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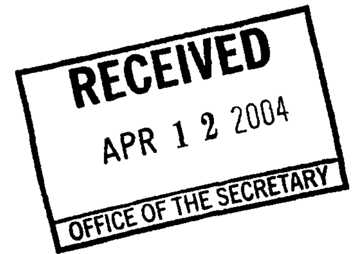
PACIFIC SELECT DISTRIBUTORS



April 9, 2004

Jonathan G. Katz
Secretary
United States Securities and Exchange Commission
450 Fifth Street, NW
Washington DC 20549-0609

RE: Request for Comments on Proposed Rule Changes Creating New Disclosure Requirements at Point of Sale and Confirmation and Related Matters – File No. S7-06-04

Dear Mr. Katz:

Enclosed please find a series of comments prepared by John L. Dixon, President of Pacific Select Distributors, Inc. ("PSD") in response to the above referenced matter. Mr. Dixon is traveling and asked that I submit his comments.

Mr. Dixon's comments summarize the business of PSD. Mr. Dixon's comments focus on the concerns of retail broker-dealers as well as those of investors with the proposed rule changes.

We understand that you will be receiving comments from the Investment Company Institute ("ICI"), American Council of Life Insurers ("ACLI") and National Association for Variable Annuities ("NAVA"). We work closely with each of these organizations' and have provided comments to them. We ask that you carefully consider their observations.

We sincerely appreciate the opportunity to provide comments.

Sincerely,

S. Kendrick Dunn

S. Kendrick Dunn
Assistant Vice President

Cc: John L. Dixon, President, PSD

PACIFIC SELECT DISTRIBUTORS, INC.
Corporate Headquarters
700 Newport Center Drive, Newport Beach, California 92660-6397 Tel (800) 800-7646

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PACIFIC SELECT DISTRIBUTORS

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OFFICE OF THE SECRETARY

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Washington DC 20549-0609

RE: Request for Comments on Proposed Rule Changes Creating New Disclosure Requirements at Point of Sale and Confirmation and Related Matters – File No. S7-06-04

Dear Mr. Katz:

We are pleased to respond to the request for comments on the proposed rule changes promulgated by the Securities and Exchange Commission ("SEC") relating to point of sale and confirmation disclosures for mutual fund shares, certain unit investment trust interests (including sub-accounts in variable contracts) and municipal fund securities used for education savings (e.g., 529 plans) and other related matters included under File No. S7-06-04 ("the Proposal"). In these comments we refer to those investment vehicles affected by the proposed rule changes as "Covered Securities".

Pacific Select Distributors, Inc. ("PSD") is a broker-dealer member firm of the National Association of Securities Dealers, Inc. ("NASD") and is a subsidiary of Pacific Life Insurance Company. PSD has an affiliate relationship and directly or indirectly owns majority control of six retail NASD member firms. PSD also serves as a distributor of variable contracts and mutual funds offered by Pacific Life Insurance Company and its affiliates.

We have reviewed the Proposal and wish to provide both general observations and specific suggestions about the proposed disclosures at point of sale and via confirmations; then provide input on certain of the other issues where comments were solicited.

General Observations

The Proposal would impose an entirely new set of disclosure obligations on broker-dealers with regard to Covered Securities.

Prospectus As a Disclosure Device. For many years regulators have focused on the prospectus as the primary disclosure device. Directives from regulators over the past several years about point of sale disclosures have created significant confusion. While some regulators have

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Corporate Headquarters
700 Newport Center Drive, Newport Beach, California 92660-6397 Tel (800) 800-7646

advocated specific disclosures be made to supplement those included in the prospectus, others have come down hard on firms where it was felt that partial disclosures might distract investors from reviewing the prospectus. The SEC apparently has determined that the prospectus is no longer an adequate disclosure device and that certain disclosures should be made outside the prospectus. We think there is significant risk that the level of extra-prospectus disclosure introduced by the Proposal will draw the attention of investors away from the prospectus as a disclosure tool.

Added Disclosures May Confuse Investors. The object of the Proposal is to help the retail customer; yet the Proposal demands disclosure of far more detailed information than the average retail customer could reasonably comprehend or use in making investment decisions. Current rules require the disclosure of sales loads, 12(b)1 fees, management fees, etc. and do so in a format that is relatively easy to understand. Efforts made by the SEC to encourage plain language have further enhanced investor friendly disclosures. In contrast, the complex disclosures the Proposal would require at point of sale and in confirmations could create more confusion than clarity for investors.

In advance of placing an order for a Covered Security, a financial advisor would be required to provide either verbal or written disclosures of the dollar amount of any front-end load; the dollar amount of any back-end load (assuming a holding period of one year at the same value); the dollar amount of any sales fee received by the broker-dealer; the dollar amount of asset-based service fees the broker-dealer will receive in the first year; whether the sponsors of the Covered Securities pay brokerage commissions to the broker-dealer; and whether the sponsors of the Covered Securities share revenues with the broker-dealer. In addition, if the Covered Securities are proprietary and/or include a back-end load, the financial advisor would also have to disclose if the broker-dealer provides increased commission payouts to promote the sale of the Covered Securities. Substantial further disclosures would be required as part of the confirmation. These include duplication of the disclosures at the point of sale (but with a myriad of additional details) plus comparisons to industry medians, calculations of back-end loads for each year they are in effect; the precise dollar amount of revenue sharing and portfolio brokerage the broker-dealer received in conjunction with the transactions and disclosure of differential compensation and breakpoint information. Obviously, to make the information meaningful, both the point of sale and confirmations disclosures would have to be accompanied by detailed definitions.

There is a significant risk that this excessive (in our opinion) disclosure on financial sharing arrangements will cause investors to focus too much on such issues and not enough on other disclosure information that is of equal or greater importance – e.g. the investment objectives of the product, the risks of making an investment, the operating expense ratio of the product, the historical performance, etc.

Unfair Transfer of Disclosure Obligations. The obligation to disclose distribution costs logically belongs to the sponsor of the Covered Securities. The sponsor controls the fees and other resources that cover these costs and determines how such resources and costs are shared with broker-dealers or others involved in the distribution and/or ongoing services connected with

the Covered Securities. Under the Proposal, the data gathering, administrative and disclosure burdens are being unfairly transferred to broker-dealers. If the Proposal is implemented, broker-dealers will incur enormous costs associated with creating and maintaining systems for transferring, manipulating and disclosing information controlled by and proprietary to the sponsors of Covered Securities. Further, the Proposal does not appear to mandate that sponsors make available to broker-dealers the information essential to creating the disclosures required under the Proposal.

Proposals Will Promote Alternative Investments. We believe that the proposed rule changes and the huge cost to implement those changes will result in a significant shift in focus from the Covered Securities and toward individual securities and/or alternative investments not affected by the Proposal. That would be unfortunate since the Covered Securities, particularly mutual funds, are the cornerstone of retirement planning for middle income Americans. They provide good opportunities for obtaining professional management and diversification for those who have modest pools of capital or are in the process of accumulating such pools of capital. The success of load funds and other packaged products is ample evidence that broker-dealers and their affiliated financial advisors are important catalysts in encouraging investors to strive for financial independence. It would be unfortunate to discourage the sale and purchase of Covered Securities by increasing both the complexity of transactions and costs associated with those transactions to an unacceptable level.

Proposals Are Too Expensive to Implement. We are confident the SEC has substantially underestimated the cost to the industry to re-tool to implement the proposed changes. Many independent contractor firms, both small and large, specialize in the sale of Covered Securities and sign selling agreements with most significant sponsors of mutual funds and variable contracts. These firms will often not have the financial capability of building the systems that would be required to implement the Proposal. We believe implementation of the Proposal as written will cause substantial financial damage to all retail broker-dealers and will likely result in the financial demise of many smaller firms that are primarily involved in the sale of Covered Securities.

As a point of interest, broker-dealers are already experiencing significant negative financial impacts as a result of this and other proposals dealing with directed transactions and revenue sharing. Many sponsors have simply stopped or suspended revenue sharing until final conclusions are reached with regard to the Proposal and other proposed rule changes. As a result, those sponsors are now retaining funds previously shared with broker-dealers. This already has resulted in a loss of many millions of dollars to broker-dealers.

Time Frame for Implementation. The new systems that would be required to comply with the detailed, custom disclosures and other changes in the Proposal would require many months of design and development – probably two years or more for firms that specialize in Covered Securities and are already enmeshed in substantial projects resulting from regulatory mandates or suggested changes such as identifying and tracking breakpoint opportunities and monitoring variable contract and B-share transactions, etc. tracking of breakpoints.

Proposals Punish the Best Firms. Unfortunately the expenses of creating the systems essential to implement the point of sale and confirmation disclosures under the Proposal would be highest for the broker-dealers which have the least conflicts of interest and offer the most flexibility to public customers. By way of illustration, consider the impact of the proposed disclosure requirements on a retail, planning-oriented broker-dealer that signs agreements with all significant load and no-load mutual fund sponsors. Its affiliated financial advisors and public customers have ultimate flexibility in selecting mutual funds for investment portfolios. The challenges and costs of building the systems to implement the new disclosures required under the Proposal would be insurmountable unless the firm substantially narrowed the mutual fund offerings available to its customers. In contrast, a broker-dealer affiliated with a sponsor of Covered Securities and which limits sales to proprietary products would find the Proposal much less expensive and complicated to implement.

Negative Impact on Competition. The Proposal would require the disclosure of private sharing arrangements between sponsors of Covered Securities and broker-dealers. We agree that it is important for investors to have fees and expenses disclosed, including details about selling compensation. At the same time, we do not believe it is necessary or wise to require detailed disclosure of all the financial relationships between a sponsor and a broker-dealer. For example, a sponsor may negotiate with broker-dealer A to carry out more distribution tasks than broker-dealer B. It is logical that the sponsor would pay more to broker-dealer A for its extra work. Requiring disclosure of this detail would unfairly penalize broker-dealer A. Such disclosures would also expose the economic relationships between sponsors and broker-dealers to a degree that could cost them a significant competitive advantage.

Specific Suggestions

Disclosure of Revenue Sharing, Directed Brokerage. We believe it is appropriate that customers be made aware when revenue sharing arrangements or directed brokerage arrangements exist between a sponsor of Covered Securities and the customer's broker-dealer. Such disclosure should be made in the most cost effective way and should not include details that would confuse the customer or unfairly inform competitors of the sponsor or broker-dealer. We suggest that a list of sponsors with which such arrangements exist be provided on a web site that is updated quarterly. Further, we suggest that customers be informed both verbally (at the point of sale) and in writing (with the confirmation) of the existence of that web site.

Disclosure of Covered Securities Expenses. Broker-dealers should not be required to duplicate expense disclosures already made by sponsors of Covered Securities. Disclosures should be standardized and not personalized. The gain in transparency from personalized expense disclosure is clearly dwarfed by the enormous price tag to the industry.

Point of Sale Disclosure Impractical. We suggest deleting the proposed customized point of sale disclosures as impractical. For example, in a typical planning environment, a financial advisor would be discussing various options to optimize balance in a families' investment

portfolio, including personal accounts, joint accounts, children's accounts, IRA accounts, etc. One meeting could dictate many disclosure forms that would have to be changed multiple times to comply with the proposed rule. In most cases a financial advisor will not even know what specific products or amounts will be recommended before meeting with the potential investor. To require that a detailed written disclosure be provided in advance of the transaction means that in almost every situation a two or more meeting scenario will be required to meet the proposed rules. Most meetings with planning oriented advisors take place away from the representative's office; so creating the disclosure documentation during the meeting is not practical. In the case of a verbal disclosure – assuming a telephone conversation as the basis for a transaction – the likelihood of concluding the conversation with an order or series of orders that is identical to those planned and researched is very low. So, once again, it would often prove impossible to satisfy the proposed disclosures without delaying any implementation to a second or third conversation. The inefficiencies resulting from the proposed point of sale disclosures would certainly motivate broker-dealers and their financial advisors to consider alternatives to the Covered Securities.

Revenue Sharing or Directed Brokerage Disclosure. Broker-dealers should not be required to disclose revenue sharing or directed brokerage as though it relates to individual purchases of Covered Securities. In fact there is no direct connection and to indicate otherwise would be misleading. In many cases, a broker-dealer does not have any idea what economic benefits of such arrangements will be in advance of a individual purchase. Only large broker-dealers have contracted arrangements and even in those cases where such contracted arrangements exist, the compensation is variable based on company-wide sales volume and/or values of assets under management. Further, it is this proposed disclosure more than any other that would drive the costs of implementation to unacceptable levels.

We believe that a general disclosure that a sponsor provides some revenue sharing and/or directed brokerage is meaningful and sufficient, except in cases where such compensation is shared as incentive compensation with registered personnel directly involved in a customer's transaction(s). Requiring disclosure of the amount of revenue sharing and/or directed brokerage (as compared to disclosing the mere existence of such arrangements, as we recommend) could be unfair and misleading. For example, a firm that executes a significant number of trades for a mutual fund complex based solely on its execution capabilities, but only sells a small number of fund shares would be required to disclose a disproportionate level of compensation that should not even be connected to fund sales.

Disclosure of Differential Compensation. We believe that disclosure of differential compensation arrangements should apply to any Covered Security not just to proprietary products and back-loaded products. The most important disclosure is whether the broker-dealer pays a higher percentage of the gross dealer concession or other incentive compensation for selling particular funds – normally either proprietary funds or funds on a "special list" of funds with which the broker-dealer has special revenue sharing arrangements. Such compensation differences influence product selection at the point of sale and should be disclosed in advance of a transaction.

Creates an Unfair Risk Profile Image for Covered Securities. We do not believe the risk profile of Covered Securities justifies the proposed high level of detailed, customized disclosures proposed. For example, most investment professionals look on mutual funds as having the best disclosure, strictest governance, best diversification standards and most thorough regulatory oversight of any investment class. It is obvious that many other investments including individual equities, municipal and corporate bonds, government securities, options, stock futures, closed end funds, etc. have a higher risk profile; yet transactions in these securities do not require detailed point of sale disclosures. Requiring that mutual funds be subject to higher disclosure requirements and creating substantial customizing of disclosures at the point of sale sends a very negative message to the investing public and creates significant barriers and unfair burdens in connection with the sale of mutual fund shares (and other Covered Securities). This will likely result in many individuals who would be better served by investing in Covered Securities, being attracted to or directed to other more risky investment alternatives. We are concerned that this proposal demonstrates an overreaction resulting from the recent Congressional focus and media hype relating to breakpoint and timing issues.

Comparison Range Disclosures. We recommend that the SEC abandon the proposed requirement that broker-dealers disclose industry medians and ranges for sales loads, service fees, revenue sharing and directed brokerage. We believe the task of creating and maintaining such statistical data is substantial and we question the value of such disclosures. Further, there is plenty of information comparing mutual funds already available in the public media.

Other Issues

Following are comments on a few of the many other items included in the Proposal.

Disclosures Relating to Breakpoints on Mutual Fund Transactions. The proposal suggests that on mutual fund confirmations, that a separate comparison be made between the breakpoint discount provided and that disclosed in the prospectus. This would require systems that are maintained with all breakpoints from all funds offered through a broker-dealer and would unfairly penalize firms that offer a wide variety of funds. We suggest that instead the recommendation of the Breakpoint Task Force be adopted, requiring that the percentage amount of the actual breakpoint on the specific transaction be reported on the confirmation.

Delegation of Supervisory Responsibility to Clearing Firms. The Proposal indicates that a clearing firm would be required to have a reasonable basis for believing that an introducing firm is complying with all its legal requirements under the rules. This is a substantial and unwarranted change in the relationship of a clearing firm with its correspondents. If affected, it could substantially change and disrupt the relationship, including economic terms, between clearing firms and correspondents. We believe it is inappropriate to assign a supervisory role to a clearing firm. Clearing firms and introducing firms should be able to continue to define their responsibilities to each other via their negotiated clearing agreements.

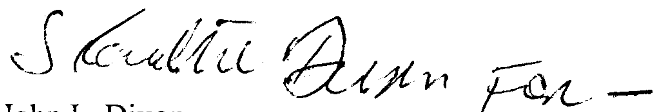
Application of the Proposal to Banks. Banks and other federally insured depository institutions should be subject to any of the proposed rules that are effected [or adopted] for broker-dealers. To exempt banks would unfairly create a competitive disadvantage for broker-dealers.

Variable Annuity and Variable Life Contracts. While most of the illustrations and SEC commentary supporting the Proposal are couched in mutual funds, the Proposal as written would equally apply to variable contracts issues by insurance companies. There are substantial differences in these contracts that need to be carefully examined before applying the proposed rule changes. The disclosures as described in the Proposal do not fit well with variable annuities' benefits and contract terms. Further, the calculations of sales fees and expenses with respect to a variable contract with substantial death benefits could create a biased and unfair picture of product offerings. Further, variable annuities and variable life contracts vary substantially in structure and benefits; therefore a common set of disclosure requirements is not practical.

Conclusion

In conclusion, we believe the disclosures afforded purchasers of Covered Securities under current rules are mostly adequate. Any necessary additional disclosures can be accomplished without requiring expensive new technology outlays on the part of sponsors or broker-dealers.

Respectfully Submitted,



John L. Dixon
President, PSD

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