Mr. Jonathon G. Katz, Secretary
Untied States Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549 – 0609

Re: File No. S7-06-04; Release No. 34-51274
Reopened Comment Period –
Point of Sale Disclosure and Confirmation Requirements

Dear Mr. Katz:

Nationwide Financial Services, Inc. ("Nationwide") appreciates the opportunity to provide comment to the Securities and Exchange Commission (the "SEC" or the "Commission") with respect to proposed rules 15c2-2 and 15c2-3 under the Securities Exchange Act of 1934. These proposed rules would impose new broker-dealer disclosure obligations at the point of sale and within confirmation statements in conjunction with transactions in mutual fund shares, variable insurance products and college savings plans.

As originally proposed over one year ago, the rules would have imposed requirements on broker-dealer firms to provide information focused on distribution costs and potential conflicts of interests associated with the sale of such products. The new release,[1] however, comprehensively revamps the originally proposed rules, shifting emphasis away from distribution related costs and potential conflicts of interest toward "comprehensive ownership costs." In conjunction with these changes, numerous questions are posed within the release, seeking investor and industry comment.

Because many of Nationwide's businesses involve the distribution of investment company products,[2] we recognize the significance and practical implications of proposed

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[1] Release Nos. 33-8544; 34-51274 ; IC-26778 – *Point of Sale Disclosure Requirements for Transactions in Mutual Funds, College Savings Plans and Certain Other Securities [Variable Insurance Products], and Amendments to the Registration Form for Mutual Funds.*

[2] Nationwide and its affiliated companies are, in many respects, a microcosm of the financial services industry, particularly with respect to commerce in mutual funds. Nationwide affiliates provide investment management services to, and operate, open-end management companies (mutual funds). Broker-dealer affiliates of Nationwide operate distribution facilities through which mutual funds are distributed on a wholesale and retail basis. In addition, Nationwide is a leading provider of public and private sector retirement plans, providing access to mutual funds for several million retirement plan participants. Nationwide is also a long-term participant in the variable insurance product (annuity and life) industry.

Rules 15c2-2 and 15c2-3 and the impact these rules will have on industry participants and investors.

Nationwide strongly supports regulatory measures that, as a practical matter, enable investors to become more knowledgeable and as fully informed as possible with regard to the costs and potential benefits of investment company securities they own or are considering owning.

We are concerned, however, in light of the wholesale changes embodied in the new supplemental release – and the more than 100 separate queries posed by the Commission in connection with the revamped proposal – that sufficient time has not been afforded to permit a truly thoughtful evaluation of the substantive impact, economic and otherwise, of the new rules. Nationwide respectfully submits that it is in the interest of all concerned parties, particularly investors, to extend the comment period in order to permit a longer, more thorough evaluation of the various implications of these proposals.

Consider, for example, the oral point of sale requirements that are contemplated when delivery of written point of sale material is impossible (e.g., in the course of a telephone conversation). Typical registered representatives have, or seek to have, long-standing relationships with clients built on trust and experience. Where a registered representative has a thoroughly professional and mutually rewarding long-term relationship with a client, requiring Miranda-esque recitals of (what are likely to be) heavily lawyered disclosure scripts may well engender as much impatience and disdain as enlightenment.

This may not necessarily be the inevitable result of oral point of sale requirements, but we believe it is a distinct possibility in certain instances and, in any case, highlights the need to have several aspects of the proposed rules evaluated more deliberatively and methodically than is possible in the compressed time frame made available for comment.

Variable Insurance Products

With regard to variable insurance products, Nationwide generally supports the comment letters furnished by the Committee of Annuity Insurers and the American Council of Life Insurers (the "ACLI"). Buying patterns over the last several years abundantly demonstrate that variable annuity and variable life insurance purchasers seek various forms of guaranteed (death and so-called "living") benefits unavailable in other investment products. Point of sale disclosures that focus narrowly on cost disclosure – and that significantly increase the likelihood that prospectus and other provided forms of comprehensive disclosure (e.g., insurance contracts, contract/policy data pages, buyer's guides, etc) will be ignored – may effectively and unintentionally encourage uninformed or partially-informed decision-making on the part of investors.

Moreover, many variable insurance products contain optional, *a la carte* features and contain benefits driven by the individual investor's personal preferences or mortality

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Many Nationwide products and services are distributed through cooperative arrangements with several hundred independent broker-dealer firms.

characteristics. Complying with the proposed rules may require broker-dealer (or insurance companies) firms to maintain costly quoting systems able to generate an almost infinite number of possible cost permutations. Will the expense associated with maintaining the capacity to generate this type of disclosure for multiple products be justified given the wide array of sources (prospectuses, policies/contracts, replacement forms, data pages, policy summaries, NASD-approved sales material) that already provide comprehensive cost disclosure? Directly or indirectly, it will ultimately be consumers who will bear this expense.

If better disclosure is needed, Nationwide supports the notion – advanced by the ACLI and others – that thoughtful, deliberate and collective efforts on the part of the variable insurance product industry and the Commission to improve prospectus disclosure (and variable life policy illustrations) will better serve the investing public.

Definition of "Institutional Investor"

It is contemplated that proposed rule 15c2-3 will contain an exception for purchases made by institutional investors. Nationwide is concerned, however, that certain formulations of the definition of "institutional investor" may include some, but not all, qualified retirement plans (including 403(b) and governmental retirement plans). For example, the NASD definition of "institutional investor," volunteered as a possible definition for purposes of the proposed rule, includes exceptions for retirement plans having more than 100 participants.

Nationwide supports similar treatment under the proposed rule for all retirement plans. Implicit in the exception for "institutional investors" is recognition of the existence of other factors, making the protections of the rule unnecessary or redundant. Retirement plans, for example, are typically overseen by plan fiduciaries and others charged with acting in the best interests of plan participants. This is no less the case with respect to plans having less than 100 participants than it is with plans having more than 100 participants. Disparate treatment for retirement plans on the basis of plan populations is unwarranted because the same protections apply irrespective of the size of the plan.

Moreover, mandating compliance with the rule(s) for smaller plans may add to the overall acquisition costs for smaller retirement plans. Such plans may already be disadvantaged (compared to larger plans) in bargaining for record-keeping, plan administration and other plan-related services. Is it contemplated that the modified confirmation requirements may apply to plan deferrals made through payroll deduction? If so, this would effectively require repetitive disclosures of information that plan sponsors and other fiduciaries should and are expected to be fully cognizant of in the first instance.

Conclusion

Nationwide appreciates the opportunity to provide comment with respect to these proposals. We are not unmindful or dismissive of the perceived problems these proposals are intended to ameliorate; however, we encourage the Commission to adopt a more methodical, measured approach, seeking first to improve existing disclosure methodologies rather than rushing to create new disclosure media that will undoubtedly create additional expense with only marginal or incomplete gains in overall investor awareness and knowledge.

Sincerely yours,

Roger Craig
Vice President - Associate General Counsel
Nationwide Financial Services, Inc.

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