



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

August 23, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Proposed Rulemaking Regarding Investment Company
Advertising: Target Date Retirement Fund Names and Marketing,
File No. S7-12-10

Dear Ms. Murphy:

The Mutual Fund Directors Forum (“the Forum”)¹ appreciates the opportunity to comment on the proposed rulemaking by the Securities and Exchange Commission (“Commission” or “SEC”) concerning “Investment Company Advertising: Target Date Retirement Fund Names and Marketing.”²

The Forum, an independent, non-profit organization for investment company independent directors, is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through continuing education and other services, the Forum provides its members with opportunities to share ideas, experiences, and information concerning critical issues facing investment company independent directors today and serves as an independent vehicle through which Forum members can express their views on matters of concern.

Comments

Lately, target date funds, particularly those approaching their target date, have received significant attention because of their seemingly unpredictable performance during the recent market turmoil. This attention has also led to questions about target date funds’ marketing and disclosure practices, and whether the names and marketing

¹ The Forum’s current membership includes over 600 independent directors, representing 83 independent director groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

² Proposed Rulemaking: Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Rel. No. 9126 (June 16, 2010) [75 FR 35920 (June 23, 2010)] (“Release”).

materials of target date funds may have contributed to a lack of investor understanding of the funds and their strategies and risks.

As proposed, the new rules would require that a target date retirement fund with the target date in its name disclose the fund's asset allocation at the target date immediately adjacent to the first use of the fund's name in marketing materials.³ In addition, proposed amendments to rule 482 and rule 34b-1 would require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time, together with a statement that would highlight the fund's final asset allocation. Further, proposed amendments to rule 482 and rule 34b-1 would require a statement in marketing materials to the effect that a target date retirement fund should not be selected based solely on age or retirement date, that it is not a guaranteed investment, and that the stated asset allocations may be subject to change. Finally, amendments proposed to rule 156 under the Securities Act would, if adopted, provide additional guidance regarding statements that could be considered misleading in marketing materials for target date retirement funds and other investment companies.

Independent fund directors have a special and unique interest in accurate and comprehensible fund disclosure. First, and most obviously, a fund's directors sign the registration statement, including the prospectus, and thus must be satisfied that the prospectus disclosure complies with the relevant statutory requirements. But second, and even more importantly, as the one group that represents only fund shareholders and owes its fiduciary duties solely to those shareholders, independent directors have a substantial interest in ensuring that prospectuses, other required disclosure documents, and fund marketing and advertising materials, clearly and effectively communicate to fund investors the information that those investors need and want to know about their funds. Therefore, Forum members support the Commission's overall effort to provide investors with more transparent information about target date funds.

The proposed amendments are intended to help clarify the meaning of the date in a target date fund's name and improve the information provided when these funds are advertised and marketed to investors. The proposals are thus intended to advance the goal of better aligning the expectations of the millions of everyday Americans who use target date funds to invest for retirement and educational needs with the assumptions underlying the funds' glide paths.

Disclosure Enhancements

In our view, clarity and directness are the keys to effective disclosure. As the Release notes,⁴ for a target date fund, key information for investors includes the manner in which the allocation among various asset classes changes over the life of a fund

³ Target date funds that have passed their target date would be required to disclose the fund's actual asset allocation as of the most recent calendar quarter.

⁴ Release at 75 FR 35931.

(including, significantly, what the allocation will be at the fund's target date and at its landing date). Analyzing the differences between possible investments requires understanding the differences in the funds' glide paths and differences in the time at which a final allocation is reached. For many investors, the differences among target date funds (including target date funds with the same target date) and the risks associated with the investment strategies of the funds can be difficult to grasp. The Commission's proposal is focused appropriately on requiring disclosure of a target fund's asset allocation at its target date and requiring that the fund's glide path be presented graphically in marketing and advertising materials. Combined with required disclosure about the risks of target date funds, this information will make it easier for investors to understand target date funds, to compare target date funds with one another, and to compare target date funds with other potential investments that they might make.

We have some concern, however, that the Commission's proposals have the potential to increase "disclosure clutter." That is, they risk inadvertently deemphasizing important portions of the disclosure by requiring the prominent display of too much information. For example, the proposal would require disclosure, immediately after use of the target date fund's name, of the percentages (or, presumably, the ranges) of asset allocations at the target date. We suggest investor testing or other study to ensure that the proposed disclosure would clearly communicate the information, or whether the percentage asset allocations would be better presented in context. Similarly, we are concerned that the new disclosures proposed for radio and television advertisements for target date funds,⁵ when added to the cautionary language already required in all fund advertisements,⁶ may hinder achievement of the goals of clarity and directness.

Prospectus Disclosure

Though not proposing any changes to current prospectus disclosure requirements, the Release requests comment on the sufficiency of disclosures for target date funds. In making this request, however, the Release notes that current prospectuses for target date funds generally include the following elements, which the Commission believes must be disclosed as part of a target date fund's principal investment risks and strategies:

⁵ Under the Release, a radio or television advertisement regarding a target date fund that includes the target date in its name must disclose the both the target date fund's intended asset allocation at the date included in the name, as well as the fund's landing point, an explanation that the asset allocation of the fund becomes fixed at the landing point, and the intended percentage allocation of the fund at the landing point. Proposed rules 482(b)(5)(iii) and 482(b)(5)(v), Release at 75 FR 35920, 35924, 35932.

⁶ See Rule 482(b)(1).

An advertisement must include a statement that advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus and, if available, the summary prospectus contain this and other information about the investment company; identifies a source from which an investor may obtain a prospectus and, if available, a summary prospectus; and states that the prospectus and, if available, the summary prospectus should be read carefully before investing.

1. a description of the glide path, often presented as a table or graph broken down by asset class;
2. the significance of specific points along the glide path, such as the target date and the landing point, and any flexibility retained by the investment manager to deviate from the glide path; and
3. the specific risks attendant to investments in target date funds, such as the risk of loss up to and after the target date, and the risk of loss due to the absence of guarantees associated with the investment.⁷

In particular, the Release requests comment on whether such disclosure should be expressly required by Form N-1A, and whether any additional disclosures should be required in target date fund prospectuses.

As the Release notes,⁸ this information is already being disclosed pursuant to existing disclosure requirements. Indeed, the Commission's review of target date prospectuses, as described in the Release, showed that target date funds already provide the material disclosures necessary to inform investors of the investment strategies, investment risks, and other factors relevant to their decision to invest in a particular target date vehicle. Therefore, mandating these or additional disclosures does not appear to be necessary.

GAO Study

The benefits outlined above provide strong reason for the Commission to adopt the proposed rules and we applaud the Commission's initiatives in this regard. We note, however, that the recently signed Dodd-Frank Wall Street Reform and Consumer Protection Act directs the Government Accountability Office to conduct a study, due within six months, of mutual fund advertising ("GAO Study").⁹ Because that study may in turn lead to further legislation or rulemaking, the Commission may wish to postpone finalizing the rules proposed in the Release to allow time for the results of the GAO Study to inform the rules ultimately adopted.

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⁷ Release at 75 FR 35920, 35935

⁸ Release at 75 FR 35935

⁹ Public Law No: 111-203, Title IX, Sec. 918

The Comptroller is required to conduct a study, and to report to the Congressional Banking Committees within 18 months after enactment of the Act, on mutual fund advertising to identify: (i) existing and proposed regulatory requirements for open-end investment company advertisements; (ii) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds; (iii) the impact of such advertising on consumers; and (iv) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

In sum, these proposals represent an important step forward in improving disclosures in target date fund advertisements and marketing materials in a way that will make information about such funds more accessible and more understandable for investors. We therefore encourage the Commission to adopt and implement this proposal, with due consideration given to our concerns about disclosure clutter, and with the modest delay we suggest to consider the results of the forthcoming GAO Study.

We would welcome the opportunity to discuss our views with the Commission in greater detail. Please feel free to contact me at (202) 507-4492 or david.schwartz@mfd.org at any time. Thank you again for the opportunity to comment on these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Schwartz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David S. Schwartz
Senior Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes
Andrew J. Donohue, Director, Division of Investment Management