

THE FINANCIAL SERVICES ROUNDTABLE



Financing America's Economy

Via Electronic Delivery

July 9, 2012

The Honorable Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Target Date Disclosure [RIN 1210-AB38], 77 Fed. Reg. 30928 (May 24, 2012)

Dear Assistant Secretary Borzi:

The Financial Services Roundtable (the “Roundtable”)¹ respectfully submits this response to the Department of Labor’s (the “Department”) request for public comment on proposals to enhance disclosure concerning target date or similar investments.² In addition to the concerns addressed in this letter, the Roundtable continues to support the views expressed in its comment letter dated January 14, 2011, submitted in response to the Department’s initial Target Date Disclosure proposal.³

On May 24, 2012, the Department re-opened the comment period to afford the public an opportunity to comment on a study of individual investors’ understanding of target date funds and related marketing materials that was prepared for the Securities and Exchange Commission (the “Commission”).⁴ The Department noted the relevance of the study to its proposed

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$85.5 trillion in managed assets, \$965 billion in revenue, and 2.3 million jobs.

² See Target Date Disclosure, Department of Labor [RIN 1210-AB38], 75 Fed. Reg. 73987 (Nov. 30, 2010), proposing to amend the Department’s qualified default investment alternative regulation, available at <http://www.gpo.gov/fdsys/pkg/FR-2010-11-30/pdf/2010-29509.pdf>.

³ See Comments of The Financial Services Roundtable, Target Date Disclosure (Jan. 14, 2011), available at http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs11/RoundtableCommentonTargetDateDisclosure1.13.11.pdf.

⁴ See SIEGEL & GALE LLC, *Investor Testing of Target Date Retirement Fund Comprehension and Communications* (Feb. 15, 2012), available at <http://www.sec.gov/comments/s7-12-10/s71210.shtml>.

rulemaking, and invited parties that had submitted comments on the Commission's target date fund proposals⁵ to submit (or reference) those comments for inclusion in the Department's public record. Accordingly, the Roundtable hereby submits its comment letter on the Commission's target date fund proposals for inclusion in the Department's public record.⁶

The Roundtable supports efforts by regulators to ensure that retail investors receive material information that enables them to evaluate and compare target date funds and other investment vehicles that now exist in the retirement markets. We commend the Department and the Commission for their efforts to coordinate their rulemaking initiatives "to avoid the potential cost and confusion (on the part of plan sponsors, participants or beneficiaries) that could result if the two agencies were to establish inconsistent disclosure requirements."⁷ We encourage regulators to continue to work together to develop and establish a disclosure framework that provides retail investors with the type of clear, concise, and meaningful information needed in the most cost-effective manner possible.

We note that the effective date for amendments proposed by the Department could occur at a different time period from the effective date for amendments proposed by the Commission. The Roundtable is concerned that the transition to two independent sets of rules may result in investor confusion because investors would receive multiple disclosure documents that seemingly cover the same topics. Multiple, serially-effective regulatory disclosure requirements also would unnecessarily increase the plan's operational compliance costs without providing offsetting benefits to plan participants and beneficiaries.

The Roundtable believes that coordinating the effective dates for new disclosure requirements adopted by the Department and the Commission will enhance plan participants' and beneficiaries' understanding of the information and greatly reduce implementation costs. We recommend that the compliance dates for the new rules take place concurrently and at the end of the calendar quarter. This would enable funds to implement the changes in the normal cycle of updating marketing material, which would significantly reduce the compliance costs.

The Roundtable further recommends that plan sponsors have a minimum 90-day transition period to implement the new requirements, as our members will be required to upgrade their systems to comply with the proposed target date disclosures. In this regard, we note that some of our member companies are already providing participant-level disclosure notices on behalf of their recordkeeping clients, in advance of the July 1, 2012 effective date for compliance

⁵ See Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9309, 77 Fed. Reg. 20749 (Apr. 6, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-04-06/pdf/2012-8348.pdf>.

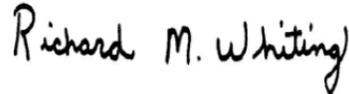
⁶ See Comments of The Financial Services Roundtable, Investment Company Advertising: Target Date Retirement Fund Names and Marketing (May 21, 2012), available at http://www.fsround.org/fsr/policy_issues/regulatory/pdfs/pdfs12/2012-Comments-on-Target-Date-Retirement-Fund-Names-and-Marketing.pdf.

⁷ See Target Date Disclosure, Department of Labor [RIN 1210-AB38], 77 Fed. Reg. 30928, 30929 (May, 24, 2012), proposing to amend the Department's qualified default investment alternative regulation, available at <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=26099>.

with the new section 408(b)(2) disclosure obligations.⁸ These new participant-level disclosure obligations required significant systems upgrades over an extended time period.

The Roundtable appreciates the opportunity to submit comments on the Department's target date disclosure proposals. If it would be helpful to discuss the Roundtable's specific comments or general views on this issue, please contact me at Rich@fsround.org or Brian Tate at Brian@fsround.org.

Sincerely yours,



Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable

ENCLOSURE

With a copy to:

The Honorable Michael L. Davis, Deputy Assistant Secretary
Kristen Zarenko, Office of Regulations and Interpretations

⁸ See Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure, Department of Labor [RIN 1210-AB08], 77 Fed. Reg. 5632 (Feb. 3, 2012), available at <https://webapps.dol.gov/federalregister/PdfDisplay.aspx?DocId=25781>.

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May 21, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9126 [File No. S7-12-10] (June 23, 2010)

Dear Ms. Murphy:

The Financial Services Roundtable (the “Roundtable”)¹ respectfully submits this letter in response to the Securities and Exchange Commission’s (the “Commission”) request for comments on proposed amendments to rules 156 and 482 under the Securities Act of 1933 and rule 34b-1 under the Investment Company Act of 1940 governing marketing materials for target date retirement funds (“Target Date Funds”).² The Commission engaged a consultant to study individual investors’ understanding of Target Date Funds and related marketing materials.³ On April 6, 2012, the Commission re-opened the comment period to afford the public an opportunity to comment on the proposed amendments and the study.⁴

I. Executive Summary

In light of concerns about potential investor misunderstanding, the Commission proposed the following changes to marketing materials used for Target Date Funds: (1) where a fund’s name includes a target date, disclose the asset allocation at the target date immediately adjacent to the first use of the

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² 75 Fed. Reg. 35,920 (June 23, 2010) (“Proposing Release”), available at <http://sec.gov/rules/proposed/2010/33-9126fr.pdf>.

³ See SIEGEL & GALE LLC, *Investor Testing of Target Date Retirement Fund Comprehension and Communications* (Feb. 15, 2012), available at <http://www.sec.gov/comments/s7-12-10/s71210.shtml>. The study also included questions that tested the impact of disclosures that would be required by the proposed amendments.

⁴ See Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9309 [77 Fed. Reg. 20749 (Apr. 6, 2012)], available at <http://www.gpo.gov/fdsys/pkg/FR-2012-04-06/pdf/2012-8348.pdf>.

fund's name; (2) include a table, chart, or graph depicting the fund's asset allocation over time and a statement disclosing the fund's final asset allocation; and (3) include a statement that: (a) the fund should not be selected based solely on age or retirement date; (b) the fund is not a guaranteed investment; and (c) stated asset allocations may be subject to change.⁵ The Commission also proposed to provide further guidance for investment companies (including Target Date Funds) concerning statements in marketing materials that could be deemed misleading.⁶

The Roundtable supports efforts by regulators to ensure that retail investors receive material information that enables investors to evaluate and compare Target Date Funds and other investment vehicles that now exist in the retirement markets. We also encourage regulators to work together to develop and establish a disclosure framework (including interpretative guidance) that provides retail investors with the type of clear, concise, and meaningful information that they need in the most cost-effective manner possible.⁷ Absent increased collaboration among regulators, new investor disclosures likely would result in greater investor confusion and less effective disclosure, notwithstanding the substantial expense likely to be incurred in developing and implementing such disclosures.

In summary, the Roundtable's comments are as follows:

- The Roundtable supports the use of a glide path to illustrate a Target Date Fund's asset allocation over the life of the fund.
- The Roundtable agrees with the Commission that specific Target Date Fund prospectus disclosure items are unnecessary.
- Rule 156 already addresses the obligation to provide full and fair disclosure of material information in sales literature. Further rule amendments are not necessary to address the potential for undue focus on particular factors (*e.g.*, "age" in a Target Date Fund) or representations (*e.g.*, the ease of investment) in sales literature.
- Target Date Funds should have a minimum 90-day transition period to implement the new requirements. Further, the compliance dates for the new rules should take place concurrently and at the end of the calendar quarter.

II. Enhanced Target Date Fund Disclosures

The Roundtable supports initiatives to facilitate and enhance the timing, manner, method, format and scope of disclosures to retail investors. In determining the content of any required disclosure, the Roundtable believes that regulators should take care to ensure that any new requirements do not cause inadvertent harm to investors. More disclosure does not necessarily mean "better" disclosure. Specifically, the Roundtable believes that there is a risk that harm may occur when regulators create disclosure requirements that are confusing to investors, inconsistent with other regulatory requirements, provide information that is duplicative or unneeded, or unnecessarily increase the cost of providing services to investors.

⁵ See Proposed rule 482(b)(5) under the Securities Act and proposed rule 34b-1(c) under the Company Act.

⁶ See Proposed rule 156(b)(4) under the Securities Act.

⁷ Joint agency coordination also would be consistent with President Barack Obama's directive that agencies promote "coordination, simplification, and harmonization." See Executive Order 13563, "Improving Regulation and Regulatory Review" (Jan. 18, 2011). More recently, the Office of Management and Budget directed agencies to consider the "cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules." See "Cumulative Effects of Regulations," (Mar. 20, 2012), at 1, available at <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf>.

A Glide Path Illustration Could Aid Investors' Understanding of Asset Allocation

As proposed, Target Date Fund marketing materials must include a table, chart, or graph clearly depicting the percentage allocations of the fund among types of investments at periodic intervals over the life of the fund (“glide path”). The Commission noted that Target Date Fund prospectuses generally include glide path disclosures under existing regulatory requirements.⁸ The Roundtable supports the use of a glide path to illustrate a Target Date Fund’s asset allocation (*e.g.*, at the target date and the landing point), because it could aid investors’ understanding of the fund’s asset allocation over time.

Specific Target Date Fund Prospectus Disclosure Items Are Unnecessary

Although it did not propose amendments to prospectus disclosure items, the Commission asked whether it should amend Form N-1A under the Securities Act⁹ to provide specific requirements for Target Date Funds.¹⁰ Investment companies already are required to disclose material information (including risks, investment objectives, and investment strategies) in the statutory prospectus. We further note that the Commission’s staff determined that Target Date Fund prospectuses generally provide disclosures specific to Target Date Funds, including any flexibility retained by the investment adviser to deviate from the glide path and the specific risks associated with investments in Target Date Funds (including risk of loss and absence of investment guarantees).¹¹ Accordingly, we do not believe that additional prospectus disclosure items specifically for Target Date Funds are necessary.

III. Interpretative Guidance Concerning Sales Literature

Full and fair disclosure of material information is the foundation of federal regulation of securities offerings.¹² Sales literature that contains an untrue statement or omission of a material fact is materially misleading.¹³ Rule 156 provides guidance concerning information in sales literature that could be materially misleading for purposes of the anti-fraud provisions of federal securities law.¹⁴ Rule 156 further provides that whether any particular statement is misleading would depend on an evaluation of the context in which the statement is made.¹⁵

Under the proposed amendment to rule 156, it could be misleading to suggest that investment company securities are an appropriate investment based on a single factor (such as age or tax status) or certain representations about the “simplicity” of the investment plan, or that the plan “requires little or no monitoring by the investor.” The proposed guidance would apply to all investment companies.

⁸ See Proposing Release, 75 Fed. Reg. at 35935.

⁹ 17 C.F.R. § 239.15A.

¹⁰ See Proposing Release, 75 Fed. Reg. at 35935.

¹¹ *Id.*

¹² Securities Act of 1933, Pub. Law No. 73-22, ch. 38, 48 Stat. 74 (codified as amended at 15 U.S.C. § 77a–zzz (2010)) (adopting the Securities Act “to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof”). See also *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963) (noting that federal securities laws “substitute a philosophy of full disclosure for the philosophy of *caveat emptor*”).

¹³ See Rule 156(a)(1) and (2) [17 C.F.R. § 230.156(a)(1) and (2)].

¹⁴ Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)], and rule 10b-5 under the Exchange Act [17 C.F.R. § 240.10b-5].

¹⁵ Rule 156(a)-(b).

As the Commission noted, “a Target Date Fund is typically intended for investors whose retirement date is at or about the fund’s stated target date.”¹⁶ The Commission further noted that these investments are “designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time without the need for each investor” to rebalance the portfolio.¹⁷ Since 2006, Target Date Funds also have become an important investment alternative for 401(k) plans, due to their designation as qualified default investment alternatives by the Department of Labor.¹⁸

Although Target Date Funds are *designed to make it easier for investors to diversify* the investments they use for *retirement* planning, we appreciate the need for investors to consider a range of factors and other information in making an investment decision. Under rule 156, a statement in sales material may be misleading due to the “absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading.”¹⁹ Thus, rule 156 already addresses the obligation to provide full and fair disclosure of material information in sales literature. Therefore, we do not believe further rule amendments are necessary to address the Commission’s concerns about the potential for undue focus on particular factors or representations in sales literature.

IV. Transition Period

The Roundtable agrees that funds should have a minimum 90-day transition period to implement the new requirements. Because amendments to the rules could occur at different time periods, we are concerned that the transition to the new rules may result in investor confusion because investors would receive multiple disclosure documents that seemingly cover the same topics. Multiple, serially effective regulatory disclosure requirements also would unnecessarily increase funds’ operational compliance costs without providing offsetting benefits to investors receiving such information.

The Roundtable believes that coordinating the effective dates for new disclosures requirements will enhance investors’ understanding of the information and greatly reduce implementation costs. We recommend that the compliance dates for the new rules take place concurrently and at the end of the calendar quarter. This would enable funds to implement the changes in the normal cycle of updating marketing material, which could reduce the compliance costs significantly.

* * *

¹⁶ See Proposing Release, 75 Fed. Reg. at 35921.

¹⁷ *Id.*

¹⁸ *Id.* (noting that 70% of U.S. employers use them as default investments).

¹⁹ Rule 156(b)(1)(ii).

The Roundtable appreciates the opportunity to submit comments on the proposed amendments to rules governing marketing materials for Target Date Funds. If it would be helpful to discuss the Roundtable's specific comments or general views on this issue, please contact me at Rich@fsround.org or Brian Tate at Brian@fsround.org.

Sincerely yours,



Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable

With a copy to:

The Honorable Mary L. Schapiro, Chairman
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Daniel M. Gallagher, Commissioner

Eileen Rominger, Director, Division of Investment Management
J. Matthew DeLesDernier, Attorney-Adviser, Division of Investment Management