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November 5, 2010

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Proposed Rule on Mutual Fund Distribution Fees; Confirmations
Release Nos 33-9128; 34-62544, IC– 29367 (July 21, 2010) File No S7-15-10

Dear Ms. Murphy:

The Financial Planning Association® ("FPA®")[1] welcomes the opportunity to comment on the proposed new rule on mutual fund distribution fees and confirmations.[2] We commend the Securities and Exchange Commission's ("SEC") efforts to make mutual fund distribution fees more transparent, to create accuracy in the labeling of those fees, and to reduce investor expenses. However, we are concerned that some aspects of the proposal, as written, will not accomplish those goals.

We support the efforts to make mutual fund fee disclosures more transparent by requiring mutual funds to accurately label fees with a description of what they are being used for, instead of using a reference to a section of the law that is meaningless to the average investor. We believe that this change will increase investor understanding of the purpose of these fees. This increased understanding will lead to more and better competition as investors will have the information necessary to ask their intermediaries to demonstrate the purpose of these fees. This could then lead to a reduction in fees if informed investors determine that the fees are not reasonable.

Unfortunately, we do not believe that other parts of the proposal will accomplish the SEC's laudable goals. This belief is based on the following three concerns: the proposal is premature given other issues before the SEC; the proposed hard caps on distribution fees could

[1]The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms, with approximately 25,000 individual members. Most are affiliated with investment adviser firms registered with the Securities and Exchange Commission or state securities administrators, and approximately 58 percent hold insurance licenses. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver, Colorado.

[2] *Mutual Fund Distribution Fees; Confirmations,* SEC Release Nos. 33-9128; 34-62544; IC-29367; File No.S7-15-10 (July 21, 2010), 75FR 47064 (August 4, 2010) (the "Release").

have unintended adverse consequences; and finally, there is also the distinct possibility that the hard caps will not work as intended.

The SEC is presently working on a large number of initiatives, both internally generated and from the Dodd-Frank Wall Street Reform and Consumer Protection Act, that will have an impact on this area. For instance, if the SEC adopts the investment adviser fiduciary standard for investment advice given by broker-dealers, any possible conflict of interest between the investor paying higher fees and the agent receiving money for his or her time will have to be fully disclosed and fairly managed. It is conceivable that an investor, after full and fair disclosure of all the issues, may rationally determine that any extra costs of using a Class C share are worth the benefits received. New point of sale disclosure rules being considered by the SEC may allow for easier understanding of fees by highlighting those expenses.[3] Given these, and the many other changes that are occurring, we believe that the SEC should wait for a period of time until the effect of all the other initiatives can be seen before implementing changes to the mutual fund fee structure.

Some of the possibly unintended consequences of the proposed changes are a reduction in investor services, a stifling of innovation, or creating incentives to churn accounts when the fees reach their maximum level. The proposed change will favor Class A shares, where the agent receives their entire remuneration up front, over Class C shares, where the agent will have to wait a number of years to receive the same fee. Yet Class C shares are often the preferred vehicle for investing and may lead to a better alignment of interests between the investor and the agent. We are also concerned with the possible disruption to the existing distribution system. The present compensation structure has been in place for decades. Thus, many intermediaries and their clients have created their portfolios to accommodate this structure. This present structure is highly effective at providing agents with the compensation necessary for them to service smaller accounts. While they could transfer these accounts into advisory accounts, the costs of managing all of these small accounts may lead to increased costs being passed on to investors. Changing this structure could result in the need for these investors to recreate their portfolios which may lead to additional increased costs for them.

It appears from the proposal that one of the SEC's concerns is the cost of owning certain classes of mutual funds. Yet, because funds will have discretion to characterize expenses, we are concerned that the costs the proposal seeks to contain will not go down. As stated in the proposal, "under our proposed approach, some funds are likely to treat expenses for the same service as a 'marketing and service fee' or 'other expense'." [4] Funds will have a strong incentive to simply move the costs from a capped fee to an uncapped fee. We are concerned that they may simply re-characterize the fee and continue charging as before, eliminating any benefit to the investor.

Other concerns include proposed changes to the confirmation statement. While we do support increased disclosure of the complete fee prior to and at the time of purchase, we are concerned with it occurring after the purchase of the fund. Disclosure should be complete before the investor makes the purchase. Confirmations are not the place for additional disclosure, by then it is too late for the investor to make an informed decision. Therefore, we do not support additional disclosure of fee information on the confirmation statement.

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[3] Release at N. 222.
[4] Release at 100.

Greater transparency is always in the investors' best interest and we support the SEC's efforts to bring greater clarity to this area. We are concerned, however, that the rule, as drafted, may lead to many unintended consequences and urge the SEC to refrain from adopting this proposed rule until the issues can be further explored.

Thank you for the opportunity to comment on this rule proposal. If you have any comments or questions regarding this comment letter, please do not hesitate to contact the undersigned.

Sincerely

/s/ David A. Cohen

David A. Cohen
Assistant Director-Government Relations

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner

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