1369

April 15, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. S7-06-04, Release No. 33-8544
Point of Sale (POS) and Confirmation Disclosure Requirements

Dear Mr. Katz:

AARP appreciates this opportunity to submit supplemental comments to the U.S. Securities and Exchange Commission (the Commission or SEC) on its revised proposals (amending the Securities Exchange Act of 1934) to improve mutual fund purchase disclosures.[1] On March 1, 2005, the Commission announced that it would briefly reopen the comment period in response to the extensive feed back that had been received regarding its original proposals. We believe that the proposed revisions represent valuable improvements to the original disclosure design. We also believe that the rule and model revisions in the re-proposal are feasible, obtainable, and will provide added value and benefit to ordinary investors. However, there is room for improvement.[2]

The challenge before the Commission is to determine how the customer can have access to timely information that is characterized by a proper balance of completeness of ownership costs (transaction-related as well as fund management-related) and clarity of presentation. As guiding principles, we believe that investment disclosures should be measured against two fundamental standards:

- First, appropriate information that facilitates instrument comparison through standardization (optimally across different types of securities investments as

[1] The original proposals were released by the Securities and Exchange Commission in January 2004.

[2] We remain concerned that these improved mutual fund disclosures will be undermined by the implementation of the Commission's recently revised concept release (December 2004) of a proposal to exempt certain fee-based brokerage accounts from regulation under the Investment Advisers Act (IAA). Our principal concern remains that the Commission will continue to rely on a "solely incidental" standard, a standard that has never been defined and therefore cannot be enforced, to draw a distinction between brokers and advisers. In effect, this distinction artificially restricts the scope of investor protections intended by the IAA. See our comment letter to the SEC, File No. S7-25-99, dated March 9, 2005.

well as more specifically between mutual funds) should be made readily available to potential investors; and

- Second, information should be presented to users in a timely fashion -- without diminishing its accuracy, reliability or accountability -- to promote improved decision-making by ordinary consumers.

We noted in our commentary regarding the original point of sale (POS) and transaction confirmation disclosures that the model forms represented a promising step forward.[3] We also stressed, based on the results of our field test on the original fund disclosure proposals that (even within the confines of the mutual fund marketplace) more needed to be done to[4]:

- capture operating costs,
- disclose more conflicts of interest, and
- link the disclosed information more closely to the individual investors' decision-making process.

To the Commission's credit, it recognized that the original rule and model formulations continued to confuse lay investors with their marketplace jargon, complexity and format.[5] The SEC chose to retain a consulting firm with expertise in the development and testing of financial documents.[6] Strongly recommended by AARP and other customer advocacy groups[7], the adoption of this suggestion has clearly led to significant improvements in the potential usefulness and use of these important disclosures. Other substantive improvements in the re-proposal include banning directed brokerage[8], adding fund operating expenses (also referred to as

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[3] See our comment letter to the SEC, File No. S7-06-04, dated May 21, 2004.

[4] AARP conducted a controlled online field test of the SEC's original disclosure models, in March of 2004, based upon two national samples, composed of investors and non-investors 35/+ (one set for Class A shares and one set for Class B shares). Participants were asked to rate the originally proposed mutual fund point of sale and confirmation disclosures on how well they were able to interpret information in the proposed forms.

[5]This difficulty with market terminology is very evident in the findings of our study (as well as in the SEC's subsequent focus group investigations, see the SEC reference in footnote 6) of the original mutual fund disclosure models as they were proposed by the Commission in January of 2004.

[6] See: "Results of In-Depth Investor Interviews Regarding Proposed Mutual Fund Sales Fee and Conflict of Interest Disclosure Forms," Report to the SEC from Siegel & Gale, LLC and Gelb Consulting Group, Inc., November 4, 2004.

[7] See the joint comment letter submitted to the SEC by Consumer Federation of America, Fund Democracy, Consumer Action and Consumers Union, File No. S7-06-04, dated April 21, 2004.

[8] The improper fund management practice of allocating fund brokerage to provide brokers with hidden compensation for the sale of fund shares.

management costs) into the POS, and adding the application of the proposed rules to broker-sold 529 Plans.

However, while we believe that the re-proposal offers improvement in the disclosure of mutual fund pricing, it does not clearly distinguish between brokerage fees for selling securities, and the ongoing costs of fund management. This was an important recommendation made in our original commentary. We continue to believe that this is an important distinction, and it would provide a useful basis for improving fund comparability, at a meaningful stage in the customer's decision-making process. A related concern with the re-proposal for POS disclosures is that they do not include any information about the amount of revenue sharing payments[9] received by the broker. Potential investors will have no information to use in evaluating the effect that these payments may have on the broker's recommendation. This information should not be relegated to a broker's website or lost in a prospectus.[10]

Written POS Disclosures

We support the Commission strategy of adopting a combination of standardized and transaction-specific cost disclosures, as a framework for improving communication of key investment information to ordinary investors. We believe that the introduction and presentation of fund pricing information and management (operating) costs represent a genuine step forward in the design of POS disclosures. We also believe that it is important that the investor know and be able to see the transaction costs they will be paying to make a purchase. Therefore, we believe that POS disclosures would be substantively enhanced for fund cost comparisons -- and provide a more accurate picture of the total ownership costs involved -- if a similar disclosure of sales-related service fees were to be developed and tested. This disclosure would replace the check-off (Yes/No) format that indicates only if the broker-dealer received or paid promotional fees. We believe that the existing attempt at disclosure of service fees unnecessarily limits the comparative utility of the POS disclosure.[11]

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[9] A term that is used to characterize payments made by fund managers and fund distributors, and their affiliates, that are associated with the sale of fund shares.

[10] Our perspective is that mutual fund prospectuses should serve as the information anchors for investors, providing greater detail and more complete explanations. But clearly, the problems of terminology, content and format (that our research indicated had affected the utility of the original models of POS and confirmation disclosures) also plague most investment prospectuses, diminishing their utility. We encourage the SEC to turn to this matter as an important next step.

[11] We can understand the challenge that this recommendation represents to the Commission at this point in the rule-making process. And we appreciate that the motivation for the check-off format was to simplify complex financial service interrelationships in a fashion useful to the widest range of customers. Our perspective is, after considering the findings from our study as well as the findings of the focus group research provided to the SEC by Siegel & Gale, that the loss of such an important

We do not support the view that a broker-dealer's existing standard practice should be acceptable as an alternative. Such an opt-out provision would run counter to the basic objective and benefit of standardization -- and that is to facilitate comparative shopping through uniformity of format as well as terminology.

On a more technical level, we believe that in the interest of information clarity, continuity and utility, it is appropriate for the Commission to mandate the format of the forms, including font size and layout. We believe it to be important that written POS disclosures should have a "date line" where the broker-dealer indicates when the communication occurred, and a "signature line" that customers are required to sign to validate their receipt of a POS disclosure. Equivalent information should be recorded by the broker-dealer if the communication occurs over the telephone.

However, we recommend that the Commission require that non-applicable categories of information receive a "not applicable" designation, rather than the categories being omitted from the form. We believe this approach to be clearer, by maintaining consistency of format, and ultimately more cost effective. And rather than "hoping" that investors will request, and that broker-dealers will provide, forms for different share classes and pricing structures, we believe that the revised POS forms should be required to be made available. That is to say, broker-dealers should be required to offer to "fill in" the appropriate form(s) for the specific securities being considered by a customer -- regardless of whether the securities are being recommended by the broker-dealer.

Timing of Written POS Disclosures

If -- as we are recommending -- upon first and subsequent contacts with the customer the broker-dealer is required to inform the customer that their requests for POS disclosures must be honored prior to the broker-dealer's receipt of their order, than we believe that the investor should be the trigger for POS disclosures. The default trigger (where no POS disclosures have been requested by the customer) would be a requirement that POS disclosure be provided to the customer of the securities recommended by the broker-dealer for purchase. In either scenario, the appropriate POS disclosures must be provided to the customer "prior to the receipt of an order" by the broker-dealer. Customers should exercise their prerogative to take some time to consider information presented in the POS disclosures before deciding if and how to proceed.

We anticipate that this process will encourage the customer to investigate particular funds that they may have an interest in. And this process will also provide the

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source of comparable cost information for the purposes of simplification were too substantial. We anticipate that the introduction of service fee information into the disclosure would not need to substantially differ in complexity from the level of the other sections of the disclosure form. Additional testing would be very useful in developing this aspect of the disclosures.

broker-dealer with additional information regarding customer investment interests, and provide them with an opportunity -- if not a motivation -- to target their recommendations properly and promptly.

Oral POS Disclosures

We agree with the Commission that oral communication of POS disclosures poses a serious challenge. The issue of monitoring compliance, and the need to give investors the opportunity to consider the POS information when making investment decisions, are two formidable issues. Our central concern is that any further truncation of cost information from that being provided in the written POS disclosures would, we believe, do harm to the overall purpose and value of the proposed revised rules.

Nevertheless, it appears inevitable that the Commission will allow for POS disclosures to be delivered orally, while a number of other fund securities will qualify for a purchase exemption and therefore those investors will receive no POS disclosure at all. Perhaps the best approach that has surfaced so far is to have a faxed or emailed copy of the relevant written disclosures forwarded to customers prior to or at the time of the telephone contact. This approach could be recommended by the SEC as a best practice. Unfortunately, customers without access to these modes of communication will not have these options. Conversely, we believe that broker-dealers should be required to maintain a toll-free telephone number (available from the broker-dealer) that investors can call to request paper copies (faxed, emailed or mailed) ahead of the telephone contact.

Confirmation Proposal

Our view regarding the revised sale confirmation disclosure is generally reflected in our discussion of the proposed POS disclosure model. Here again, we do not support the view that a broker-dealer's existing standard practice should be acceptable as an alternative. We believe that such opt-out provisions undercut the precise objectives that the Commission is promoting with its revised rules and models for sale conformation as well as POS disclosures. This commitment by the Commission should again include the responsibility for mandating the format and content (including terminology) of the sale confirmation forms.

Internet-based Disclosures

Our view is that fund POS and confirmation disclosures and prospectuses, and detailed information about revenue sharing payments (including disclosures about other broker compensation practices), should be made available to the customer on the Internet. We support the Commission's proposal that all disclosure materials should be made available electronically -- but only as a supplemental option. We also believe that broker-dealers should be required to maintain a toll-free telephone number (available from the broker-dealer) that investors can call to request paper copies (faxed or mailed) of materials available on the Internet.

Cost of Disclosures

And lastly, we recognize that the brokerage industry has consistently raised an objection to the POS rule -- in particular -- on the basis that it will lead to substantial costs that will not be justified by the benefits - and in fact may work to the disadvantage of mutual funds and their shareholders in the broader securities marketplace. The underlying logic of this objection raises an unsettling issue: If these rules are promulgated, will broker-dealers be making investment recommendations regarding mutual funds based on what is in the best interest of their clients, or based on higher compensation that they can receive from recommending other financial products where the ownership costs are less transparent to the investor? We would hope not. But this concern is the basis for our recommendation that the methods and lessons learned from this rule-making exercise be extended to broker-dealer compensation practices in the broader securities marketplace.

However, we do believe it is true that an increase in cost is unavoidable. Clearly, provided the complexity of the distribution payment system and the pervasiveness of the conflicts of interest it creates, effective disclosure cannot be accomplished without some added cost. However, we also believe that much of this expense may be recovered through better investment choices and returns, by investors who will more likely be alerted to the conflicts of interest and to the other types and amounts of embedded or hidden costs.

Conclusions

We commend the Commission for elevating its consideration of the informational needs of ordinary investors. We believe the proposed rules and amendments will improve prospects for better individual decision-making and aid in the prevention of some of the most abusive practices discovered in the recent mutual fund scandals.

We look forward to working with the Commission as this rule-making process progresses. If we can elaborate on any aspect of this or our previous commentary, or on our field study of investor reactions to the proposed mutual fund disclosures, please do hesitate to call me, or have a member of your staff call Roy Green in our Federal Affairs Department at (202) 434-3800.

Sincerely,

David Certner
Director
Federal Affairs