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ADVISORS NETWORK

By Electronic Mail

April 12, 2004

Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth St., N.W.
Washington, D.C. 20509

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

Dear Mr. Katz:

Thank you for giving us the opportunity to comment on the above-referenced rule proposal (the "Proposal"). [1] ING Advisors Network is the marketing name for a group of fully-disclosed retail broker-dealers with a total of over 9,000 representatives offering securities services through thousands of branch and non-branch locations.[2]

At the outset we would like to state our agreement with the general concept of enhanced disclosure for investors in mutual funds. Much of the information addressed in the Proposal is potentially useful for at least some investors to these ends. However, as set forth more fully below, the Proposal in its current form has a number of substantial and serious drawbacks. It would require disclosure of information that is extremely difficult, if not impossible, for retail broker-dealers of mutual funds to provide. In some instances the information proposed to be required could be misleading and/or immaterial to most investors and could detract from other more important information disclosed in the fund prospectus. Further, the Proposal would impose substantial additional and ongoing costs on broker-dealers that would ultimately be borne by small retail investors.

For the reasons set forth below, we believe that the Proposal, as currently drafted, rather than inuring to the benefit of investors will instead result in making mutual funds

[1] We previously requested an extension of time to present comments on the Proposal. These unprecedented rules are complex and have far-reaching consequences that would require substantially more time to fully analyze. We sincerely hope that the Commission will provide further opportunities for the industry to voice its concerns and suggestions.

[2] The broker-dealers include ING Financial Partners, Inc., Financial Network Investment Corporation, Multi-Financial Securities Corporation and PrimeVest Financial Services, Inc. and its subsidiary broker-dealers. The broker-dealers are subsidiaries of ING Group.

less available and attractive for those investors for whom they are often the most appropriate type of investment.

PROPOSED RULE 15c2-3 IS OVERLY COMPLEX AND UNMANAGEABLE

As a preliminary matter, we are extremely concerned with Section (a) of proposed Rule 15c2-3, which states that it shall be "unlawful" for a broker-dealer not to give an investor information "consistent" with the remainder of the rule. As discussed more below, the rule is overly complex and unmanageable in many respects.

Proposed Rule 15c2-3 Will Not Achieve its Stated Purpose

The Commission's stated purpose of proposed Rule 15c2-3 is to provide:

> ". . . transaction-specific information about distribution-related costs, and about remuneration arrangements that lead to conflicts of interest for their brokers, dealers or municipal securities dealers. That information would enable investors to better understand the costs and conflicts associated with investments in those securities prior to entering into transactions, which should promote better informed decision-making."

To achieve this goal, the Proposal would require disclosures for the specific amount of an investor's proposed investment on a number of items. Where the value is not reasonably able to be "estimated" at the time of disclosure, then a model investment of $10,000 may be used. This creates several concerns. First, it is questionable of what value estimates of specific charges would be to investors, nor is it clear what would be deemed to be a "reasonable" estimate of the information required. Second, "transaction-specific" information is not available at the point of sale due of mutual funds because of the way in which these securities are priced. The net asset value ("NAV") is not known until close of the market on the day of purchase. In the case of exchanges, the calculations become even more complex because neither the amount available for exchange nor the NAV of the fund into which the exchange are known. To provide an investor with calculations based on the preceding day's NAV would certainly be considered misleading to an investor where the value has fluctuated. Finally regarding application-way, or check and application business ("application-way business"), the execution, confirmation and clearance of the transaction is handled by the fund, not the registered representative or the broker dealer.

Therefore, in order to avoid allegations of having improperly given an investor clearly erroneous information in order to estimate a charge, broker-dealers would instead provide the "model investment" of $10,000. With respect to sales loads, it is not clear why such model information could not be provided in the prospectus which should be the primary disclosure document for investors relating to the expenses and performance information of the mutual fund. Requiring broker-dealers to separately give out such "model investment" information at point of sale, which will likely differ from the confirmation the investor receives after the purchase, will result in confusion for

investors. Moreover, where the investor is engaging in several transactions for several different accounts, the amount of paperwork could be overwhelming.

If the true purpose of proposed Rule 15c2-3 is to provide investors with information about potential conflicts of interest, we believe that there are better ways to provide this information than by preparing calculations based on estimated information. The amount of the actual sales load is identified in the mutual fund prospectus and the exact amount will provided to the investor in the confirmation. With respect to revenue-sharing, directed brokerage and compensation differentials for proprietary and other products, such potential conflicts could be described in a primarily qualitative written disclosure at an early point in its relationship with the investor, such as at account opening. The qualitative written disclosure could address the above topics from the standpoint of both the broker-dealer and the registered representative. Through this type of disclosure, an investor could be educated about what financial incentives might influence the broker-dealer and the individual registered representative to sell a particular product. This disclosure could include some relevant quantitative information at the firm level as to the amount of revenue sharing and directed brokerage that exists. Specific information with respect to an investor's purchase should be disclosed when it can be done so accurately – in the confirmation.

Proposed Rule 15c2-3 is Unclear as to "Point of Sale"

Proposed Rule 15c2-3 makes the purchase of a covered security "unlawful" unless the required "point of sale" disclosures are made. "Point of sale" is defined as either "immediately prior" to acceptance of a purchase order from an investor, presumably in a brokerage context, or at the time of the "first communication" with the investor regarding the covered security, where the broker-dealer does not accept the purchase order. Presumably, this latter situation is intended to cover application-way business in which an investor submits a check and application directly to the mutual fund. However, the proposed rule does not reflect the manner in which application-way business is frequently conducted.

In this regard, unlike brokerage transactions, the processing of application-way business is not controlled by the broker-dealer, particularly after the first transaction. Typically, in the first transaction, a registered representative may assist an investor in completing an application for the purchase of a mutual fund or variable product which is then forwarded by the broker-dealer and ultimately executed and confirmed by the mutual fund or insurance company. In this scenario, it is possible to provide the investor with a point of sale disclosure document. However, thereafter the investor may purchase additional mutual fund shares or make additional payments on an insurance contract with no involvement by the registered representative. In this situation, the broker-dealer does not learn of the additional transaction until commission data is received. Provision of a point of sale document under these circumstances is not possible. Nevertheless, there is no carve out in the proposed rule for these situations and a broker-dealer could be held to have violated a rule it was impossible to comply with.

For these reasons, providing a conflict of interest statement to investors at account opening makes more sense. At a minimum, no such statement should be mandated for transactions in which the broker-dealer does not make a recommendation.

The Investor's Right to Terminate Orders is Unclear, Burdensome and Unfair

Proposed Rule 15c2-3 states that a purchase order received by the broker-dealer prior to the point of sale document being provided to an investor shall be treated as an "indication of interest" until the required information is disclosed "…and following disclosure, the customer has had an opportunity to determine whether to place an order" (emphasis added). Because the term "opportunity" is not defined, the proposed rule injects uncertainty into this remedy and gives the investor an unlimited right to cancel a purchase even where timely point of sale disclosure was given. Where inadvertent failure to provide the disclosure document occurs, the intended remedy is even more unclear. Because of these uncertainties, broker-dealers will necessarily be forced to process purchase orders only in writing, with an investor acknowledgement that he/she has had an "opportunity" to determine whether the "indication of interest" should be deemed to be a purchase order.

With respect to orders placed orally (such as by telephone), the providing of a point of sale document becomes even more unworkable. While the Proposal does not require a written document to be provided, it does require oral disclosure of the information which will take longer than the one-minute average estimated by the Commission.[3] It is questionable as to how many investors will be willing to listen to an extensive dissertation before submitting a purchase order and even more questionable whether this process will spark a meaningful dialogue as suggested by the Commission. It will certainly increase broker-dealer call center wait times and act as an inconvenience to investors who wish to place orders.

Further, while the point of sale disclosure document is required for all purchase orders of covered securities, there is no carve out provision for orders placed by investment advisers or other types of investment managers, or institutional investors. With orders placed by these individuals, who is entitled to the disclosure document?

PROPOSED RULE 15c2-2 CONFIRMATION DISCLOSURES ARE UNWORKABLE

Proposed Rule 15c2-2 would require precise dollar disclosure for some of the same disclosure items contained in Proposed Rule 15c2-3. These include the precise amount of any front-end load, the precise amount of any back-end load, the amount of any sales fee received by the broker-dealer and the amount of asset-based service fees the

[3] The Proposal would require that a record be maintained of any such oral disclosures and requests comment on whether "electronic copies" should be required. It is not clear what is being suggested. If the Commission is intending on requiring conversations with investors in which oral disclosures are made to be taped, the costs of compliance with this rule would be significantly increased.

broker-dealer will receive in the first year, expressed as a percentage of the investor's investment. The amount of the front-end load is disclosed in the prospectus and would be disclosed in proposed Rule 15c2-3, as is the sales fee received by the broker-dealer. However, both the back-end load and any asset-based fees would be required to be disclosed assuming no change in value. This is potentially very misleading to investors and could easily be interpreted by them as indicating that mutual funds do not fluctuate in value.

The requirement to disclose to investors who purchase shares without a load the breakpoint information for other share classes does not make sense as currently drafted. There are any number of reasons an investor may purchase load-waived shares and disclosure of other share classes would be meaningless.

It is proposed that "median information and comparison ranges" for a number of the disclosable items be disclosed. However, it is difficult to conceive how such comparisons could be made. It is our understanding from the Proposal that the Commission will issue more focused proposals for notice and comment on this issue in the future.

Particularly problematic is the requirement to state the precise amount of revenue sharing and portfolio brokerage the broker-dealer expects to receive in connection with the transaction as a percentage of the NAV of the investment. The Proposal defines "revenue-sharing" to include all payments received by a broker-dealer from the fund adviser or other fund affiliated, whether those payments are asset-based or not. This includes seminar reimbursement and other payments which have no direct relationship to any particular investor's purchase. Further, different fund families pay servicing fees to broker-dealers in different ways. Broker-dealers often do not know what determination the funds make or how they make those determinations.

As a result, broker-dealers would have to determine how revenue sharing was characterized by a particular fund and make a disclosure that would inappropriately suggest that the broker-dealer has an incentive to favor one fund over another when no such incentive exists. In other instances, disclosure would evidence no incentive when, in fact, one might exist. Further, the Proposal requires revenue-sharing to be averaged across an entire fund family without regard to differences in institutional and retail classes or the purpose of the payment.

As stated before, it is unclear how a fully disclosed broker-dealer could reasonably comply with proposed Rule 15c2-2 with respect to its application way business.

BANKS AND BROKER-DEALERS SHOULD BE TREATED EQUALLY BY THE PROPOSALS

Inexplicably, the Proposal would apply to mutual funds purchased through broker-dealers but not through banks or other insured depository institutions. Today, banks and other depository institutions are required to comply with Rule 10b-10 whenever they

sell securities. The imposition of such extremely burdensome rules on broker-dealers and not on banks represents an unjustified and unwarranted competitive disadvantage. To the extent that revenue-sharing, differential compensation and other issues in the Proposal are perceived to represent conflicts of interest important to investors, those conflicts are exactly the same for banks as they are for broker-dealers and should be equally important to bank investors.

THE PROPOSAL INAPPROPRIATELY PLACES COMPENSATION AS THE PRIMARY INVESTMENT CONSIDERATION FOR INVESTORS

We continue to believe that the prospectus should remain as the most important disclosure document for investors. That document contains information concerning those issues of most importance to investors – investment objectives of a fund, risks of investing in the fund, the historical performance of the fund and the entire operating costs of the fund. That document also contains information concerning sales loads and broker-dealer compensation, albeit not in as detailed a format as is desirable for investors.

While conflict of interest information is certainly one important factor for investors to consider when choosing an investment, the Proposal creates the perception that it is the most important information an investor should consider by disclosing the information twice in a short period of time. Conflict of interest goes to the issue of a salesperson's motivation to sell a particular fund not necessarily to the issue of the suitability of the fund itself for a particular investor.

THE COSTS OF COMPLIANCE ARE SUBSTANTIAL AND OUTWEIGH ANY BENEFIT TO INVESTORS

Although the Commission has estimated that proposed Rule 15c3-3 would cost less than $85,000 for the average broker-dealer to implement, and $180,000 per year for compliance, we believe that these estimations are substantially low. For firms such as ours, completely new systems would need to be created to prepare the point of sale documents and ensure that the documents are available for distribution at every location in which one of our representatives meets with a client. We would also have to prepare the documents for each location at which telephone calls are accepted. Moreover, we would be required to establish and monitor supervisory and compliance procedures to ensure that the disclosures are made before a mutual fund purchase order is accepted. To create these systems and staff them would cost substantially more than the Commission's estimates.

Similarly, proposed Rule 15c2-3 would be expensive to implement and to administer would be extremely costly. This proposal would require complex new data feeds and complex calculations for each and every transaction. Considering that most independent firms and regional/ community banks conduct a majority of their mutual fund business "application-way", this would require the potential conversion of millions of investors and hundred of billions of dollars to either a full service self-clearing

platform, or a correspondent clearing platform, and substantial costs and inconvenience to investors and small broker-dealers. [4] This becomes even more problematic and costly given the short time frame within which confirmations must be given.

The additional costs attendant to the Proposal would have to be recovered from the investing public if broker-dealers are to continue to conduct mutual fund business. We would be required to raise transaction fees, increase annual account fees for accounts holding mutual funds or refuse to do business with small accounts. We certainly would be required to reduce the number of funds we currently offer to investors. The possible ramifications of these needed steps on public investors and the mutual fund industry as a whole are incalculable. Given the limited utility of the information to be provided to investors, these costs certainly outweigh the benefits to the vast majority of mutual fund investors.

ALTERNATIVES ARE AVAILABLE THAT COULD BETTER SERVE INVESTORS' INTERESTS

As previously stated, we believe that investors should have better information available to them than they currently enjoy. We believe that a better method than the Proposal would be for broker-dealers to maintain web sites that disclose sales fees, revenue sharing and the firms' compensation practices for registered representatives, including differential compensation, which directly relate to a broker-dealer's potential conflict of interest. For the relatively small number of investors who may not have access to a computer, the information could be supplied by mail in response to a request. We also believe, however, that with respect to information such as breakpoints and distribution costs which are fundamentally the obligation of the mutual funds, those entities should be encouraged or required to provide investors with ready access to clear and concise information concerning their funds. Mutual fund companies are in the best position to disclose information directly under their control.

In conclusion we note that this type of rule-making may negatively impact the ability of a broker-dealer to obtain professional liability coverage, given the mandatory and rigid disclosure requirements of the proposed rules. Reduction in professional liability coverage, with the consequent loss of assets backing up claims, can only hurt investors.

Respectfully submitted,

John S. Simmers
CEO

[4] Application-way business is less costly, more efficient, more easily understood by the investor, and avoids brokerage platform and administrative fees, such as inactive account fees. Application-way business, coupled with a 12b-1 servicing fees to registered representatives has proved to be a very effective and efficient medium for servicing accounts, such as making changes to accountholder names and addresses and providing other back office services, dedicated exclusively to mutual fund holdings.