

November 17, 2005

Via Electronic Mail to Rule-Comments@sec.gov

Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

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

Dear Mr. Katz:

NewRiver, Inc. ("NewRiver") appreciates the opportunity to comment on the above-referenced rule proposals (the "Disclosure Proposals") that would require broker-dealers and municipal securities dealers to make certain enhanced disclosures in connection with transactions in securities issued by mutual funds, interests issued by unit investment trusts (including insurance company separate accounts that offer variable annuity contracts and variable life insurance policies) and securities issued by college savings or "529" plans.¹ NewRiver commends the Commission for addressing these important investor protection issues.

Founded in 1995, NewRiver is a privately-held company that provides database-driven disclosure systems and services to the distributors of mutual fund products, 529 plans, and variable investment products. NewRiver's current clients include more than 100 financial institutions in the brokerage, retirement and insurance markets.

NewRiver's services are based on technology that allows the company to index and parse filings that issuers make with the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. With regard to mutual funds, a critical component of NewRiver's technology involves the daily processing of supplements to prospectuses and statements of additional information ("SAI"). Today, the EDGAR system includes filings for more than 20,000 mutual fund share classes. Each fund files a prospectus every year, followed by, on

¹ See SEC Release No. 34-49148 (January 29, 2004), 69 Fed Reg. 6438 (February 10, 2004) ("Proposing Release"). After receiving thousands of comments on these proposals, the Commission published a supplemental request for comments seeking feedback on the issues raised by the earlier commenters. SEC Release No. 34-51274 (February 28, 2005), 70 Fed. Reg. 10521 (March 4, 2005) ("2005 Release").

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average, four supplements to the prospectus due to material changes to the operations, management, or policies of the fund. As a result, on an average day, about 4.5% of all mutual fund share classes are affected by a new EDGAR filing.

NewRiver's technology for mutual fund filings is unique in that it first transforms EDGAR filings into electronic documents and then deposits these documents into a "compliance envelope" containing the current prospectus and SAI and all supplements thereto, as well as the fund's annual and semi-annual reports. In a second step, NewRiver extracts approximately 300 data points disclosed in the prospectus, SAI and related supplements. As part of the data extraction process, NewRiver maintains a link between the extracted data point and the exact location in the underlying document from which the data was extracted.

Because this process occurs daily and because the process retains the underlying link between extracted data and source document, NewRiver is able to guarantee that the extracted data accurately matches the filings made by each mutual fund. The resulting database covers all the fundamental data and processing rules required for a range of compliance-related applications.²

In June 2004, NewRiver launched a new service called FundPOINT Desktop ("FundPOINT 1.0"), an Internet-based application derived from NewRiver's mutual fund database. This service allows broker-dealers to ensure that investors are charged the correct sales loads on mutual fund transactions and that investors receive the advantage of any breakpoints to which they are entitled.³ In August of this year, NewRiver introduced a second version of FundPOINT Desktop ("FundPOINT 2.0"), which combines the original breakpoint disclosure functionality with a point-of-sale disclosure functionality designed to address proposed rule 15c2-3. Over the past eighteen months, NewRiver has installed FundPOINT 1.0 for more than 25,000 registered representatives, sales assistants, and call center personnel within seven major broker-dealer organizations. NewRiver has also installed FundPOINT 2.0

² "Fundamental data" refers to data that provides basic information about a fund, such as its name or the identities of its board members. "Processing rules" are options based on the share class and the investor's financial situation that a fund uses in processing a specific transaction. Examples of processing rules are the load tables, which define commission breakpoints, and family linking rules, which specify which family members' accounts can be linked to reduce a commission.

³ In December 2002, the NASD issued Notice to Members ("NTM") 02-85 reminding members of their obligation to ensure that mutual fund executions are effected on the terms most advantageous to the customer. In the case of front-end load funds, this obligation often entails the need to gather complete information regarding the customer's account and related and linked accounts, as well as the applicable fund's breakpoint schedules and policies regarding letters of intent and rights of accumulation.

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at three broker-dealers with more than 3,000 registered representatives.⁴ In addition, more than 40,000 registered representatives, sales assistants, and call center personnel have access to proprietary broker-dealer applications that incorporate NewRiver data to deliver disclosure functionality similar to that provided by FundPOINT 2.0.

Based on our practical experience designing, installing and maintaining these mutual fund disclosure systems, NewRiver offers the following observations regarding the Disclosure Proposals:

- Proposed rule 15c2-3 is both technically possible and economically feasible today using commercially available databases and technology.
- Delivery of a personalized disclosure document can be made efficiently at the point of sale. If properly designed, the workflow associated with delivery of a point-of-sale disclosure document will not adversely affect the purchase and sale cycle, and will, in fact, make the purchase of mutual funds easier for the investor and more efficient for the registered representative and the broker-dealer.
- Personalized point-of-sale disclosure is an important tool to enable investors to understand the sales charges and related factors involved in the purchase of a mutual fund, 529 plan, or variable investment product.
- If a personalized disclosure document is delivered to the investor prior to purchase, the delivery of a confirmation disclosure as contemplated by proposed rule 15c2-2 should be optional.

***PROPOSED RULE 15c2-3 IS BOTH TECHNICALLY POSSIBLE
AND ECONOMICALLY FEASIBLE***

NewRiver believes that implementation of proposed rule 15c2-3 is both technically possible and economically feasible using commercial technology available to the brokerage industry today.

Based on our experience, it appears that the most costly and technically difficult aspect of the Disclosure Proposals is that they require the creation and maintenance of a database of mutual fund processing rules covering the various pricing, sales charges, and related information associated with mutual fund shares. As a practical matter, without access to comprehensive and accurate information about every fund that a broker-dealer offers for sale, compliance with the proposed disclosure rules is not possible.

⁴ This means that these firms, today, have the capacity to comply with proposed rule 15c2-3.

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Fortunately, commercially available databases of this information exist today. As mentioned above, more than 65,000 registered representatives currently rely on the NewRiver database for information relevant to the point-of-sale disclosure process.⁵ Similar databases are available from the National Securities Clearing Corporation and Morningstar, Inc. While each of these databases differs somewhat in data detail, coverage and accuracy,⁶ we believe a competitive commercial market for this data exists today.

Likewise, we believe that proposed rule 15c2-3 can be complied with in a cost-effective manner. In reaching this conclusion, we find that the Commission's cost estimates relating to the point-of-sale disclosure proposal are substantially too high.⁷ Using commercially available databases, such as those referenced above, and commonly available Internet-based technology, we estimate that the one-time implementation cost of proposed rule 15c2-3 would be less than \$100 million industry-wide, not \$450 million, as the SEC estimates.⁸ Moreover, we estimate the aggregate cost of maintaining and updating these systems on an ongoing basis to be less than \$100 million annually, a fraction of the Commission's estimate of \$975 million.⁹ It is significant to note that our estimates are well within the range of costs that industry commenters on the Disclosure Proposals thought could reasonably be borne by investors.¹⁰

⁵ As a point of reference, NewRiver estimates the total number of registered representatives, sales assistants and call center staff involved in the direct sale of mutual funds to retail investors to be 400,000 individuals.

⁶ NewRiver is the only data provider that relies exclusively on the EDGAR system and the only one that updates its database daily. We believe that this approach results in unparalleled data accuracy.

⁷ See Proposing Release, Section IX.C.2., 69 Fed. Reg. at 6472. The 2005 Release did not contain a cost-benefit analysis.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Letter from Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association ("SIA") to Jonathan G. Katz, dated April 4, 2005, p. 4. ("SIA believes that the NASD's Profile Plus proposal, together with a drastic rethinking of the confirmation requirements in proposed Rule 15c2-2, can reduce the cost of the proposals from the 'multi-billions' per year range to the 'hundreds of millions' per year range -- a cost, while still substantial, that we believe could reasonably be borne by investors.") Note that the SIA's analysis applied to both of the Disclosure Proposals, whereas NewRiver's cost estimates pertain specifically to rule 15c2-3. As explained below, NewRiver contends that a robust point-of-sale disclosure system obviates the need for the disclosures contemplated by proposed rule 15c2-2. Thus, NewRiver believes that the total cost of enhanced disclosure is well within the SIA's comfort zone.

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NewRiver's cost estimates are based on our actual experience implementing technology for brokerage firms that complies with all of the requirements currently outlined in proposed rule 15c2-3. Our estimates include both database access fees as well as the physical resource costs of implementing and maintaining a delivery and auditing system for registered representatives, sales assistants and call center personnel at the broker-dealer or external vendor. These estimates also reflect the fact that broker-dealers may wish to integrate a point-of-sale delivery system with other line of business systems within the broker-dealer's or third-party vendor's operation. While NewRiver believes that systems such as FundPOINT 2.0 allow broker-dealers to comply with proposed Rule 15c2-3 without substantial integration with other systems, we recognize that some firms may choose to integrate our system with their existing order entry, supervision, and records retention functions.

The economic feasibility of the point-of-sale disclosure rule is primarily attributable to two factors. The first is the existence of commercially available databases that allow the cost of creating and maintaining a comprehensive source of fund information to be spread across the entire industry. The second is the fact that compliance with proposed rule 15c2-3 can be achieved using Internet-based technology that does not impose significant programming or software maintenance expenses on the broker-dealer. The cost benefits of Internet-based technology over older client-side, client-server and mainframe-based software and systems are well established within and outside the financial services industry.¹¹ NewRiver's direct experience has demonstrated that the actual cost of implementing and maintaining Internet-based software functionality in compliance with proposed rule 15c2-3 is a fraction of prevailing cost estimates.

***POINT-OF-SALE DISCLOSURE CAN BE PERSONALIZED
AND DELIVERED EFFICIENTLY***

The SEC's cost estimates for proposed rule 15c2-3 include direct costs for system implementation and maintenance as well as the time required for registered representatives to deliver personalized disclosures at the point of sale.¹² NewRiver believes that, if properly designed, the workflow associated with delivery of a personalized point-of-sale disclosure document will not contribute additional time to the purchase and sale cycle. To the contrary, our experience has shown that such a system may, in fact, make the purchase and sale cycle less time consuming and burdensome to the registered representative, the brokerage operation, and the individual investor.

¹¹ See e.g., John Hagel III and John Seeley Brown, "Your Next IT Strategy," *Harvard Business Review*, October 1, 2001. (Citing the experience of companies such as Merrill Lynch, General Motors and Dell Computer, the authors discuss the significant cost savings that can be achieved when companies buy their information technology services over the Internet rather than maintain all of their own hardware and software.)

¹² See note 7, *supra*.

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The current point-of-sale process for broker-sold funds involves activities beyond those specifically contemplated by proposed rule 15c2-3. Existing SEC and NASD requirements mandate (i) delivery of a current prospectus,¹³ (ii) the making of a suitability determination by the registered representative based on an investor's objectives and financial situation,¹⁴ and (iii) adequate disclosure regarding breakpoint discounts.¹⁵ Broker-dealers are already incurring substantial costs to comply with these various obligations.¹⁶

The SEC's cost estimates for proposed rule 15c2-3 assume that the delivery of a point-of-sale disclosure form would add at least one minute per transaction to the sales process.¹⁷ NewRiver's FundPOINT 2.0 application has demonstrated in practice that a properly designed point-of-sale workflow system can combine the existing obligations with point-of-sale disclosure of the type proposed in 15c2-3 into a single, automated Internet-based workflow. Based on this experience, we believe that a properly designed system would actually reduce the amount of time required for point-of-sale compliance, even if rule 15c2-3 were adopted as proposed.

PERSONALIZED POINT-OF-SALE DISCLOSURE IS AN IMPORTANT INVESTOR PROTECTION TOOL

From the mutual fund investors' perspective, NewRiver believes that the receipt of personalized point-of-sale disclosure should be a key component of the investment decision process. For the average retail customer, the decision to buy a mutual fund product is similar to the decision to enter into any other large consumer transaction, such as the financing of an automobile purchase.¹⁸ Congress enacted the Truth in Lending Act in 1968 to require

¹³ Rule 15c2-8 under the Securities Exchange Act of 1934.

¹⁴ NASD Rule 2310.

¹⁵ NASD IM-2830-1 and NTM 02-85. The NASD has recommended the use of standard breakpoint disclosure forms. http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_010543.pdf.

¹⁶ For example, many broker-dealers have begun to distribute some type of breakpoint disclosure forms and are taking other steps to document their point-of-sale practices.

¹⁷ Proposing Release, 69 Fed. Reg. at 6468.

¹⁸ In 2003, the average mutual fund account was approximately \$28,000. U.S. General Accounting Office report, "Mutual Funds: Additional Disclosures Could Increase Transparency of Fees and Other Practices," June 18, 2003. In that same year, the average car loan was \$23,801. <http://www.edmunds.com/help/about/press/100956/article.html>.

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personalized disclosure at the point of sale of all fees and expenses associated with consumer credit products such as automobile loans.¹⁹ Today, it is hard to imagine a consumer's choosing a car loan based on a hypothetical or standardized fee disclosure. Given the importance of mutual funds, 529 plans and variable insurance products to the savings of American consumers, NewRiver believes the same standard should apply to these investment products that are already required for other consumer financial products.

Because personalized, point-of-sale disclosure can be made in an efficient manner, we believe that proposed rule 15c2-3 is an appropriate way to enhance investor protection.

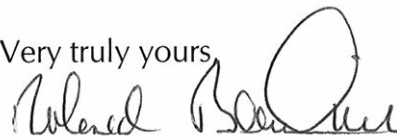
PRE- AND POST-SALE DISCLOSURE SHOULD BE ALTERNATIVES

NewRiver believes that the Commission should adopt rules 15c2-3 and 15c2-2 as alternative disclosure requirements. To the extent that a broker-dealer can demonstrate delivery of the point-of-sale disclosure form contemplated by proposed rule 15c2-3, we believe the confirmation disclosure contemplated by proposed rule 15c2-2 should be optional. Such an approach would significantly reduce the cost of compliance by eliminating duplicative disclosure and expense without in any way diminishing investor protection.²⁰ An alternative disclosure regime would also provide the industry with the flexibility to choose the most effective means of delivering critical information to investors.

* * * *

NewRiver appreciates the opportunity to express its views on the Disclosure Proposals. If you have any questions regarding the foregoing or require additional information, please call Garrett Wiley, Managing Director at 978-247-7267.

Very truly yours,



Roland Beaulieu
President/CEO

¹⁹ 15 U.S.C. '1601.

²⁰ In fact, one might reasonably conclude that supplying both pre-sale and confirm disclosure would overwhelm and confuse investors.

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Cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
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Robert L.D. Colby
Meyer Eisenberg
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