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Poll: More Work Required on 12b-1 Reform

By Mariah Summers July 28, 2010

Though the Securities and Exchange Commission is well intentioned with its current 12b-1 reform efforts, areas of the proposal still need work. That's according to a plurality of *Ignites* poll respondents.

Roughly 47%, or 109 voters, said that the SEC's intentions are good but its proposal needs some tweaking. This made it the most popular response in a poll that asked readers' opinions on the commission's recent 12b-1 reform proposal.

About 19%, or 43 voters, said they hadn't had time to figure out exactly what the commission is proposing with its planned overhaul. Meanwhile, 16%, or 36 voters, said the SEC's current proposal is unworkable.

More than 12% said the SEC has issued a good reform proposal. Finally, 6% doubted whether the SEC has the time or resources to implement and enforce a new 12b-1 policy.

The SEC's reform proposal seeks to overhaul sales charges and offer greater fee transparency. It would specifically eliminate "hidden sales charges" that 12b-1 fees can represent by requiring for the first time disclosure and monitoring of these fees as sales charges. The measure also attempts to cap the cumulative sales charge, or sales load, investors pay and spark competition by offering broker-dealers the opportunity to set mutual fund sales load rates.

Industry observers say it's understandable that many *Ignites* poll respondents will have a hard time accepting the current 12b-1 proposal before the mandatory comment period ends on Nov. 5.

"I would say in general that the tension is, from the business side, about how there's a cost to marketing and distributing any product," says Bibb Strench, who focuses on compliance issues and serves as a Washington, D.C.-based counsel at **Seward & Kissel**.

"The way the industry has evolved, mutual funds need intermediaries to get their product to consumers. [Fund executives] must balance that side of the equation with protection of consumers so that investors are not overpaying for the product or so that investors are fully informed about the various components of the cost of the product," says Strench, adding that balancing the two issues is not always easy.

Another compliance attorney outlined the specific areas of concern for the mutual fund industry regarding the SEC's proposal.

“It seems that the SEC is on the right track, but there are a number of operational issues that will have to be addressed if this proposal is going to move forward,” says Niels Holch, partner at **Holch & Erickson**, a Washington, D.C., law firm specializing in regulatory issues.

“This is going to change substantially the way in which sales load fees are going to be accounted for,” he says. “You’re also going to have to track by share lot, and not all intermediaries do that. For upfront sales loads that have breakpoint discounts, there’s a sliding scale and the question is: How does that translate into the ongoing sales charge that’s outlined within the reform proposal?”

Holch says that additional issues raised by the SEC’s proposal include sub-accounting fees, shareholder exchanges within a fund family, revenue sharing disclosure and the oversight role of fund boards.

“There’s a lot to get through,” Holch adds, “and people generally don’t like change.”

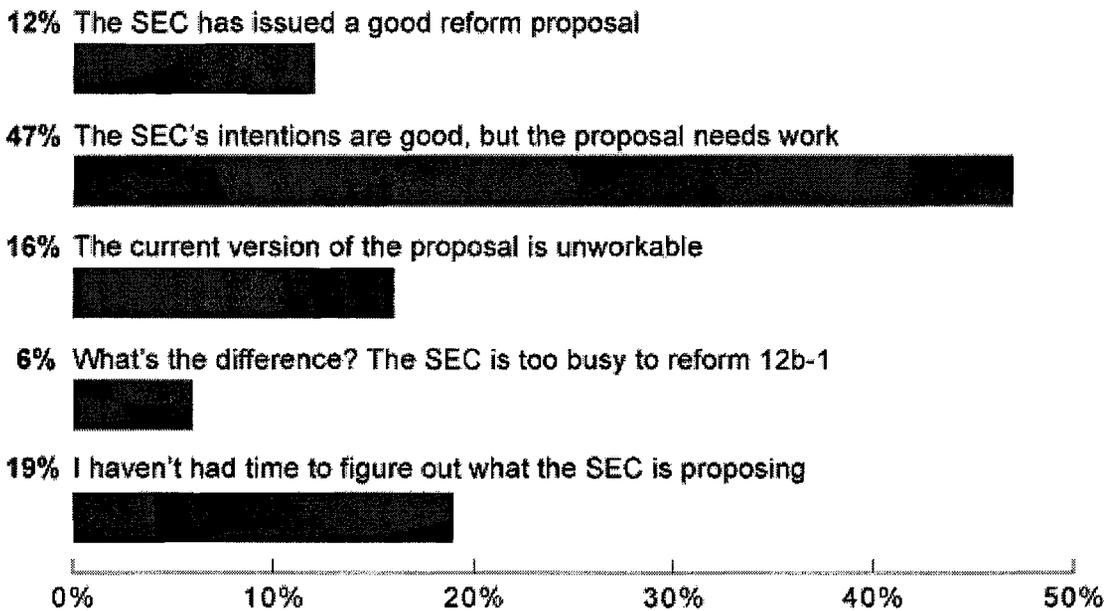
Precisely 231 *Ignites* subscribers participated in the survey as of 3 p.m. Tuesday.

The poll is an unscientific sampling of *Ignites* subscribers. Readers voted only once on a voluntary basis. *Ignites*’s audience consists of financial advisors, money managers and service providers.

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What’s Your View of 12b-1 Overhaul?

Last week the SEC proposed a new rule on how funds charge and disclose their marketing and distribution costs under Rule 12b-1. What option best reflects your view of the SEC’s proposal?



Total Votes: 231

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