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VIA ELECTRONIC MAIL TO
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April 8, 2005

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File No. S7-06-04 (Point of Sale Disclosure Requirements and Confirmation Requirements for Transaction in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds)

Dear Mr. Katz:

Wachovia Securities, LLC ("Wachovia") appreciates the opportunity to provide further comment upon proposed Rules 15c2-2 and 15c2-3 under the Securities Exchange Act of 1934 and proposed amendments to Exchange Act Rule 10b-10 and Form N-1A (collectively, the "Proposed Rules").[1] The Proposed Rules require broker-dealers to provide investors with certain information concerning mutual funds, variable annuities, variable life insurance policies and Section 529 plan securities (each a "covered security") at various times, including in oral and/or written disclosures at or before the point of sale and in the transaction confirmation. Wachovia applauds and fully supports the U.S. Securities and Exchange Commission's (the "Commission") efforts to provide clear, meaningful information to help the public form informed, reasoned investment decisions and address various components of the Proposed Rules below.

I. Costs Associated with the Proposed Rules.

Again, Wachovia is fully supportive of the principles underlying the Proposed Rules. We would be remiss, however, if we did not reiterate at the onset and incorporate herein by reference our concerns about the costs associated with the Proposed Rules set forth in our earlier letter.[2] To summarize, the Commission previously estimated the costs associated with implementing the Proposed Rules at approximately $850 million to start and $2 billion on an ongoing basis. We questioned the Commission's estimates and noted that the Securities Industry Association estimated that these costs were approximately twice those amounts in some areas. Regardless whether the actual costs associated with implementing and maintaining compliance with the Proposed

[1] SEC Release No. 33-8544; 34-51274; IC-26778 (Feb. 28, 2005).
[2] *See* the letter from Ronald C. Long, Regulatory Counsel, to Jonathan Katz, Secretary (April 12, 2004) (available at http://www.sec.gov/rules/proposed/s70604/wachoviasec041204.pdf).

Rules are closer to the Commission's estimates, the SIA's calculations, or, given the questions posed by this current proposal, another, yet undetermined, figure, it is certain that these costs will be substantial. Wachovia respectfully asks that the Commission carefully consider the burden of the tremendous costs and systems changes that the Proposed Rules will impose on the industry – and, by extension, individual investors – and consider any reasonable modifications to the Proposed Rules, including any changes to the timeline set forth to incorporate these rules, to reduce these costs.

II. The Written Disclosure.

The Proposed Rules require that broker-dealers provide a client with a document concerning the relevant covered security at the point of sale (the "Written Disclosure"). The Written Disclosure will outline the various fees and expenses associated with an investment in the covered security through the use of standardized and, upon request, transaction-specific disclosures. In addition, it poses and answers certain questions regarding revenue sharing arrangements or special sales incentives in an effort to alert the investor of any conflicts of interest. Wachovia offers the following comments concerning the Written Disclosure's content and use.

A. The Commission should table any Written Disclosure relating to variable annuities to allow reconciliation with the National Association of Insurance Commissioners' ("NAIC") model disclosure.

First and foremost, we note that since Commission initially offered the Proposed Rules in 2004, the NAIC proposed model disclosures relating to the sale of variable annuities. To avoid inadvertently creating inconsistent and confusing standards for these investments, we respectfully ask that the Commission postpone any Written Disclosure relating to variable annuities to allow reconciliation with the NAIC standards.

B. The Written Disclosure should include qualitative information about the covered security to provide the investor with a sound basis with which to evaluate the investment.

The Commission's goal to highlight the costs associated with purchasing and maintaining an investment in a covered security is indeed laudable. However, Wachovia believes that the Written Disclosure's focus on this facet, and omission of any information about the various risks associated with the covered security save for a legend that encourages an investor to read the prospectus, does not provide the investor with a sound basis to evaluate the investment. Therefore, we propose that the Written Disclosure also provide the investor with a brief qualitative analysis of the covered security. This analysis could include a short description of the risks typically associated with the type of investment under consideration. It could also contain a clear and prominent warning that an investment in a covered security will fluctuate and may lose value. Wachovia believes that such a discussion will enhance an

investor's understanding of the covered security and is consistent with the spirit of the Proposed Rules as well as those rules presently governing communications with the public.[3]

C. Transaction-specific cost information should be omitted from the Written Disclosure.

We are unconvinced that adding transaction-specific cost disclosure would add to the investor's understanding of the covered security's fees and expenses given that the Written Disclosure would already contain computations for standardized investments of $1,000, $50,000 and $100,000. By comparison, it is an absolute certainty that requiring this information would dramatically increase the costs associated with creating the Written Disclosure and supervising its use and distribution. Thus, we believe that this aspect should be removed from the Written Disclosure in its entirety.

D. The Written Disclosure needs only to disclose recurring fees and expenses on an aggregate basis.

Wachovia notes that the Written Disclosure lists each recurring fee on a percentage basis and demonstrates the impact of these fees on an investment through the use of standardized and transaction-specific computations. The result is a potentially dizzying array of charts, figures and percentages, especially as it relates to variable annuities and variable life insurance contracts. As the most effective disclosure is often the clearest and simplest disclosure, we recommend that the Written Disclosure only disclose the covered security's fees and expenses on an aggregate basis. This would still provide the investor with ample notice of the impact of fees and expenses on an investment, but do so in a more concise manner. Such a revision would also reduce the costs associated with creating and maintaining the document by removing, in our rough estimation, at least 75% of the data points. As discussed in our earlier comments, we anticipate that the costs associated with creating and maintaining any new disclosures will be considerable and welcome reasonable and prudent measures to reduce these costs.[4]

E. The questions in the "Conflicts of Interest" section are ambiguous and potentially misleading.

Each Written Disclosure contains a "Conflicts of Interest" section that poses questions to prompt disclosure whether the broker-dealer receives "extra" from the covered security or its affiliates to promote the fund over other funds or pays its associates extra to sell the particular covered security or class of covered security. While Wachovia believes that an investor should have the information he or she needs to form an educated investment decision, we do not believe that this section, as drafted, meets this goal.

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[3] *See, e.g.,* Rules 482 and 498 under the Securities Act of 1933 and NASD Conduct Rule 2210.
[4] *Supra* note 2.

We are concerned that the section's name and its underlying questions are ripe with the potential to confuse investors. For example, we can easily envision an instance in which an investor sees a single "yes" answer in a so-called "Conflicts of Interest" section and prematurely (and erroneously) concludes that the proposed investment is contrary to his or her interest, regardless of the suitability analysis. We can also see a situation in which the client continuously searches for a covered security that has "no" conflicts and ignores more salient aspects of the investment such as its objective, annual fees and expenses, etc. As such, we respectfully request that the Commission remove this section in its entirety and replace it with clear and prominent disclosure that informs the investor that the broker-dealer has varying distribution agreements and compensation structures for different funds and fund classes and encourages him or her to obtain a copy of the supplemental disclosure document for further information on this topic.

In the alternative, we propose that the Commission rename the section "Conflicts of Interest" with a term or phrase that is less pejorative such as "Our Compensation." We also ask that the Commission rephrase the question "Does the fund or its affiliates pay us extra to promote this fund over other funds?" to something less inflammatory such as "Does the fund company pay us for additional marketing support?" or "Do you receive additional compensation for marketing?" We feel that such language would more accurately convey this information.

F. The Proposed Rules should allow modifications to the Written Disclosure's format so long as such modifications are not misleading.

The Commission queried whether the Proposed Rules should mandate a certain layout and type font. Wachovia submits that no such requirement is necessary. Broker-dealers compete with one another to service the public's investing needs. This competition will naturally compel broker-dealers to improve their quality of service, including that of any disclosures. We feel that imposing restrictions on the Written Disclosure's format will certainly hamstring this competition. We also note that allowing broker-dealers to determine the most efficient means to implement required disclosures is consistent with the current regulatory framework.[5] As such, we respectfully suggest that the Proposed Rules permit any non-material changes to the Written Disclosure's format.

[5] *Supra* note 3.

G. In addition to the proposed exemptions to providing a Written Disclosure, broker-dealers should not have to provide the Written Disclosure for an unsolicited order, a subsequent transfer among investment subaccounts within any covered security, or variable life insurance transactions.

The Commission has contemplated certain instances in which a broker-dealer would not have to provide an investor with a Written Disclosure. These included a subsequent purchase of the same covered security, an order placed by an "institutional" investor, a transaction in which an advisor used discretion, and an order placed via the mail. We agree that providing Written Disclosure in these instances would not further an investor's understanding of the transaction and support their inclusion in the Proposed Rules. We would add to this list:

1. An unsolicited order.

In the case of an unsolicited transaction, an investor has clearly demonstrated his or her familiarity with the covered security and would likely have little need for the information provided in the Written Disclosure.

2. A subsequent transfer among subaccounts within any covered security.

In such transactions, an investor is not contemplating the purchase of a new investment. Rather, he or she is adjusting a present investment and typically only faces changes in his or her annual fees, and potentially, a one-time transfer fee. This information would have been disclosed in either a Written Disclosure at the point of sale or in other documents such as the prospectus. Therefore, we submit that that another Written Disclosure at or around a transfer among subaccounts is unnecessary for the investor's protection.

3. Any transaction with respect to a variable life insurance policy.

We note that an investor undergoes a very thorough application and underwriting process before completing the purchase of a variable life insurance policy. During this, he or she receives extensive disclosure about the potential benefits, risks and costs associated with the policy. Thus, Wachovia submits that providing a Written Disclosure for variable life insurance policy transactions is unduly repetitive and unnecessary.

In addition, for the sake of clarity and consistency with the existing regulatory framework, we recommend that Commission incorporate the NASD's definition for an "institutional investor" into the Proposed Rules.[6]

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[6] *See, e.g.,* NASD Conduct Rule 2211(a)(3).

H. The Proposed Rules should explicitly provide a safe harbor from private rights of action arising from non-fraudulent disclosures made under the Rule.

Finally, the Commission noted that it would not expect private rights of action to result when a broker-dealer makes non-fraudulent disclosures pursuant to the Proposed Rules. Consistent with the Commission's goal of providing clear, meaningful disclosure, Wachovia suggests that the Proposed Rules explicitly provide a safe harbor from such actions and asks that the Commission contemplate permitting a legend on the Written Disclosure to that effect.

III. The Oral Disclosure.

The Proposed Rules require that broker-dealers issue certain disclosures to the clients either "immediately prior" to accepting a verbal order to purchase a covered security or upon the "initial communication" with a client if the advisor could solicit transactions and receive compensation without handling the actual order (hereinafter, the "Oral Disclosure"). The Commission proposes that the Oral Disclosure include the standardized and transaction-specific expense information found in the Written Disclosure or this information plus disclosure concerning whether the broker-dealer receives revenue sharing payments or engages in differential compensation practices as well as other information "useful to investors."

Wachovia believes that mandating the recitation of various tables and other rote disclosure over the telephone would likely lead to "paralysis by analysis." In addition, as noted in I. above, we believe that overemphasizing the covered security's fees and expenses does not provide the investor with a sound basis with which to evaluate the investment. Instead, in view of the information contained in the Written Disclosure, we submit that the Commission eliminate the Oral Disclosure in its entirety and only require that an advisor inform the client that further information about the covered security's fees and expenses and the firm's compensation practices can be found on the firm's website or he or she could prepare and send a Written Disclosure that explains the covered security's fees and expenses in detail. We feel that this change would satisfy the Commission's desire to put the investor on notice that the covered security imposes various recurring fees and expenses, but prevent him or her from being overwhelmed by a tremendous amount of data over the telephone.

IV. Confirmations.

The Commission also proposed amendments to Rule 10b-10 that would add more precise data concerning the impact of sales loads on an investor's purchase.[7]

[7] See the proposed "You paid when you bought" section in Attachments 8, 11, and 14 and the proposed "You will pay when you sell" section in Attachments 9, 12, and 14 of the Release.

Wachovia believes that this information will further an investor's understanding of his or her purchase and fully supports its inclusion.

However, we do not feel that the information that the Commission proposed for the "You also pay each year" and "Conflicts of Interest" sections achieves this same goal. First, this information appears to be a reiteration of that contained in the Written Disclosure and the prospectus. It is unclear to us how repeating the information *after the investor completes the order* adds to his or her understanding of the product. More importantly, these disclosures appear to run counter to a confirmation's basic purpose: a receipt of the transaction to allow the investor the opportunity to ensure that the broker-dealer executed the order as instructed. We believe that to try to make the confirmation a prospectus-like document would increase the likelihood that an investor would discard the document due to information overload. As such, Wachovia respectfully submits that the Commission eliminate the "You also pay each year" and "Conflicts of Interest" sections in confirmations.

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Wachovia trusts that the above is responsive to the Commission's request for information. We would be pleased to meet with the Commission or its Staff to answer any questions in this matter.

Respectfully,

/s/ Ronald C. Long

Ronald C. Long
Regulatory Policy and Administration

/s/ Ryan P. Smith

Ryan P. Smith
Regulatory and EDR Attorney