual fund disclosure documents. When a plan recordkeeper, administrator or consultant receives payments from a mutual fund or other plan investment, the obligation to disclose that payment must fall on the recipient of the payment. While these payments come from fees disclosed in the mutual fund prospectus, the prospectus as a practical matter cannot provide the kind of individualized disclosures to the plan that the recipient of the fees can and should provide.

Third, we believe it would be inappropriate for several reasons for the SEC to dictate fee disclosure with the degree of specificity recommended in your letter. The SEC-required mutual fund fee table already provides a high degree of standardization in the presentation of fund expenses, while allowing funds flexibility to reflect accurately their investment management and administrative service arrangements. No other product provides this level of standardized, comparable fee disclosure.

The recommendation that the SEC designate new fee categories and define "the types of fees that fall into each of these fee categories" amounts to federal regulation of private contracts. Mutual funds seldom have employees and rely on third parties to provide services to operate the funds, and the service and fee arrangements can vary from fund to fund. For the SEC to dictate fee categories with the detail you envision amounts to the government setting the terms and conditions of privately negotiated contracts. Such a federal mandate for contractual arrangements would stifle innovation, market competition, and economies of scale and scope. And to what end? The fund investor cannot negotiate the individual details of the fund's fees and expenses.

Finally, your letter seems to presume that mutual fund transaction costs can be quantified. In truth, funds experience several types of transaction costs, some of which have no widely agreed upon standard of measurement. Brokerage commissions paid by funds when stocks are acquired are explicit, but government and corporate bonds, and many stocks, are traded without commissions. Securities have other trading costs such as bid-ask spreads and market impact costs, which can be as significant as commissions. These costs vary across securities and from minute to minute during the day. Requirements to track, trace, and quantify all trading costs would be extremely difficult and expensive. The SEC has sought to balance the information needs of investors with the costs of producing this information in its proposal that the Summary Prospectus prominently disclose and explain the portfolio turnover rate. Fund transaction costs – which under accounting and tax rules are capitalized, not expensed – affect fund performance, which SEC rules require be reported in a standardized way. Accordingly, fund trading costs are not hidden. Their impact is apparent in fund performance.

The Investment Company Institute has supported effective disclosure to defined contribution plan sponsors and participants since 1976. We share your interest in assuring that mutual fund investors, including retirement investors, receive information that is useful to them in making investment decisions. Mutual funds are the most transparent investment products available to retirement investors. The SEC summary prospectus, when adopted, will bring mutual fund disclosure a quantum leap forward. I appreciate that you directed your recommendations to the SEC because it requested comment on its proposal. I find it curious, however, that very little attention is paid to improving the disclosure of products in the retirement market that are not mutual funds. These products should be held to similar standards.

Sincerely,

Paul Schott Stevens
President and CEO

cc: The Honorable Christopher Cox, Chairman, U.S. Securities and Exchange Commission
The Honorable Edward M. Kennedy, Chairman, Senate Health, Education, Labor and Pensions Committee
The Honorable Robert E. Andrews, Chairman, House Health, Employment, Labor and Pensions Subcommittee
The Honorable Tom Harkin, Senate Health, Education, Labor and Pensions Committee
The Honorable Herb Kohl, Chairman, Senate Special Committee on Aging
The Honorable Barney Frank, Chairman, House Financial Services Committee
The Honorable Bradford P. Campbell, Assistant Secretary, U.S. Department of Labor