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March 21, 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
Room 6184, Stop 6-9
450 Fifth Street, N.W.
Washington, D.C. 20549

BY E-MAIL

RE: *Request for Comment Period Extension on Proposed Point-of-Sale Disclosure and Confirmation Requirements for Transactions in Mutual Funds, Variable Contract Separate Accounts, and College Savings Plans*; File No. S7-06-04; Release No. 33-8544.[1]

Dear Mr. Katz:

The American Council of Life Insurers respectfully requests that the comment period on Release No. 33-8544 be extended for 60 days to provide an opportunity for careful analysis and constructive comment. The initiative would require broker-dealers to provide customers with targeted information about costs and conflicts of interest in the sale of mutual funds, college savings plans, and variable insurance products. The release reopened the comment period and invited supplemental comment on modifications to an initial proposal published in January 2004. Release No. 33-8544 appeared in the Federal Register Vol. 70, No. 42, dated March 4, 2005, and contained a 30-day comment period expiring April 4, 2005.

The American Council of Life Insurers is a national trade association representing 354 life insurers that comprise 74% of total industry assets. Many life insurers offer variable annuities and variable life insurance. Over 50% of the NASD's 660,000 registered representatives work for broker-dealers affiliated with life insurance companies. The initiative would have a significant impact on our industry, and may have an unwarranted anticompetitive impact.

We have actively participated in a numerous SEC rulemaking initiatives. Constructive input on SEC rule proposals ensures balanced regulations in the public interest, and provides a critical means to refine and clarify technical aspects of significant initiatives. A meaningful opportunity for deliberative analysis and public comment is fundamental to sound rulemaking.

Our member companies have concerns with the point-of-sale and confirmation proposal. The nominal 30-day comment period does not provide adequate opportunity for meaningful analysis, or a reasonable time within which to formulate comments for submission. We would like to have a sufficient opportunity to provide feedback on the revised proposal.

The initiative merits thorough discussion and analysis. The newly proposed rule changes are significant and have been evolving since February 2004. The release does not reference any emergency

[1] The release was also issued coextensively under Release Nos. 34-51274 and IC-26778.

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regulatory situations needing immediate action. The fundamental focus of the rule amendments is currently addressed by a variety of existing disclosure, confirmation, and market conduct standards. A regulatory void, therefore, does not exit. An added 60 day comment period extension fulfills the public interest and the Administrative Procedure Act.

A 30 day comment period is insufficient to address the issues raised in the release. As a practical matter, most observers will have fewer than 30 days to digest the revised proposal following its March 4, 2005, Federal Register printing date. Some of the provisions appeared for the first time in the release, and will require sufficient time to analyze.

These factors support a reasonable extension to the comment period. Industry groups like our trade association circulate regulatory proposals, elicit membership input, develop a consensus, and circulate a draft letter of comment before submission. This is a worthwhile, but time intensive, process that is difficult to execute in 30 days.

The special time burdens confronting regulated industries and large organizations in digesting regulatory proposals were explicitly recognized by the Administrative Conference of the United States in its publication entitled *A Guide to Federal Agency Rulemaking*, which observes:

> The 60-day period established by Executive Order 12044 for significant regulations (and no longer in effect unless adopted by agency rule) is a more reasonable *minimum* time for comment. However a longer time may be required if the agency is seeking information on particular subjects or counter-proposals from regulated industry. *"Interested persons" often are large organizations and they need time to coordinate and approve an organizational response or to authorize expenditure of funds to do the research needed to produce informed comments.*[2]

The NASD itself spent over twelve months (approximately 365 days) analyzing and revising the proposal after the initial comment period ended. In light of this lengthy time period for revision of the initial proposal, industry commentators should be entitled to a reasonable period of comment longer than 30 days.

There are several additional reasons that a comment extension should be granted in this instance:

- The revised proposal has been transformed from conflict of interest disclosure into detailed cost disclosure. The purpose of the proposal has, therefore, migrated significantly. Commentators need adequate time to carefully evaluate the substantially different proposal.

- The initial proposal elicited over 4,000 letters of comment expressing a variety of practical and regulatory concerns. This volume of comment was a lightning rod for broad regulatory concern. Given the scope of the issues and the range of commentators, the initiative merits a functional opportunity to evaluate the revisions and develop comments.

- Notwithstanding the release's assertion that the SEC has considered the rule's impact on competition, some of the changes in the proposal could unreasonably burden competition. A longer comment period will allow the SEC to execute its responsibilities under the Securities Exchange Act through elicitation and evaluation of comments about impairments to competition.

- The proposal's cost-oriented revisions were premised on "extensive investor interviews" that are outlined in lengthy consultant reports. The findings, methodology and

[2] *See, A Guide to Federal Agency Rulemaking* (1983) at 124 (emphasis added).

conclusions in the reports should be exposed to public scrutiny within a sufficient comment period. The nominal 30-day comment period does not permit the reasoned examination that the revised proposal requires.

- The revised proposal will impose substantial cost, systems and logistical burdens. The brief 30-day comment period does not allow careful, deliberative analysis of the revised proposal's burdens and benefits.

- Some observers have noted that the revised proposal substantially increases broker-dealers' exposure to liability for inaccurate disclosure. Additionally, the revised proposal mandates individualized cost calculations that some broker-dealers may be unable to generate. A hasty comment period makes little sense under these circumstances.

An extended comment period will not unduly lengthen this regulatory matter, and will foster constructive, thoughtful input on the issues raised by the SEC. The regulatory process and the public interest will be better served by a deliberative, not rushed, review of the revised rule proposal. These regulatory modifications are too important to miss full exposure to public scrutiny.

For these reasons, we respectfully request that the Commission extend the comment period on Release No. 33-8544 for a 60-day period. It would be most constructive to publish notice of a rule extension formally, so that members of the public will not be discouraged from submitting comments after the expiration of the release's initial 30-day comment period. The SEC has formally published notice of extended comment periods in a variety of recent rulemakings.[3]

We greatly appreciate your attention to our concerns. If any questions develop, please call.

Sincerely,

Carl B. Wilkerson

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CBW/pm

cc: William H. Donaldson, Chairman
Paul Atkins, Commissioner
Cynthia A. Glassman, Commissioner
Harvey Goldschmid, Commissioner
Roel Campos, Commissioner
Annette L. Nazareth, Director, Division of Market Regulation
Catherine McGuire, Associate Director, Division of Market Regulation

[3] *See, e.g.*, File No. 34-51019, in which the SEC formally published notice of a comment extension on a proposal to evaluate the fairness and governance of self-regulatory organizations.