VIA ELECTRONIC MAIL

April 4, 2005

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

Re: File No. S7-06-04 – Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities (Proposed Rules)

Dear Mr. Katz:

The Financial Services Institute[1] (Institute) appreciates the opportunity to comment on the Securities and Exchange Commission's proposal to require broker-dealers to provide investors with targeted information at the "point of sale" and in transaction confirmations regarding the costs and conflicts of interest that arise from the distribution of mutual funds, 529 plan interests and variable insurance products (Covered Securities).

We applaud the SEC's efforts to carefully and thoroughly analyze the disclosure regime for the Covered Securities. The Institute supports enhanced disclosure of commissions and other remuneration received by broker-dealers in connection with the sale of Covered Securities, including sales loads and deferred sales loads, 12b-1 fees, revenue sharing, portfolio brokerage arrangements and differential compensation. We agree with the SEC that investors should have more detailed information about anything that might pose a conflict of interest to the broker-dealer recommending the Covered Security. The Institute believes, however, that these disclosures are more properly made in the product prospectus and/or by selling broker-dealers through web site postings rather than the burdensome, costly regime proposed by the SEC.

A. Background of Institute Members

The Institute was conceived in 2003 and launched in 2004 as an advocacy voice for independent broker-dealers. Our members have a number of similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of Covered Securities by "check and application"; take a

[1] The Financial Services Institute, Voice of the Independent Contractor Broker-Dealer, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers that serve registered representatives who are independent contractors. The Institute has 104 member firms, with more than 124,000 registered representatives and over $8.3 billion in Total Revenues.

comprehensive approach to their clients' financial goals and objectives; offer primarily packaged products such as mutual funds and fixed and variable insurance products; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Our members' registered representatives are independent contractors, rather than employees of our member broker-dealers. These registered representatives are typically located in communities where they know their clients personally and provide investment advice to their clients on a face-to-face basis. Our members generally do not concentrate their retail business on the sale of individual stocks and bonds; engage in active trading strategies; make markets; carry inventories; engage in investment banking services; or prepare and issue research to retail customers. We believe our members have a strong incentive to keep their clients' interests paramount because they take a comprehensive, holistic approach to their clients' financial needs and objectives.

B. Summary Comments

We have reviewed and analyzed Release No. 33-8358 (Proposing Release) and Release No. 33-8544 (Supplemental Release) to the extent possible in the brief period allotted for comment. Following are summaries of our comments, each of which will be discussed in more detail below, to the proposals that we believe have the most direct impact on our members:

- The point of sale disclosure system, as proposed, will have the unintended consequence of substantially limiting the broad universe of mutual funds and variable insurance products currently available to investors. We also believe it will encourage broker-dealers to limit the use of or curtail entirely mutual fund asset allocation programs, which even the NASD has acknowledged are beneficial to investors[2].

- The mutual fund and insurance industries are in the best position to make the point of sale disclosures and, before the SEC radically changes the entire concept of disclosure with respect to products sold by prospectus, it should conduct a thorough review and evaluation of current prospectus disclosure and, at a minimum, implement its revised disclosure regime by creating a new, simplified prospectus.

- The SEC's emphasis on cost structure will have the unintended consequence of causing investors to equate suitability and appropriateness only with the lowest cost product. We believe that investors will be misled into believing that suitability can be determined solely on the basis of a product's internal expenses.

- We are concerned with the brief comment period established by the SEC to review and evaluate the Supplemental Release. The SEC and its consulting firm spent almost a year interviewing investors and consumer groups and restructuring the disclosure regime described in the Proposing Release before issuing the Supplemental Release. The Supplemental Release adds to the original disclosure regime, including transaction-specific information, the disclosure of costs and fees

[2] See NASD Notice to Members 98-98.

associated with the ownership of the Covered Securities, thereby substantially broadening the scope of the disclosure and our members' obligations. The SEC also raises over 100 new questions in the Supplemental Release to which it requests comments. However, the SEC granted only 30 days to evaluate the Supplemental Release and a complete set of new disclosure forms and respond to its requests for comment. We urge the SEC to extend the comment period so that our members and others in securities industry, including the issuers of the Covered Securities, can thoroughly evaluate the total, realistic impact of the Supplemental Release and the costs associated with implementing the new disclosure documents. By not analyzing the costs and impact of implementing the revised point of sale disclosure forms and confirmations, the SEC has failed to meet its legal obligations under the Paperwork Reduction Act of 1995, Section 3(f) of the Securities Exchange Act of 1934 (1934 Act), the Small Business Regulatory Enforcement Fairness Act of 1996 and the Regulatory Flexibility Act to ensure that the Proposed Rules promote efficiency, competition, and capital formation and whether its actions will have an adverse impact on small business.

C. Detailed Comments

1. Comments to Proposed Rule 15c2-3 (Point of Sale Disclosures)

a. **Benefits of Disclosure** – The Institute supports enhanced disclosure of fees investors pay in connection with the purchase and ownership of Covered Securities, including sales loads and deferred sales loads, 12b-1 fees, revenue sharing, portfolio brokerage arrangements and differential compensation. We agree with the SEC that investors should have more detailed information about anything that might pose a conflict of interest to the broker-dealer recommending the Covered Security. Nevertheless, the Institute is concerned that the SEC does not fully appreciate the adverse unintended consequences the point of sale rule proposal will have on investors and our members. We urge the SEC, before it adopts the proposed point of sale rule, to discuss with our members and representatives of the issuers of the Covered Securities the method the issuers will use to provide our members with the data necessary to prepare and maintain the point of sale disclosure forms. It is unrealistic to expect our members to obtain the information about fees manually from each issuer's web site. We also ask the SEC to carefully consider the method of and timing of the delivery of the point of sale disclosure form in light of the fact that our members will effect most of the sales of the Covered Securities by "check and application."

b. **Current Disclosure Documents Too Complex** – SEC Chairman William Donaldson and Paul Roye, Director of the Division of Investment Management, have recently stated that current mutual fund disclosure documents are too long and complicated. The same could be said of the disclosure documents for 529 plans and variable insurance products. We agree. Messrs. Donaldson and Roye have called for a "top-to-bottom review of the mutual fund disclosure regime." We believe this initiative is long overdue

and should be extended to include the disclosure documents used by the other Covered Securities. We urge the SEC to postpone any action on its point of sale disclosure and confirmation initiative until this more comprehensive review is complete. Otherwise, we are convinced that our members will be required to expend substantial funds and human resources duplicating efforts and creating disclosures that may subsequently be determined by the SEC to be ineffective, conflicting and simply not helpful to investors. We are convinced that it is counter productive to attempt to resolve the problem of complex, lengthy and poorly written prospectuses by creating another layer of disclosure. As we discuss in more detail below, this will only cause investors to place less importance on the prospectus as their primary source of information on which to base their investment decision.

c. **Disclosures More Properly Made In The Prospectus** – The prospectus is clearly the best vehicle for disclosure of the fees associated with the Covered Securities. We are not aware of any circumstance involving the public offering of registered securities under which the SEC has required the issuer or selling dealers to provide disclosures in any document or other medium outside the four corners of the prospectus. The only other securities subject to such onerous disclosure requirements are penny stocks. We do not consider the Covered Securities to be in the same category as penny stocks. Section 10 of the Securities Act of 1933 (1933 Act) sets out the information that must be in a prospectus for it to be considered complete. In the past broker-dealers engaged in the sale of securities through public offerings have been extremely careful about the use of any "free writing" during the offering period when the prospectus must be used for fear of having the "free writing" considered a defective, incomplete prospectus for purposes of Section 10. We are extremely concerned that the SEC is establishing a questionable and potentially dangerous precedent with the point of sale disclosure form. The SEC's point of sale disclosure form could be considered a summary or "additional" prospectus under Section 10(b) and Section 24(g) of the Investment Company Act of 1940 (1940 Act).

The SEC dealt with this issue with respect to mutual funds by adopting Rule 498 under the 1940 Act.[3] Rule 498 creates the "Profile" prospectus for mutual funds that enables the issuer to provide summary information about a fund to investors who can use the information to determine if they are interested in investing in a specific mutual fund before obtaining the full prospectus. The SEC went a step further in adopting Rule 498 by exercising its authority under Section 10(b) to exempt the "Profile" prospectus from the strict liability provisions of Section 11 of the 1933 Act. The SEC has taken no such action

[3] See, Securities Act Release No. 33-7513 (March 23, 1998). The SEC noted in its adoption of Rule 498 that it "has long encouraged summary prospectuses under Section 10(b) of the Securities Act to provide investors with a condensed statement of important information included in the prospectus."

with respect to the point of sale disclosure forms. The SEC does not propose to issue the proposed rules pursuant to its Section 10 authority.[4]

FSI is also concerned that investors will assume that they can rely on the disclosure forms for the material information with which to make their investment decision to the exclusion of the prospectus. We do not believe that the SEC's proposed use of a disclaimer on the disclosure forms referring the investor to the prospectus will serve to remedy this misconception. This will not serve the best interests of investors. FSI believes the best solution to these concerns is for the SEC to mandate that the issuers of the Covered Securities prepare "Profile" prospectuses as contemplated under Rule 498 and require their distribution to investors at the point of sale. This approach has several benefits for investors: (i) the point of sale disclosure forms will be prepared by the issuers, who are best positioned to provide current, accurate information about the fees associated with the Covered Securities; (ii) the point of sale disclosure forms will be reviewed by the SEC staff: and (iii) the disclosure forms will carry prospectus liability. If the SEC rejects this solution, we urge the SEC to exercise its authority under Section 10(b) to exempt the point of sale disclosure forms from the strict liability provisions of Section 11.

d. **Unintended Consequences to Investors** – As we discuss elsewhere in our comments, we support the SEC's efforts to provide investors with more detailed information about distribution and ownership costs and potential and real conflicts of interest in connection with the purchase of the Covered Securities. We are very concerned that the implementation of the SEC's current disclosure proposals will have substantial unintended consequences for investors that will nullify the SEC's intended benefits. It is axiomatic that large broker-dealers will not absorb the costs associated with printing and updating the point of sale disclosure forms. They will have the leverage to require the issuers of the Covered Securities who remain on their "approved product" list to pay directly or otherwise assume these costs. Investors will now pay both the cost to prepare and update the prospectus and to prepare and update the point of sale disclosure form, thereby increasing the internal expenses of Covered Securities distributed through broker-dealers. Independent and smaller broker-dealers lack the financial clout to influence issuers of the Covered Securities to pay or assume these costs. As such, these broker-dealers will have no choice but to substantially reduce the number of Covered Securities with which they have selling agreements. This will dramatically limit competition and investment choices available to investors.

e. **Clarity of Model Disclosure Forms** – If the SEC insists on proceeding with the adoption of the proposed rules, we suggest revising the point of sale disclosure forms as follows:

[4] SEC rules exclude from the definition of "advertising" under the 1940 Act any prospectus, and make clear that the Rule 498 profile prospectus is included in this exemption. It is not clear if a similar exemption will be available for the proposed point of sale disclosure forms or if there are any ramifications under NASD Conduct Rule 2210.

- Change the caption on each disclosure form to read as follows: "fees you pay to us and to (product sponsor) and our conflicts of interest associated with the purchase and ownership of _____."

- Change the term "other expenses" to "other fees" under "Fees" in the mutual fund and 529 Plan disclosures to ensure consistency and insert the phrase "we do not receive any of these fees" under management fees, other fees and state administrative fees.

- Under "you pay when you sell" in the variable insurance disclosure form, modify the first sentence to read as follows: "You may pay a surrender charge if you withdraw more than a permitted minimum amount from your contract within a certain period of time. Your contract may permit you to make a partial withdrawal anytime without a surrender penalty under certain circumstances. Refer to your prospectus for details on contract withdrawals."

- FSI believes that the SEC should mandate the form and content of the disclosure forms and confirmations. This will ensure uniformity among sponsors of the Covered Securities and selling broker-dealers. We also suggest that the SEC add signature and date lines to the point of sale disclosure forms. Our members have advised us that they will require investors to sign and date these disclosures in order to provide evidence that the disclosure form was delivered.

f. **Identification of Securities Underlying the Covered Security** – FSI suggests that the SEC refrain from including sub account or portfolio holdings on the point of sale disclosure forms. Investors often do not select the sub accounts into which they will invest their premium in a variable insurance product until after the product is purchased. We also are aware that the information is readily available from the issuer and that additional disclosure of this information on the proposed disclosure forms will merely lead to information overload. FSI also believes that disclosure of sub account composition is not consistent with the primary purpose of the rule proposals, which is to enhance disclosures of fees and conflicts of interest. We also believe that the level of disclosure proposed here would be virtually impossible to deliver at the point of sale by selling broker-dealers.

We support the SEC's recommendation to require disclosure that investors in 529 plans may be eligible to receive tax benefits if they invest in their home state's plan. We believe the language on the SEC's proposed disclosure form is adequate for this purpose.

g. **Combined Use of Standardized and Transaction-Specific Cost Disclosure** – In our previous comment letter we informed the SEC that the cost of providing transaction-specific cost disclosure will be prohibitive for most of our members. We believe that adding the standardized cost data and making the transaction-specific data optional to the investor will merely make the disclosure more complex and costly. After discussing this proposal with our

members, FSI is extremely concerned that our members will be required to expend substantial amounts to access the standardized fee data, to apply the data to the three sample transactions on the disclosure form and to manipulate the data to convert the percentages into specific dollar amounts. Neither the Proposing Release nor the Supplemental Release discuss whether the SEC will require product sponsors to provide the fee data to broker-dealers in a form that can be captured and manipulated in a cost effective manner or at all. Our members have convinced us that the cost estimates provided by the SEC to create the disclosure forms and maintain them are grossly out of line with reality.

One unintended consequence of the SEC's fee disclosure proposal is that it will be anti-competitive. Unless prohibited by the SEC, the sponsors of the Covered Securities will charge the selling broker-dealers to provide the fee information necessary to create and maintain the standardized disclosures. As discussed in d above, large broker-dealers that sell substantial amounts of the Covered Securities of a specific product sponsor will be in a better position to negotiate these costs than will our members.

This will disadvantage our members and their clients in one of two ways.

Our members will be forced to limit selling arrangements to those sponsors of Covered Securities that will provide the fee data in a manner and at a cost our members can accept, thereby limiting the choices of Covered Securities investors can purchase through our members. Alternatively, our members will be forced to abandon the "check and application" method of processing mutual fund transactions and to move most, if not all, of their mutual fund business to their clearing firm. This will increase substantially the cost to investors, as they will have to pay the ticket charges that are not associated with "check and application" purchases. FSI believes that the only realistic alternative for our members is for the SEC to mandate that mutual fund issuers create broker-dealer-specific disclosure forms that can be downloaded from the issuer's web site at no cost or at some minimal cost to broker-dealers that sell the issuers' mutual funds. Our members could then complete the appropriate boxes with respect to conflicts of interest.

Presenting the fee information on the disclosure forms will cause investors to assume that they no longer need to read the prospectus in order to make an informed investment decision. They will be led to believe that if other data is important to their investment decision the SEC would mandate its disclosure on the disclosure forms. In effect, the SEC will be sending investors the message that it is appropriate to ignore the prospectus as the primary disclosure tool because it is so complex and difficult to understand that it is not meaningful or relevant to the investor's investment decision. Investors will be led to believe that factors such as investment objectives, risk factors, historical performance, the background and experience of the manager and the permitted investment strategies are not as important to an investor's investment decision as are the costs and fees associated with the purchase and ownership of the Covered Securities.

FSI is also concerned that the SEC's emphasis on product fees will have the unintended consequence of suggesting to investors that the primary determinant of product suitability and value should be low internal fees. We are concerned that investors will conclude that the SEC is telling them that the lowest cost product is always the best investment, regardless of the product's other features. Investors will come to believe that the SEC is suggesting that they should place little or no value on services provided by either the product's investment manager or the investor's personal financial advisor, unless the services are provided at the lowest possible cost. FSI believes that this does a tremendous disservice to small investors who consistently state that they seek to rely on professional advice to manage their investments. We suggest that a better approach would be for the SEC to adopt a Rule 498 "Profile" prospectus or similar disclosure document for use with Covered Securities.

h. **Use of Internet-Based Disclosure is Preferable** – If the SEC decides to adopt some form of disclosure of fees associated with the purchase and ownership of the Covered Securities, which we oppose, we urge the SEC to adopt web site disclosure in place of its proposed paper-based point of sale disclosure for the following reasons:

- Paper disclosure forms will require registered representatives in the field to calculate the transaction-specific fees. There will undoubtedly be errors. Although the calculations at the home office will still be manual, our members believe that there will be more quality control and fewer errors.

- Assuming that our members can obtain the necessary information to create the web site disclosures in a form they can use and at a cost they can afford, which we are not convinced is the case, it should be simpler and more cost effective to create and maintain the disclosure of standardized fee, revenue sharing and differential compensation information on the broker-dealer's web site rather than on a series of paper forms. Accuracy and currency of the information will be better controlled. Investors will be able to contact someone at the broker-dealer who understands the disclosure regime and who can answer their questions and help them understand how to use the information in connection with their investment decisions.

- The SEC's proposed paper-based point of sale disclosure system does not comply with the Paperwork Reduction Act of 1995.

- Web site disclosure is consistent with the recommendations of the Joint NASD/Industry Task Force on Breakpoints (Task Force) with respect to public disclosure of breakpoint information. The Task Force stated in pertinent part that the SEC should mandate web site disclosure by rule.

i. **Disclosure of All Share Classes Under Consideration** – FSI believes that point of sale disclosure forms, if mandated, should not be required for all share classes or all mutual funds that are merely discussed with investors as alternative investment prospects. For example, our members often discuss a

substantial number of share classes and mutual funds in connection with the establishment of an asset allocation/diversification investment plan. Investors could reasonably expect to receive more than twenty disclosure forms if point of sale disclosure is to be made at this point. We believe that this would merely serve to confuse investors and provide information that will be irrelevant at the time of disclosure.

j. **Disclosure of Special Incentives** – FSI agrees that it will be more meaningful to investors and more practical for broker-dealers to move standardized information about fees, dealer concessions and revenue sharing called for by Attachment 15 to the Proposing Release to web site disclosure systems. We remain extremely concerned, however, that neither the Proposing Release nor the Supplemental Release address how broker-dealers are to obtain the information needed to populate Attachment 15. We also note that certain fee information called for in the point of sale disclosure forms is duplicated in Attachment 15. We urge the SEC to incorporate the remaining disclosures from the point of sale disclosure forms into Attachment 15, since the information in Attachment 15 can be delivered to investors at the earliest possible moment in the transaction process if posted on a broker-dealer's web site. This will enable investors to access information about conflicts of interest and fees at their convenience and as often as they wish during the transaction process.

k. **Reference to the Fund Prospectus** – As discussed above, FSI remains convinced that the best, most comprehensive vehicle for proper disclosure of material information is the prospectus. We urge the SEC to focus its efforts on developing a simpler, more "user friendly" prospectus, rather than adopting additional rules that provide for another layer of disclosure. Because we believe strongly that the prospectus should remain the primary source of investment information, we do not agree that the mere reference to the prospectus in the point of sale disclosure forms is sufficient to ensure that investors will read and rely on the prospectus to make their ultimate investment decision. Based on discussions with our members and past experience, investors will ignore the prospectus if they have any short, simple alternative, even if the alternative is not a complete prospectus. The SEC's point of sale proposal will lead investors to conclude that the information mandated by the SEC in the disclosure forms is the most important information to use in making their investment decision and, therefore, they can ignore the prospectus.

l. **Oral Disclosure of Point of Sale Information** – FSI opposes any requirement to make point of sale disclosures by telephone. It will be extremely problematic to require investors to sit through a one way telephone call dealing with such complex information. The SEC has stated that telephonic disclosure of complex information will be ineffective. If the SEC decides to adopt some form of telephonic disclosure, FSI urges the SEC to not require the disclosure until the point at which specific Covered Securities are recommended for purchase. At this point the investor will be engaged in the transaction and

should be more willing to invest the time necessary to sit through the entire disclosure presentation.

FSI vigorously opposes as anti-competitive the SEC's proposal to permit broker-dealers that use an automated telephone system to receive and process orders for Covered Securities to program their telephone systems to convey minimal information about fees and then permit investors to elect not to listen to all other disclosure information. This gives the broker-dealer that uses an automated telephone order system and provides no investment advice, a clear competitive advantage over other full-service broker-dealers that provide substantial investment advice through financial advisors. The fact that the SEC may require these broker-dealers to send written disclosures after the transaction is complete to investors who opt out of the telephonic disclosure does not lessen the competitive disadvantage to the full-service broker-dealers. FSI recommends that the SEC require broker-dealers who use automated telephone order systems to make point of sale disclosures on their web site. FSI believes that all point of sale disclosures should be made on a broker-dealer's web site. If the SEC adopts this system of disclosure there will be no need to have such complex disclosures made by telephone.

m. **Timing of Point of Sale Disclosure** – FSI members sell Covered Securities primarily by "check and application." Applications and new account opening documents are typically completed by financial advisors in the field and are transmitted with the investor's check directly to the sponsor of the Covered Securities. Copies of the check, application and new account opening documents are transmitted to the financial advisor's broker-dealer. The broker-dealer may not learn of these transactions until they receive the copies of the transaction documents. If the SEC mandates point of sale disclosures, these disclosures will have to be made by the financial advisor if they are to be given before the transaction is complete. It will be impossible for our members to ensure that the financial advisor has given the most current version of the disclosure form, has correctly calculated the transaction-specific data, or has given the disclosure form at all until after they receive copies of the transaction documents, including copies of the point of sale disclosure form. Our members will not know until they receive the transaction documents if the investor has a right to terminate the transaction because the point of sale disclosure form was not timely received.

Assuming the SEC adopts the point of sale disclosure proposal, our members urge the SEC to permit broker-dealers to deliver point of sale disclosure by posting the information on their web sites along with the information concerning conflicts of interest called for in Attachment 15. Web-based disclosure will prevent these lapses. Also, web-based disclosure will enable investors to access fee and conflict of interest disclosures at any point during the transaction process they choose.

n. **Proposed Exception for Transactions Subject to Investment Adviser Discretion** – In the Supplemental Release the SEC considers a scenario where

an investment advisor establishes investor accounts with a retail broker-dealer. Our members have registered representatives who are also investment adviser representatives of a federally registered investment adviser that they own and who manage investor assets on platforms other than the broker-dealer's clearing firm. Often these investment adviser representatives manage investor assets on the platforms of product supermarkets. The assets they purchase through these supermarkets include Covered Securities that, except for payment of selling compensation and 12b-1 fees to the investment adviser representatives, have all of the other attributes and fees common to the Covered Securities described in the Supplemental Release. The SEC does not consider this more likely scenario in its analysis. Who should deliver the point of sale disclosures and confirmations? Based on the language of the Proposing Release we believe this should be the responsibility of the supermarket broker-dealer through which these transactions are processed. FSI urges the SEC to clarify this issue by making it clear in any rules it ultimately adopts that our analysis is correct.

o. **Special Issues Relating to Point of Sale Disclosure for Purchases of Variable Insurance Products** – FSI supports the SEC's proposal to provide investors with more information about the costs associated with the purchase and ownership of variable insurance products. Many of our members currently utilize disclosure forms to explain the features of these products that they believe investors must understand in order to make informed investment decisions. However, our members do this only because the prospectus for variable insurance products is so complex that our members are concerned that investors will not fully understand many of the important features of these products. This merely a band-aid approach and does not get to the root of the problem, which is that the prospectus remains largely unread. Adding another layer of disclosure does nothing to address investors' neglect of the prospectus and actually creates yet another disincentive to not read the prospectus. It will be in the best interest of investors for the SEC to defer action on its point of sale disclosure proposal until it can complete the SEC's planned review of the total disclosure regime for the Covered Securities.

FSI also believes that the SEC's disclosure proposal for variable insurance products makes assumptions with respect to these products that are simply not correct. For example, the SEC proposes to use one disclosure form for all variable insurance products. However, these products are continually evolving. Currently, many variable annuity sponsors provide class A, B and C share products, each with its own fee structures. As a result, we believe the SEC will ultimately find that it must adopt either a much more complex single disclosure form or one form for each product class, as with mutual funds. Of course, the cost of creating and maintaining the disclosure forms for variable insurance products will substantially increase the cost of disclosure. The application of standardized disclosures to variable life products is even more complex. The fees associated with these products are not product specific. Rather, they are based on a number of factors primarily associated with the

nature of the product and certain personal factors related to the investor, such as sex, age, health, etc. We agree with the SEC that the best way to disclose fees and other features associated with this product, apart from an improved prospectus, is through product illustrations currently used for this purpose. The NASD has established clear standards for variable life illustrations and these could be adopted by the SEC as part of its disclosure regime for these products.

2. <u>Comments to Proposed Rule 15c2-2 (Confirmation Disclosures)</u>

FSI strongly opposes the confirmation proposal in its entirety unless the SEC mandates the issuers of the Covered Securities to produce and transmit the confirmations at a standard reasonable cost for all broker-dealers. Our members place a substantial portion (in some cases more than 50%) of their business in Covered Securities by "check and application." Most, of not all, of our members' business in variable insurance products is done by "check and application." As such, our members will not be able to rely on their clearing firms to produce confirmations for these transactions. The will instead either have to prepare and transmit the confirmations themselves or rely on the issuers of the Covered Securities to assume this responsibility. Currently, the issuers of the Covered Securities prepare and transmit confirmations for business done by "check and application." The issuers absorb the costs associated with this process. However, there is no clear discussion in either the Proposing Release or the Supplemental Release as to how confirmations will be created and processed and who will bear the related costs. If the issuers continue to prepare and process the confirmations and pass the costs on to broker-dealers who sell the products, it is likely that they will also base these costs on the amount of product shares/interests sold by each broker-dealer. Smaller broker-dealers, including many of our members, likely will not have the sales volumes to justify any cost reduction or discount and, therefore, will be at a competitive disadvantage with larger firms, whose costs will likely be absorbed by the issuers. Alternatively, if the issuers decide not to continue preparing and processing confirmations for transactions done by "check and application", our members will have to make a substantial investment in equipment, technology and human resources to undertake this responsibility.

In either event, we believe that the SEC's analysis of the financial and competitive impact its proposed rules will have on our members is grossly misstated. Most telling is the SEC's analysis mandated under Section 3(f) of the 34 Act. The SEC states that:

> *"The proposals should not hinder efficiency because firms should be able to use present confirmation delivery systems, after making appropriate adjustments, rather than having to build new information delivery systems. In addition, the Commission preliminarily believes that the new rules and the proposed amendments would improve investor confidence and, therefore, would promote capital formation."*

The SEC's analysis is simply wrong. If our members have to absorb the costs associated with the issuers preparing and processing the confirmations they will be forced to greatly reduce the number of Covered Securities they approve for sale to investors, thereby limiting investment choices. If the issuers of the Covered Securities choose to either not prepare confirmations under the proposed rules or impose overly burdensome charges to undertake this responsibility, our members will be forced to execute purchases of the Covered Securities through their clearing firms. The cost of doing so will be substantial and will be passed on directly to the investor. Our members currently use the "check and application" method of executing transactions in Covered Securities so that their investors can avoid the charges imposed by the clearing firms. In light of the foregoing discussion, FSI urges the SEC to further carefully evaluate the financial and competitive impact that its proposed confirmation rule will have on independent broker-dealers before finally adopting the proposed rule.

We appreciate the opportunity to share the views of our members with the SEC on these timely and important issues. We will be pleased to work with the SEC staff in conducting additional analysis on the impact of its proposed rules on independent broker-dealers. We will also be pleased to participate in any review of the present disclosure regime for Covered Securities that the SEC decides to conduct. Please feel free to contact me at 770 980-8487 with any questions or to discuss further any of our comments.

Respectfully submitted,

Dale E. Brown, CAE
Executive Director and CEO

pc: Honorable William H. Donaldson
Honorable Cynthia A. Glassman
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Honorable Paul S. Atkins
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