

# The National Association of Investment Professionals

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January 31, 2005

Ms. Margaret H. McFarland  
Deputy Secretary  
Securities & Exchange Commission  
450 Fifth Street  
Washington, DC 20549-0609

Re: File # S7-09-04

Dear Ms McFarland:

NAIP, a non-profit 501(c)6 membership organization, represents the interests and needs of individuals working in the financial services industry. We monitor and respond to proposed legislation and regulations from Congress, the Securities and Exchange Commission (SEC), and the National Association of Securities Dealers (NASD), as well as other initiatives by federal or state agencies that affect people working in our industry. We also promote the interests and the image of these individuals, and encourage and facilitate higher levels of competency in our members so that they may better serve the investing public.

On February 26, 2004 NAIP initiated a grass-roots letter writing campaign to Congress and the SEC to ensure that the on-going 12b-1 fees paid to registered representatives and advisors for investment advice given their clients would not be reduced or eliminated. As you know many of the over 1,600 letters the Commission received on this matter were from advisors/registered representatives who were concerned that they would not be paid for advice given to clients on an on-going basis. This campaign was based on the press release from former Senator Fitzgerald's office dated February 9, 2004 which, among other things, stated the following regarding 12b-1 fees:

*Further testimony revealed that nearly two-thirds of 12b-1 fees are paid to brokers. In other words, 12b-1 fees have largely degenerated into disguised loads. Some 12b-1 fees are as high as 1 percentage point per year. Over the life of a retirement plan, that 1% annual 12b-1 fee can cost an investor 35% to 40% of his or her retirement income.*

These remarks led NAIP, and others, to the conclusion that Congress, or the SEC, would eliminate on-going fees paid to brokers/advisors for consulting with their clients on their mutual fund portfolios.

And, even though NAIP commends the SEC for the amendments it made to the Investment Company Act of 1940 in Release No. IC-26591; File No. S7-09-04, we have concerns over the section entitled “C. Further Amendments to Rule 12b-1” which states the following:

*We also requested comment on the need for further amendments to rule 12b-1, including the rescission of the rule. We received approximately 1,650 comments in response to this request for comment. Comment letters provided a number of alternatives and suggestions that we have asked the staff to explore. These included an approach set forth in the Proposing Release that would refashion rule 12b-1 to provide that funds deduct distribution-related costs directly from shareholder accounts rather than from fund assets.<sup>34</sup> Commentators also addressed concerns regarding revenue sharing. We will take these and other comments we received into consideration as we evaluate whether and how to amend the rule further. We are not adopting any further changes to rule 12b-1 today. (Emphasis added.)*

As you take all of the comments you received into consideration, NAIP would like to underscore the main theme of the many brokers and advisors who wrote to the SEC on 12b-1 fees: **If 12b-1 fees are eliminated, there will be severe consequences for broker-dealers, registered representatives, and the investing public.**

This is an important theme throughout most of the 1,600 letters SEC received on this matter. You must recognize that the purchase of a mutual fund is not merely a transaction. It is the result of financial advice. The financial advice rendered may cover the entire gamut of the investor's needs or be limited to a specific life event (i.e., retirement). The result of the advice is to purchase, but the job of the investment professional doesn't end with the transaction.

The advent of 12b-1 fees created an incentive for financial advisors to provide ongoing advice and service to their clients. There was an alignment of the customer's interests with the registered rep's. The financial advisor has an incentive to keep the customer's interests and needs satisfied by providing ongoing advice and service. Advice does not end with the purchase transaction. Clients need someone to answer questions during times of market turmoil. They need help in re-evaluating their risk tolerance and asset allocations. Guidance is necessary when life events cause a new financial need or a change in course. By growing their base of assets under management and the resulting 12b-1 fee income stream, financial advisors have been able to create the infrastructure needed to provide the ongoing advice and service to their clients.

We should not underestimate the cost and the value of the network of financial advisors serving the investing public. They have invested in systems and staff that allow them to provide their clients the support they need to achieve financial success. We cannot assign a price to the value of advice. We can cite some examples that demonstrate value. For example, industry statistics have historically shown that investors with financial advisors tend to hold their mutual fund shares for longer periods. The do-it-yourself investor often makes hasty moves at the wrong time. How many dollars were saved in October 1987 when advisors told their clients not to panic and sell at the bottom of the market?

**The real result of elimination of 12b-1 fees would be a step backwards for our industry.** We would revert to a single class of mutual fund shares with front-end loads. The incentives and the funds to provide ongoing advice and service would disappear. New incentives to churn customer assets would be created and more dollars would go to fee-based programs that are more expensive.

If the concerns are about disclosure and investor understanding, let's focus on that. Make prospectuses easier to read, help educate the investing public, and consider the value of ongoing advice and service in helping investors meet their financial goals and obligations.

We cannot turn back the clock on 12b-1 fees. Products have been created that utilize them to make the products financially viable. Firms and representatives rely on these income streams to support the infrastructures they have built to serve the investing public. Action to undo what has been built over the past 20 plus years will not benefit anyone and will cause significant turmoil in the industry.

Some think that clients receive no on-going advice for the fees paid to brokers from 12b-1 fees. There is a simple solution to this problem. Have the client sign off on a form that states that the broker/advisor consulted with him or her, on an annual basis.

Where does the Commission stand on further evaluating 12b-1 fees? Will the Commission allow these fees to be paid to brokers for the needed advice it gives to clients?

Sincerely,

Thomas S. O'Keefe  
President