April 12, 2004

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
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 (Exchange Act Release No. L/9148)

Dear Mr. Katz:

The National Society of Compliance Professionals ("NSCP") appreciates the opportunity to comment on two proposed new rules and rule amendments under the Securities Exchange Act of 1934 (the "Exchange Act"). Proposed rule 15c2-2 would require brokers, dealers and municipal securities dealers to disclose transaction-related information in confirmations when customers buy or sell securities issued by open-ended investment companies, unit investment trusts, or municipal fund securities ("covered securities")[1]. Proposed rule 15c2-3 would require brokers, dealers and municipal securities dealers to disclose certain quantitative and qualitative information regarding distribution costs and conflicts of interest to investors prior to effecting transactions in covered securities[2].

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.

Since its founding in 1987, NSCP has grown to over 1,250 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

[1] Under the proposed rules, covered securities also include so-called "529 plan securities."

[2] Proposed rules 15c2-2 and 15c2-3 are referred to, collectively, as the "Proposed Rules."

largest brokerage and investment management firms to those operations with only a handful of employees. The diversity of our membership allows NSCP to represent a large variety of perspectives in the asset management industry.

NSCP supports and advocates the Commission's goal of enhancing disclosure to customers concerning transaction-related costs and conflicts of interest. Nonetheless, NSCP has concerns about the breadth of the Proposed Rules. More particularly, NSCP is concerned that the proposed confirmation disclosures may lead to increased investor confusion as a result of the volume of information to be disclosed. NSCP is also concerned that the Commission has underestimated the costs involved with implementing the Proposed Rules, particularly in light of the fact that many of these costs will arise not only on implementation, but also throughout the life of firms' customer relationships. Further, the Proposed Rules over-emphasize the vulnerability of mutual funds (and other covered securities) to conflicts of interest, instead of focusing on conflicts that may arise whenever a broker-dealer receives remuneration from a source other than the customer. These concerns, as well as other NSCP views, comments and suggestions are discussed below.

I. Proposed Rule 15c2-2

Introduction

Proposed Rule 15c2-2 would require broker-dealers and municipal securities dealers to provide certain information to customers dealing in covered securities at or before the completion of a transaction in the form of a confirmation. Under the Proposed Rule, the confirmation would include information regarding: the date, class and price of a covered security; sales loads and other distribution costs; broker-dealer compensation related to the transaction involving a covered security; differential compensation paid in connection with the transaction; breakpoint discounts; and definitions and explanatory information to assist customers in understanding each of the disclosures.

Customer Confusion

The proposed confirmation disclosure requirements, if adopted in their current form and notwithstanding the development of a confirmation focused solely on covered securities, will be significantly longer and more complex than existing confirmations. This increased length and complexity will, at best, cause greater confusion among investors and, at worse, cause many investors to simply discard the confirmations without reading them. To the extent this occurs, it will eliminate any potential benefit to these investors of the additional disclosure. Therefore, the Commission should consider eliminating those confirmation disclosure requirements that will unduly increase the length and complexity of the confirmation. Specifically, the Commission should consider eliminating the new asset-based sales fees and service fee disclosures, the detailed transaction-specific revenue sharing and portfolio brokerage commission disclosures, the differential compensation disclosures and many of the definitional disclosures. With respect to the revenue sharing and differential compensation disclosures in particular, we believe that general disclosure of the existence of these arrangements, along with an agreement to provide additional information upon request should suffice for purposes of confirmation disclosure.

Many of the proposed new confirmation disclosure requirements involve information that relates to the investment decision itself. Such information includes disclosures concerning available breakpoint discounts, information about asset-based sales charges and fees, and information concerning revenue sharing and portfolio brokerage disclosure, differential compensation disclosure and the comparison range disclosure. The inclusion of such information on the confirmation, which is not delivered until after the transaction has been effected, is of almost no practical value to investors. By encumbering the confirmation in this way, the Commission is creating a substantial risk that investors will overlook the important information that the confirmation is intended to provide. Therefore, to the extent that the Commission determines to require the disclosure of any such information, we urge the Commission to require such disclosure in a disclosure document delivered at the point-of-sale or otherwise at the outset of a broker-dealer's relationship with its customer, as discussed in Section II below, rather than in the confirmation.

Costs to Firms of Confirmations

The estimates of the costs to broker-dealers of complying with the proposed new confirmation requirements contained in the rule proposal appear to substantially understate the magnitude of those costs. Adoption of the proposals in their current form is likely to impose enormous initial and on-going costs on broker-dealers both for new technology and for additional compliance personnel to oversee and maintain the new disclosure systems. For example, we believe that confirmations will need to be tailored for each transaction involving a covered security, and that firms will incur ongoing costs in implementing and reviewing transactions for compliance with the new rule. There are also additional costs implications for those firms which are not self-clearing, and who will inevitably face extra charges from their clearing agents. In the absence of a central database or other unified source or sources of information, firms will also face considerable extra costs when obtaining information for and making the calculations required to be included in both point-of-sale and confirmation disclosures.

We believe that in most instances these additional costs necessarily will be passed on to customers. In addition, these additional costs may cause firms to curtail the number of mutual funds they make available for purchase by their customers. Increased investor costs and reduced access to mutual fund securities would be significant undesirable collateral consequences of implementing these proposed disclosure requirements in their current form. In that regard, we urge the Commission to give serious consideration to revising the proposed requirements in a manner designed to modify or eliminate some of the more onerous and less meaningful disclosure requirements. NSCP suggests that, similar to other confirmation-based disclosures of conflicts of interest, general qualitative disclosure of conflicts of interest involved in the sale of covered securities[3], coupled with more detailed disclosures of conflicts prior to transactions, would serve to alert investors to this issue.

[3] See Rule 10b-10(a)(2)(i)(c) regarding confirmation disclosure of the receipt of payment for order flow.

NSCP has had the benefit of reviewing a draft of a letter from the Investment Company, Operations, Savings and Retirement, Clearing and Independent and Small Firms Committees of the Securities Industry Association on the Proposed Rules, and supports the assertions of that letter concerning the actual annual ongoing expenses of both the Proposed Rules.

Transitional Period

In the event that the Commission determines nonetheless to adopt the detailed disclosure requirements of Proposed Rule 15c2-2, the Commission should carefully consider the amount of lead time reasonably necessary for broker-dealers to implement systems changes and compliance procedures to be able to comply with the proposed new disclosure requirements. The systems employed by firms that would generate the disclosures set out in the Proposed Rules are, in the main, legacy systems with limited fields, and would require considerable alteration, or would have to be replaced in their entirety. Although estimates vary, we believe that these rules, even if modified in certain respects, will take at least as long to comply with as the Commission's new books and records rules.[4] In that case, the Commission provided a two year period between adoption and effectiveness of the rule changes. We strongly urge the Commission to provide for at least a two year interval between approval and effectiveness for these rules as well.

II. Proposed Rule 15c2-3

Introduction

Proposed Rule 15c2-3 generally would require broker-dealers and municipal securities dealers to provide customers with point-of-sale information immediately prior to the acceptance of each purchase (but not a sale) order for a covered security. Required quantitative disclosures would include the distribution-related costs the customer is expected to incur, including front-end sales loads, estimated asset-based sales charges and service fees, the maximum amount of back-end sales loads and dealer concessions or other expected sales fees. In addition, the proposed rule would require qualitative disclosures of revenue sharing, portfolio brokerage commissions and differential compensation arrangements. Broker-dealers and municipal securities dealers would be required to treat orders received prior to the time that the point-of-sale disclosures were made to customers as "indications of interest," subject to termination by customers until such disclosures are made.

Timing of Point-of-Sale Disclosures

As an initial matter, NSCP notes that, as currently drafted, the general disclosure requirement applies whenever a broker-dealer or municipal securities dealer effects "a purchase of a covered security for a customer." NSCP believes that requiring such disclosures prior to every purchase transaction with a customer not only is unnecessary, but may also undercut the impact and utility of the disclosures. Instead, we suggest that the disclosure requirements of the

[4] Rules 17a-3 and 17a-4: Exchange Act Rel. 44,492; 66 Fed. Reg. 55,818-01; 17 C.F.R. pts. 240, 242.

Proposed Rule apply on a more episodic basis. For example, firms could be required to provide the relevant disclosures at the outset of the customer relationship in account opening documents or separate disclosures. Alternatively, customers could be provided with point-of-sale disclosures the first time that they submit an order for a covered security or the first time that each type of covered security (mutual fund, UIT, municipal fund security) is purchased[5]. To the extent that the Commission believes more regular point-of-sale disclosures are necessary, semi-annual or quarterly disclosures of such policies also should suffice, without diluting the import of the underlying disclosures[6].

Little Benefit to Customers

NSCP believes that the point-of-sale disclosures suggested in Proposed Rule 15c2-3 would be of little benefit to the average investor in covered securities, in that the required information is at best confusing, and at worst impenetrable. As with Proposed Rule 15c2-2, NSCP suggests that more simplified and qualitative communication of the potential conflicts of interest the transactions involving covered securities may be a more appropriate point-of-sale disclosure, with the clear proviso that additional qualitative and quantitative information is available at that customer's request. NSCP also believes that the Commission should make it clear on the face of any rules that written disclosures should be given at or shortly after the point of all sales, whether or not the sale in question was concluded orally or in writing.

NSCP further believes that, while the Commission intends the Proposed Rules to benefit the average investor, the burdens and costs inherent in the Proposed Rules will, in the long-term, deter brokers and dealers from transacting with or on behalf of those investors with smaller portfolios for cost reasons.

Unsolicited Orders in Covered Securities

While Proposed Rule 15c2-3 applies to purchases of covered securities, it is less clear from the proposing release whether the Commission intends that the Proposed Rule will apply to unsolicited orders from customers. Subsection (e)(2)(i) provides that the Proposed Rule will not

[5] Delivering the point of sale disclosures in any of these alternative manners would be more in line with other instances in which the Commission has determined to impose disclosure requirements with respect to securities that do not inherently impose a heightened degree of risk. See Exchange Act Rule 9b-1, regarding delivery of the options disclosure document. Risk disclosure documents required to be provided to customers on a transaction-by-transaction basis, such as those to be provided in the case of penny stocks (see Rule 15g-2 of the Exchange Act), arguably are necessary because of the greater degree of investment risk to customers than that posed by investments in covered securities.

[6] The Commission also might consider requiring amended disclosures to the extent that there are material modifications to any of the point-of-sale disclosures previously provided by broker-dealers or municipal securities dealers. Absent such modifications, NSCP sees no benefit to requiring point-of-sale disclosures for each subsequent purchase of a covered security.

apply where a clearing broker-dealer did not communicate with the customer about the transaction other than to accept the customer's order and, the broker-dealer reasonably believes that another broker-dealer has delivered the point-of-sale disclosures. While NSCP agrees that conflicts of interest may arise where a broker-dealer solicits customers to place orders for covered securities, we do not believe that the rule should apply to any broker-dealer who simply accepts an unsolicited customer order, as such orders do not involve the sales-related conflicts of interest to which the Proposed Rule is addressed.

Costs to Firms of Point-of-Sale Disclosures

As with the generation of confirmations described in Rule 15c2-2, NSCP believes that SEC has underestimated the cost to firms (and therefore, ultimately, to customers) both in direct financial terms, and in terms of the man-hours required to implement changes to systems and provide the prescribed disclosures on a recurring basis.

The data proposed by Rule 15c2-3 will vary from fund complex-to-fund complex, rendering the generation of a uniform point-of-sale disclosure difficult for most firms to virtually infeasible for firms with selling agreements with significant numbers of fund complexes. The consequent lack of a "template" will have the greatest impact on small and medium-sized broker-dealer firms without the resources to continuously monitor and update systems as new fund complexes are added to the investment options available to their clients. NSCP believes that this will create a further risk that small and medium-sized broker-dealers will restrict the number of fund families they sell in order to limit the data they are required to provide at the point-of-sale, confining customers to an unnecessarily limited number of covered securities alternatives.

Scope of Proposed Rule

NSCP believes that any point-of-sale disclosure requirements should be applicable to all entities dealing in covered securities not already subject to a similar or equivalent regulatory obligation. From an investor protection standpoint, all those who sell covered securities are potentially subject to the same or similar conflicts of interest. Anything less than a parity of obligations not only would lead to gaps in the protection of investors, but also to unequal, and anti-competitive, regulation.

The Emphases of Point-of-Sale Disclosures and Confirmations

Finally, although we recognize the enhanced regulatory focus recently afforded to mutual fund sales practice issues, NSCP is concerned that both the proposed point-of-sale and confirmation disclosure rules run the risk of over-emphasizing conflicts associated with commission and remuneration-related aspects of transactions in covered securities. As noted, conflicts of interest related to the sale of any product should be of equal concern to the Commission and investors. Similarly, concentration on distribution costs, broker-dealer compensation, differential compensation and breakpoint discount information may well detract from mutual fund performance, expenses, investment objectives and other significant investment considerations.

Transitional Period

Finally, and as noted above with respect to Proposed Rule 15c2-2, in the event they are adopted in their proposed form, NSCP believes that there should be a transitional period of at least two years to allow for the implementation of the Proposed Rules.

III. Proposed Amendments to Rule 10b-10

Notwithstanding the points raised above, NSCP is supportive of proposed revisions to Exchange Act Rule 10b-10 that would enhance disclosure of transactions involving callable preferred stock and debt securities. The proposals would require broker-dealers to: (i) inform customers about whether the issuer has reserved the right to call or repurchase the stock at its election, and that additional information is available on request (proposed amendment related to transactions in callable preferred stock); and (ii) require disclosure of the first date on which a debt security may be called (proposed amendment related to transactions in callable debt securities), and represent positive additions to the existing body of customer disclosures. We believe that these disclosures would be useful to investors and that, for many firms, the disclosures proposed will entail reasonable compliance and programming efforts.

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.

Very truly yours,

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