

MEMO# 22630

June 20, 2008

Impact Of Rule 12b-1 Reform Plan On Small Funds; Conference Call Scheduled For June 26

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TO: SMALL FUNDS COMMITTEE No. 18-08 RE: IMPACT OF RULE 12B-1 REFORM PLAN ON SMALL FUNDS; CONFERENCE CALL SCHEDULED FOR JUNE 26

In a series of recent speeches and meetings with industry representatives, the Director of the SEC's Division of Investment Management (IM), Andrew "Buddy" Donohue, has outlined the current thinking of IM staff on reform or repeal of Rule 12b-1. The plan is described briefly below, and our preliminary concerns are described in the attached outline.

We are seeking your reaction to the plan and to our outline. In particular, we would like to learn how you see the plan impacting smaller mutual fund complexes and whether smaller fund complexes share the concerns we describe.

We have scheduled a call with members of the Small Funds Committee to discuss this issue on Thursday, June 26, 2008 at 11:00 Eastern time. If you would like to participate, please RSVP to Maureen Maher (mmaher@ici.org or 202-326-5823). You will be sent the dial-in information when you RSVP.

The plan appears intended to address issues regarding disclosure, the role of the board, and instances where investors could pay more through an ongoing 12b-1 fee than through

a front-end sales load. It would include (with quotes from Mr. Donohue's April 24th speech*):

- A recommendation to treat "12b-1 fees (or at least the 75 basis point so-called 'distribution fees')...as a sales load – and require that they be disclosed as a sales charge to investors." Mr. Donohue has explained that this means characterization of these charges as asset based sales charges under Rule 6c-10, the existing rule that governs deferred sales loads. The total amount paid over time (in basis point terms) could not exceed the fund's maximum front-end sales charge.
- A recommendation to "more appropriately regulate the portion that pays for shareholder servicing and distribution-related administration." In prior meetings, Mr. Donohue explained this concept as a 25 basis point cap on 12b-1 fees, effectively creating a "safe harbor" that could be used for any mix of distribution and non-distribution related expenses.
- A recommendation to significantly revise the role of fund directors to give them the "same role with respect to 12b-1 fees that substitute for a load as they currently have with sales loads themselves."

We look forward to speaking with you on Thursday.

Robert C. Grohowski
Senior Counsel

Securities Regulation - Investment Companies

[Attachment](#)

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