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ASPPA ISSUES COMMENT ON RULE 12b-2 ***Adoption of Plan Investor Safe Harbor Essential to Regulation***

ARLINGTON, VA, (November 3, 2010) – *The following is a statement from Brian H. Graff, executive director and CEO of the American Society of Pension Professionals & Actuaries (ASPPA) and the Council of Independent Recordkeepers (CIKR) on [proposed Rule 12b-2](#) regarding the use of mutual fund assets to pay fees from the sale of mutual fund shares. Read the comment letter filed with the Securities & Exchange Commission (SEC) [here](#).*

ASPPA & CIKR support the Commission's efforts to protect individual investors from paying excessive sales charges and promoting investor understanding of mutual fund fees by replacing 12b-1; however we urge the agency to consider the impact on retirement and employee benefit plans which currently invest \$4 trillion in mutual funds.

Currently, 12b-1 fees play a significant role paying for services like recordkeeping, plan administration and other related services. It's critical that a new framework replacing Rule 12b-1, does not unnecessarily impose new burdensome costs, disrupt retirement plan services, or make mutual funds less competitive with insurance or other investment products.

ASPPA and CIKR offer the following recommendations to proposed Rule 12b-2:

- ***Provide a Plan Investor "Safe Harbor."*** Amend Rule 6c-10 to include a "safe harbor" under which mutual funds need not convert a participant in a participant-directed plan (a "plan investor") to a share class with no ongoing sales charges, if the plan investor invests in a share class with an ongoing sales charge set at a rate such that the conversion period would be at least 15 years (or 180 months). Transition rules should permit plan investors to be converted to a share class with an ongoing sales charge that satisfies the proposed safe harbor, rather than requiring conversion to a class with no ongoing sales charge.
- ***Preserve Funds' Flexibility to Pay for Plan Administration and Compliance.*** Allow funds' flexibility to pay for services to plan investors, including for administration and other plan compliance services, as well as for distribution services. We recommend the Commission (1) should confirm that fees paid from funds for plan administration and compliance activities will not be deemed to finance "distribution activity" under proposed Rule 12b-2, but (2) should not preclude funds from paying for a mix of distribution and administrative services under Rule 12b-2.
- ***Agency Coordination on 12b-2 regulations with the U.S. Department of Labor.*** If the Commission considers rulemaking to address concerns that, in paying for services to plan investors, funds may sometimes pay for services to non-fund investors, ASPPA requests the Commission consider (1) the likely costs of requiring funds to inquire about the use of fees paid for marketing, shareholder services, administration and other services provided to plan investors, and (2) trial rulemaking on this matter must be coordinated with the U.S. Department of Labor ("Labor Department") to avoid potentially significant regulatory inconsistencies.

ASPPA understands the Commission's desire to eliminate problematic and excessive broker compensation arrangements that have evolved under the current Rule 12b-1, however changes to address that issue should not undermine the success that servicing and administration arrangements have fostered for participant-directed retirement plans. Therefore, we urge the Commission to consider the ASPPA and CIKR's proposals as outlined in our comment letter— (<http://www.asppa.org/document-vault/pdfs/GAC/2010/12bfinal.aspx>)

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About ASPPA: The American Society of Pension Professionals & Actuaries (ASPPA) is a national organization of more than 7,400 retirement plan and benefits professionals that serves as the educator, voice, and advocate for the employer-based retirement system. ASPPA members are administrators, actuaries, advisors, attorneys, accountants, and other financial services professionals who provide consulting and administrative services for qualified retirement plans. www.asppa.org

About CIKR: The [Council of Independent 401\(k\) Recordkeepers](#) (CIKR) is a national organization of 401(k) plan service providers. CIKR members are unique in that they are primarily in the business of providing retirement plan services as compared to financial services companies who primarily are in the business of selling investments. Collectively the members of CIKR provide services for over 68,000 retirement plans covering 2.8 million participants and holding in excess of \$120 billion in assets.