April 6, 2005

VIA E-MAIL TO RULE-COMMENTS@SEC.GOV

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Proposed Rule on Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, Release Nos. 33-8544; 34-51274; IC-26778; File No. S7-06-04

Dear Mr. Katz:

The National Society of Compliance Professionals ("NSCP") appreciates the opportunity to submit additional comments[1] on the above-referenced rule proposal (the "Proposal") that would require broker-dealers and municipal securities dealers (hereinafter "broker-dealers") to make additional disclosures in connection with transactions in securities issued by mutual funds, interests issued by unit investment trusts or "UITs" (including insurance company separate accounts that offer variable annuity contracts and variable life insurance policies), securities issued by education savings "529" plans, and other covered securities (hereinafter "covered securities"). Under the Proposal, new rule 15c2-2 would mandate extensive new confirmation disclosures to clients for covered securities transactions. New rule 15c2-3 would impose mandatory "point of sale" disclosure requirements for covered securities transactions before they could be completed (proposed rules 15c2-2 and 15c2-3 are generally hereinafter referred to the "Proposed Rules").

The Proposed Rules are of considerable interest to the NSCP and its members. NSCP is the largest organization of securities industry professionals devoted exclusively to compliance issues, effective supervision, and oversight. The principal purpose of NSCP is to enhance compliance in the securities industry, including firms' compliance efforts and programs and to further the education and professionalism of the individuals implementing those efforts. An important mission of NSCP is to instill in its members the importance of developing and implementing sound compliance programs across-the-board.

---

[1] We originally commented on the Commission's proposal in April 2004. *See* Letter from Joan Hinchman, Executive Director, President and CEO, National Society of Compliance Professionals, to Mr. Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated April 12, 2004.

Since its founding in 1987, NSCP has grown to over 1,300 members, and the constituency from which its membership is drawn is unique. NSCP's membership is drawn principally from traditional broker-dealer firms, accounting firms, and consultants that serve them. The vast majority of NSCP members are compliance and legal personnel, and the asset management members of the NSCP span a wide spectrum of firms, including employees from the largest brokerage and investment management firms to those operations with only a handful of employees. The diversity of our membership allows the NSCP to represent a large variety of perspectives in the financial services and asset management industry.

NSCP supports the Commission's goal of enhancing disclosures to investors concerning transaction-related costs and conflicts of interest. Nonetheless, NSCP is concerned that the Proposed Rules do not appear to take into account that the industry is not "one-size-fits-all." The Commission seems to acknowledge this principle in passing in the latest Release. However, the substantive and uniform provisions of the Proposed Rules do not, in NSCP's view, adequately address the major differences among firms within the broker-dealer industry in terms of size, the scope and nature of the delivery of services, methods of communications with customers, and the clients' sophistication level.

There are large brokerage firms that may be able to absorb the substantial costs associated with implementing the Proposed Rules and spread those costs among thousands or millions of customers. There are, however, vastly more small- and medium-sized brokerage firms that will struggle significantly with the data-gathering, administrative and disclosure burdens imposed by the Proposed Rules. While NSCP believes that heightened disclosure may be beneficial to the consumer, the amount and type of disclosure proposed could be viewed as overwhelming and duplicative to a customer who already receives the prospectus document, which provides extensive details relating to the costs of various share classes and the impact of those costs and fees on performance.

The NSCP urges the Commission to evaluate the question of who is better able to provide this information in an accurate and cost-effective manner. Especially in the view of smaller broker-dealers, this goal may best be accomplished by the product manufacturers and distributors, who are responsible for providing the latest disclosure information in their prospectuses, web-sites, and marketing materials, and have the marketing staff support to create a "plain English" disclosure document for each of their products. The Proposed Rules place upon the broker-dealers the primary, if not sole, burden to gather and accurately depict the most current information from the product manufacturers and third-party vendors. Along with that burden comes the potential risk that the information on which the broker-dealers rely may be stale, inaccurate or incomplete. There is no mechanism or recourse in place to ensure that the product manufacturers and third-party vendors provide accurate and complete information. The consequences of these aspects in the Proposed Rules only serve to add to burden, cost, and risk of liability on the retail broker-dealers of complying with the point-of-sale disclosure rules.

In addition, the NSCP urges the SEC to consider exceptions to the Proposed Rules for unsolicited orders, customer-initiated Internet transactions, subsequent purchases, and no-load fund purchases. These categories of transactions do not raise the same concerns as solicited transactions involving unsophisticated or neophyte customers.

DISCUSSION

I. Product Manufacturers and Distributors Are Better Able to Provide the Proposed Written Disclosures in an Accurate and Cost-Effective Manner

The brokerage industry is far from uniform and consists of a vast array of different sized firms with different policies and practices. It will be difficult for virtually all of those firms, other than perhaps the largest wire houses, to accurately and efficiently comply with the disclosures and obligations under the Proposed Rules. To comply with these heightened disclosure requirements, broker-dealers will need real-time additional information from mutual fund companies, product manufacturers, distributors, or third-party vendors, yet none of these other parties is mandated to provide this information by the Proposed Rules. While there is no guarantee that such third-party information is accurate and complete, liability and regulatory exposure potentially rests solely on broker-dealers who rely on this information in its full and fair disclosure to clients. We believe this places upon broker-dealers undue burden and expense. It also requires the excessive expenditure of time and resources that are disproportionate with the marginal benefits imparted by the Proposed Rules in light of existing disclosures and alternative means to convey the information that is the focus of the Proposed Rules.

The SEC estimates that the one-time cost to implement both of the Proposed Rules would total about $781,000, on average, per broker-dealer, with an annual cost thereafter of about $540,000, on average, per broker-dealer. We believe that most, if not all, of these costs have been significantly underestimated and would ultimately be passed on to the investing public. Compliance with the Proposed Rules would require, among other expenses, extensive changes to existing sales and marketing efforts as well as software systems at brokerage firms. Actual costs would vary widely depending upon the capabilities of the brokerage firms' internal or external data processing systems and arrangements. The SEC's cost estimates focus on the requirements to report the prescribed data in point of sale and confirmation disclosures, but do not appear to recognize the substantial costs of setting up systems and procedures to gather the data with the prescribed frequency and to monitor the accuracy of the information conveyed on a regular basis. In addition, the estimates do not recognize the costs and effort involved in the ongoing supervision of registered representatives, proper use of the forms, and ongoing compliance with other aspects of the Proposed Rules.

Even with the best intentions, once all of these systems are in place, there is the potential undue risk that this information will be reported inaccurately and inconsistently among brokerage firms. For example, what a broker-dealer may provide as cost calculations to a client who has certain accounts household at its complex may differ from what the broker-dealer may provide as disclosure to the same client if the broker-dealer is unaware of the customer's account at its complex or if the disclosure is based on the account being held with the fund sponsor. Therefore, we believe that a better approach would be for either the fund sponsor to provide all disclosure information to the broker-dealer on a client by client basis, or perhaps, more practically, for the fund sponsor to provide a "risk profile" disclosure sheet to broker-dealers detailing the effect of costs for various dollar amounts and fund share classes.

Rather than preparing individual cost calculations for each individual client, perhaps the product sponsor could create a one-page disclosure document, to be updated quarterly, which will reflect the impact on fees for A, B, and C share classes on various dollar amounts. This "disclosure of risks" document would be standardized and current. Further, it could easily be distributed by broker-dealers, making the impact less significant on small- and medium-sized brokerage firms.

Further, the costs and burdens of the Proposed Rules are further multiplied by the lack of any contemplated process or protocol to correct errors in the proposed point-of-sale disclosures. Putting the onus of disclosure obligation on the broker-dealers, with the limited and derivative access to timely and accurate information, while at the same time failing to provide a mistake correction process, will further increase the risk of diminished cost-effective delivery of service, liability, and regulatory exposure.

The costs borne by the broker-dealers would be substantially reduced if the product manufacturers, who control this information, are required to gather the data and provide that data in point of sale forms to the broker-dealers. Disclosure of distribution costs is fundamentally the obligation of the product manufacturer and distributor since it controls all of these costs. Prospectus disclosure can identify those costs and the fund's historical performance and cost data and can accurately report the effects of those costs. The data gathering and administrative and disclosure burdens (and related liability for data errors) is being unfairly transferred to brokerage firms.

Instead of placing the burden on brokerage firms, the product manufacturers could provide the relevant data in a point of sale form similar to the forms recommended by the SEC and attached to the Proposed Rules. At the bottom of the point of sale form prepared by the product manufacturers, there could be a "conflicts of interest" section similar to that suggested by the SEC in its proposed point of sale forms. In addition, the form could include a "receipt of acknowledgement" for the investor to sign, to confirm that he or she was provided with the form by the broker-dealer.

For these reasons, the NSCP urges the SEC to seriously consider our assertion that the product manufacturers themselves would be in a much better position to provide the required disclosure information more accurately and more cost-effectively.

II. Suggested Exceptions to the Proposed Rules for Unsolicited Orders, Customer-Initiated Internet Transaction, Subsequent Purchases and No-Load funds

In its latest release on the Proposed Rules, the Commission acknowledges that requiring broker-dealers to provide point-of-sale disclosures in writing prior to accepting an order in all instances might preclude investors from purchasing mutual funds and other covered securities in a timely manner. The Commission also acknowledges that the timing of disclosure is less of an issue in the case of the suggested exceptions above.

As previously noted, the securities industry is not "one-size-fits-all," and thus, the Proposed Rules should not be either. On balance, the need for point of sale disclosures for self-directed investors is not needed. In addition, there is precedent for these exceptions. For example, SRO suitability rules do not apply to transactions that are not recommended. Further, SEC books and records rule 17a-3, dealing with customer account records, does not apply if no recommendation is made to the customer. Finally, without these exceptions, it would potentially raise costs, that would inevitably be passed on to the investors.

Indeed, there are four large categories of transactions where these acknowledged concerns about the efficacy of the Proposed Rules are present:

1. Unsolicited orders

2. Customer-initiated Internet transactions

3. Subsequent purchases of the same security

4. No-load funds

When the reduced need for the proposed disclosure requirements in these four categories is weighed against the costs and burdens of the Proposed Rules, the appropriateness of exceptions becomes apparent. Added to these concerns for these types of transactions is the real potential that imposing delay on the completion of transactions may chill transaction activity.

With regard to unsolicited orders, the Proposed Rules also have the potential to reduce the emphasis that is and should be placed on the prospectus disclosures that are currently required, and indeed, that presumptively form the basis of a customer's unsolicited order. In short, there is no need for the additional disclosures in writing before an unsolicited order can be filled.

Similarly, there is no need for additional and redundant disclosure in the case of subsequent purchases of the same security by the same customer. Assuming that the broker-dealer has previously provided the required disclosures (and has proof thereof), and there is no material change in the relationship between the issuer and the broker-dealer, no new information is imparted by the subsequent disclosure. We respectfully assert that the disclosure requirements only serve to delay the transaction and add to the broker-dealer's costs and risk exposure in such transactions.[2]

Further, with respect to the category of customer-initiated Internet orders, there is a clear need for the exemption or substantial modification of the Proposed Rules in order to promote efficiency, efficacy and reduce cost and burden. Respectfully, the Commission's Proposed Rules, even with their modifications and adjustments, do not adequately address Internet transactions and or the business conducted by broker-dealers that are primarily or exclusively Internet-based. Customers who demonstrate they are willing and able to transact securities business over the Internet should be safely presumed to be able to access all of the necessary disclosure information that is the focus of the Commission's concerns. The Commission should continue to embrace electronic delivery and benefits it offers for the delivery of disclosures and other important information to customers. The use of web pages and web links should satisfy the spirit and goals of the Proposed Rules without the redundancy, delay and cost that attend the current version of the Proposed Rules' written point-of-sale disclosure requirements.

Finally, given that the essential premise of the Proposed Rules is customers' understanding of distribution costs and potential broker-dealer conflicts of interest, extensive and expensive point-of-sale disclosure requirements would not appear to be necessary for no-load funds, especially when the substantial costs and burdens of such written disclosure requirements are considered. The Proposed Rules are concerned more with disclosing to investors the possible incentives that broker-dealers have in recommending one fund over another fund. With no-load funds, the same concerns do not arise because no-load funds are commission-free. In other words, there is no hidden incentive to recommend the no-load fund. Requiring the same extensive point-of-sale disclosure requirements would not benefit the investor and would not further any legitimate purposes of the Proposed Rules.

CONCLUSION

As stated at the outset of this letter, we share the Commission's overall goal of enhancing disclosures to customers concerning transaction-related costs and conflicts of interest. However, we believe there are other more effective and more efficient means to achieve this important goal, as outlined in this letter.

---

[2] Additional and/or renewal disclosure may be appropriate in the event of a material change in the broker-dealer's compensation arrangement or if a substantial period (e.g., one year) has passed since the previous transaction.

We hope that these comments are useful in the Commission's consideration of the Proposed Rules. We would be pleased to discuss our views in more detail with the Commission or the Staff.

Sincerely,

Joan Hinchman
Executive Director, President and CEO

The National Society of Compliance Professionals, Inc.
22 Kent Road
Cornwall Bridge, CT 06754
Phone: 860-672-0843, Fax: 860-672-3005
Email: jhinchman@nscp.org