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Does SEC 12b-1 Roundtable Favor Industry?

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While SEC chairman **Christopher Cox** has called for a "reevaluation" of 12b-1 fees, some industry observers wonder whether the panel assembled for the upcoming roundtable discussion is slanted too heavily toward the industry's interests and not shareholders'.

The 12b-1 fee roundtable is slated for June 19. In a previous speech, Cox said the fees, which were designed to pay for distribution and marketing of funds, are now used for other purposes. Some industry observers expressed concern that shareholders won't be adequately represented.

Mercer Bullard, founder of the consumer advocacy group Fund Democracy and an assistant professor of law at the University of Mississippi in Oxford, is one such observer. He says the panels are weighted toward the industry and there is not enough consumer representation. He is also a former SEC attorney, but is not participating in the panel discussions.

"As is almost always the case with these recent SEC panels, it's very industry-weighted. It doesn't have the full range of point of view that I think they need," Bullard says, adding that the panel could use at least one plaintiffs' lawyer who has brought 12b-1 cases against firms. "They have more than five lawyers who do nothing but represent fund managers."

Barbara Roper, director of investor protection at the Consumer Federation of America, on the other hand, says she is satisfied that the SEC has organized a diverse group of people who will express various viewpoints. She will be speaking at the discussion.

"I'm confident that the investor viewpoint is well represented on the panel," Roper says about the panel she is on, which focuses on ways to reform 12b-1 fees. "I'm quite satisfied."

Some of the lawyers on the panels include **Joel Goldberg**, a partner with Willkie Farr & Gallagher; **Richard Grant**, a partner with Morgan, Lewis & Bockius; and **Richard Phillips**, a partner with Kirkpatrick & Lockhart Preston Gates Ellis. (A full list of panelists can be found in a chart at the end of this article.)

The SEC has convened an all-day event to discuss 12b-1 fees and ways to change them. The first panel focuses on the historic perspective of 12b-1 fees, including why they were created, what they were intended to be used for and how the funds came to be used for other purposes. This panel will include **Matthew Fink**, former president of the Investment Company Institute, who will provide testimony refuting misconceptions surrounding 12b-1 fees, including the "myth" that the fees were never intended to pay brokers.

The next panel will focus on how 12b-1 fees are used today, uses that have definitely expanded beyond the initial focus on funding advertising. This panel will include **Paul Haaga**, executive vice president, Capital Research and Management, and vice chairman of the Investment Company Institute's board of governors, and **Martin Byrne**, managing director, office of general counsel with Merrill Lynch & Co.

Another panel will focus on the costs and benefits of 12b-1 fees and will feature **John Hill**, independent chairman with Putnam Funds, and **Jeff Keil**, principal, Keil Fiduciary Strategies. Rounding out the day will be a panel covering what can be changed about 12b-1 fees, and this panel will feature an anticipated discussion about externalizing the distribution and servicing fees by assessing them directly onto shareholder accounts rather than on fund assets.

This plan, according to **Niels Holch**, executive director of the Coalition of Mutual Fund Investors, would allow direct-buy investors to avoid the bulk of the 12b-1 fee since they are not using services that an investor going through a broker would be using. He is not speaking at the SEC event.

"This would turn it into more of a user fee so those who use more services will pay more out of their own accounts," Holch says.

Another panelist, **Don Phillips**, a managing director with Morningstar, says he is satisfied with the selection of panelists and the topics to be discussed. He says he is hoping to convey the message generally that mutual fund financial disclosures need to become more transparent and current 12b-1 fees are not helping in that area. He says costs in mutual funds should be split among three categories: investment management, distribution and operations.

"Every investor ought to be able to see that when they look at the financial statement," Phillips says. He says 12b-1 fees are used in various places and built into the expense ratio.

SEC 12b-1 Roundtable Panelists

Barbara Roper	Investor Protection Consumer Federation of America
Richard Phillips	Kirkpatrick & Lockhart Preston Gates Ellis
Don Phillips	Morningstar
Avi Nachmany	Strategic Insight
Mark Fetting	Legg Mason
Shannon Zimmerman	Investment Analyst, The Motley Fool
Brad Barber	Professor of Finance, University of California, Davis
John Hill	Independent Chair, Putnam Funds

Jeff Keil	Keil Fiduciary Strategies
Joseph Russo	Advantage Financial Group
Michael Sharp	General Counsel, Citi Global Wealth Management
Matthew Fink	Former President, ICI
Joel Goldberg	Willkie Farr & Gallagher
Richard Grant	Morgan, Lewis & Bockius
Kathryn Bradley McGrath	Mayer, Brown, Rowe & Maw
Martin Byrne	Merrill Lynch
Paul Haaga	Capital Research and Management
Melody Hobson	Ariel Mutual Funds Board of Trustees
John Morris	Charles Schwab
Charles Nelson	Great-West Retirement Services
Thomas Selman	Executive VP, NASD
Robert Uek	Independent Trustee, MFS Funds

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