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ProEquities

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OFFICE OF THE SECRETARY

April 15, 2005

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

Re: File Number S7-06-04; Proposed Rule Governing Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds

Dear Mr. Katz :

ProEquities, Inc. ("ProEquities" or "the Firm"), a registered broker/dealer, wishes to submit these comments on Securities Exchange Act New Release No. 34-51274 (the "New Release"), which seeks public input on proposed new rules governing point of sale disclosure and confirmation requirements for mutual funds, college savings plans ("Section 529 plans"), variable annuity ("VA") and variable universal life insurance ("VUL") products (collectively, "covered securities"). Related rules were previously published for comment in Securities Exchange Act New Release No. 49148 (the "Original Release").

I. Overview

ProEquities agrees that all customers should receive timely and accurate information about the features, market risks, costs and other material considerations involved in the purchase, sale or exchange of securities. The Firm commends the SEC for attempting to improve the disclosures regarding these investments. In our opinion, however, adoption of the proposed rules would improve the quantity, but not the quality, of the information that customers receive, and would do so in a manner that is neither useful to investors nor cost-effective. We believe that the suggested disclosure documents would be misleading, and would exaggerate the importance of a limited number of factors that investors should consider when making an investment decision.

We recommend that prospectuses be revised, and the Internet be used, to make any new or revised disclosures of fees, expenses and product distribution information that investors may need. The proposed requirement for a disclosure at "the point of sale" is vague and confusing, and does not adequately address the many different ways in which customers interact with and make securities purchases through broker/dealers, registered representatives, insurance companies and mutual fund families. The proposed confirmation requirements would not give investors meaningful information in time to use it, and would be unduly expensive and burdensome to implement. These and other concerns and comments are discussed in more detail below.

II. The SEC Should Issue a Formal Re-proposal Before It Adopts Final Disclosure Rules.

ProEquities counted over 350 questions, requests for comment and requests for estimated costs in the New Release. It is impossible for the Firm to provide complete responses to these inquiries within the comment period provided for in the New Release, which is regrettable in light of the seriousness of the underlying issues for investors, broker/dealers, registered representatives, product sponsors and regulators. The New Release lacks any cost-benefit, competitive or capital formation analysis of the new proposals. Furthermore, the New Release does not contain any proposed regulatory text. This fact, combined with the multiple questions and issues raised in the New Release, makes it impossible to determine exactly what the SEC is proposing and exactly which issues should be of the greatest concern to commentators. ProEquities hopes and expects that it will have the opportunity to consider and comment on a formal, fully documented re-proposal.

III. The New Point of Sale Disclosure Document Would Not Improve the Quality of Disclosure, or a Customer's Overall Understanding of the Transaction.

The Firm's principal concerns regarding the proposed point of sale disclosure document can be summarized as follows: (1) use of the disclosure document would overemphasize a limited amount of information, leading investors to ignore equally important issues with respect to their investment decisions, (2) the information provided by the disclosure document would, in many cases, be misleading or incomplete, and (3) required delivery of the disclosure document would be more expensive, and less investor-friendly, than alternative means of delivery. These points are discussed in more detail below.

First, ProEquities believes that the proposed disclosure document would overemphasize a limited amount of information, leading investors to ignore equally important issues. The material features of the covered securities are disclosed in the prospectus in accordance with SEC rules. The purpose of the prospectus is to give a complete, accurate and balanced presentation of the information that the investor needs to understand about the security under consideration. The prospectus is prepared by the product sponsor, which is the best source of information about the product.

Since the customer would receive both a prospectus (which contains details of all material investment features) and the new "summary" disclosure document, he or she would naturally assume that the matters discussed in this SEC-mandated form are at least as important as the other matters discussed in the prospectus. This would undermine the importance of the prospectus as the principal disclosure document for securities transactions, and result in unbalanced, confusing disclosure to customers. It would suggest that investment features such as the underlying assets in which the customer is investing, historical returns, asset allocation, insurance benefits, tax effects, annuity, withdrawal and loan features, guaranteed minimum benefit features, liquidity and volatility are less significant than the information disclosed in the SEC-mandated form when, in fact, such features are generally of equal or greater importance to the ultimate performance of the investment. This over-emphasis on cost, to the detriment of consideration of the benefits, features and risks of the investment, is likely to lead investors to buy investments which are not in their best interests.

Second, the information provide by the disclosure document would, in many cases, be misleading or incomplete. The Firm appreciates and understands the SEC's attempt to avoid "information overload"; however, in doing so, the SEC has proposed a document that will provide only partial answers to a few questions, and those answers will often be wrong or misinterpreted. For example, the proposed disclosure documents and the prospectus use different terminology to describe the same concepts, and present similar concepts in different ways. It is inevitable that investors, registered representatives and product sponsors would find it difficult to reconcile these disclosures. Furthermore, the disclosure form fails to discuss critical information, such as whether the current fees being charged for an investment may be lower or higher than fees in the future, whether (and to what extent) the product sponsor is currently waiving its right to collect all or some portion of the fees that it may charge, and the means by which the fee schedule may be revised. These common practices are disclosed in the prospectus, and the only meaningful way to avoid misleading the investor is to repeat the information in the disclosure document. Failure to do so would render the disclosure document misleading; doing so would increase the length and complexity of the document and duplicate disclosure that the investor already receives.

As noted in the New Release, the proposed disclosure document would require the broker-dealer to project future costs. This requirement is puzzling, given the SEC's long-standing criticism of the securities industry for providing investors with projections. More to the point, the Firm is surprised by the SEC's statement that "[the SEC] would not expect private rights of action to result from non-fraudulent disclosures under the rule" even if the broker-dealer were negligent. The proposed disclosure form is misleading and incomplete and contradicts the prospectus; errors in completing it will occur; and future costs will not be the same as those shown on the form. No one familiar with American jurisprudence can reasonably believe that litigation would not result from implementation of this proposal, unless the appropriate legislative or regulatory action is taken to specifically preclude such litigation.

Third, the Firm believes that preparation and distribution of the proposed disclosure document would be costly and inefficient. Many broker/dealer firms have selling agreements with numerous insurance companies and mutual fund companies, so their registered representatives can offer customers a selection of products that might best serve their needs. (For example, ProEquities currently sells variable products offered by about 70 insurance companies, and mutual funds offered by over 200 mutual fund families.) Broker/dealers and product sponsors currently have no effective means of communicating to each other the information required to complete the disclosure forms, and developing the needed systems would be time consuming and extraordinarily expensive. These additional costs must be ultimately passed on to customers. Furthermore, most of the information that is required on the form would be the same for every broker/dealer—the only difference would be whether the broker/dealer had a "conflict of interest." In the Firm's opinion, information that will be the same for a given investment, regardless of the broker/dealer that sells the investment, is more accurately, effectively and efficiently disclosed in the prospectus.

IV. The SEC Should Establish Reasonable Exceptions to any Point of Sale Disclosure Requirement.

The Firm believes that if the SEC requires delivery of the new point of sale disclosure in paper format, this requirement should be subject to certain exceptions in order to minimize the costs of the new requirement while still requiring delivery to those customers whom the rule is intended to protect. In particular, ProEquities believes that exemptions should be made for:

- **Institutional investors**. Broker/dealers should not be required to deliver a point of sale disclosure to an institutional investor, since that investor should be able and willing to ask the right questions and to read and understand the prospectus and other relevant information about the proposed investment.

- **Accounts with Investment Discretion.** If a professional money manager is making the investment decision, providing point of sale information to the customer is superfluous.

- **Unsolicited Trades.** The potential for conflicts of interest or undue sales pressure is greatly reduced in unsolicited transactions. Investors typically conduct unsolicited transactions after they have done their own research on the covered security in question, so there is no compelling reason to require the point of sale disclosure.

- **Repeat Purchases of the Same Security.** An investor who has previously purchased a covered security has already received the prospectus and other information about the security and the broker/dealer's relationship with the product sponsor, and has the ability to check that information before making subsequent purchases or investments. Under these circumstances, the Firm believes that the disclosure form should not be required for subsequent investments unless one of the answers under "Conflicts of Interest" has changed from "No" to "Yes." The incremental benefit of repeating the same physical paper disclosures to that investor is simply not worth the substantial cost.

Of course, these exceptions would not be necessary if the SEC adopted a disclosure system based primarily on improved prospectus and Internet-based disclosure of investment features (by the product sponsor) and Internet-based disclosure of potential conflicts of interest (by the broker/dealer), as discussed below. This alternative disclosure system would result in more readily available, complete disclosure, at less cost to broker/dealers and, ultimately, to the investing public.

V. If the SEC Determines that a New Disclosure Must be Provided to Investors, It Should Mandate Delivery Regardless of the Manner in Which the Transaction is Executed.

Subject to any exceptions that may be adopted generally (as discussed above), if the SEC determines that delivery of an additional paper disclosure document is necessary, ProEquities believes that all broker/dealer firms should be required to deliver the form (or all of the information set forth on the form) to all customers prior to the sale of the investment, regardless of the means by which the customer is affecting the transaction. The rationale for this view is straightforward. If the SEC believes that the required disclosures are so critical for investors that it must adopt industry-wide rules to implement them, the SEC must believe that these investors need the protection the disclosure is expected to provide. If (for example) a customer is purchasing a mutual fund as part of a solicited transaction, the means by which the transaction is affected (a face to face meeting with a registered representative, over the telephone or over the Internet with the broker/dealer, by mail, or on a "check and app" basis directly with the product sponsor) would not materially affect the importance of the proposed disclosures. Giving an incomplete disclosure, or an "after the fact" disclosure, to some customers (such as those who invest through a telephone conversation or over the Internet) would deprive such customers of information that the SEC has deemed to be essential in the face to face sales process. It would be irrational to determine that certain customers should receive less protection than others, based solely on the manner in which the customer affected a transaction.

Permitting a customer to waive the disclosure is equally unsatisfactory. Many investors would not be conscious of the nature of the proposed disclosures unless they see (or hear) the disclosure first. Asking such a customer to waive the right to see (or hear) a disclosure that other customers must consider before making a trade, based on the manner in which the customer affected the transaction, would be inconsistent with the SEC's view of the critical nature of the matters to be disclosed.

The Firm wishes to stress that it does not believe that the proposed disclosure document should be adopted in any form, and that Internet- and prospectus-based disclosures are the best way for the SEC to proceed. The Firm is the first to acknowledge that reading the required disclosure to a customer would be remarkably inefficient; instead, the sole purpose of these observations is to emphasize that the SEC should carefully consider when investors are "similarly situated" for purposes of determining when the disclosures would be required.

VI. If the SEC Mandates a Point of Sale Disclosure, It Should Require Delivery No Later Than Immediately Before the Date the Order is Accepted.

The New Release generally contemplates an unusual sales process - that is, a process in which a registered representative and an investor discuss, without prelude and in a face-to-face meeting, a single investment (such as a particular mutual fund or VA). In fact, the sales process typically involves extensive customer education by the registered representative, in which the representative describes in some detail the numerous types of investments that are available in order to help the investor decide how to proceed.

In this "real life" sales process, a customer may receive information about, or mention to the representative, many general product types and specific investment choices. Some product sponsors might be "preferred" sponsors, and some may not. Some product sponsors may have products that interest the investor, and some may not. Some product types may interest the investor, and some may not. The investor may initially favor (or disfavor) certain product sponsors or specific investments, but change his or her mind later. The investor may initially favor (or disfavor) a certain class of mutual fund shares, but change his or her mind later. The investor may initially favor (or disfavor) a Section 529 plan from a particular state, but change his or her mind later. The investor may initially favor (or disfavor) certain variable contract features, but change his or her mind later. The representative may suggest (for example) ten mutual funds (each with three different share classes) that for the investor's consideration, and the investor may indicate some level of interest in one or more of them. At the end of this process, the customer may purchase different investments—for example, a VA, a VUL policy, and several mutual funds—in order to satisfy different investment objectives.

In this real life process, it will be almost impossible to consistently implement disclosure requirements at the "time of recommendation", upon an expression of "preliminary intent", at the time the broker "first communicates" with the customer about a security, or the time the customer expresses a "potential interest" in a security, as suggested by the New Release. A broker/dealer would have to make the disclosures very early in the sales process in order to ensure compliance, and would have to repeat or revise the disclosures as the sales process went along. Furthermore, if the broker/dealer were required to deliver a separate disclosure for each mutual fund class that might be deemed "recommended" or of "potential interest" to the customer, the broker/dealer industry would imperil most of America's remaining forests in order to produce the required paper. In the Firm's opinion, this result would not be good for investors or for broker/dealers.

ProEquities believes that if paper disclosures are required, delivery of the disclosure before the order is accepted is appropriate. If the customer has questions upon receipt of the disclosure (or at any earlier time), the customer can ask them, and is entitled to complete and honest answers. In the Firm's opinion, the customer ***always*** has "adequate time to consider the information when making investment decisions"—the customer has the right and obligation to invest only when he or she has received, reviewed and understands all information which the broker/dealer or product sponsor is obligated to provide or which the customer has requested.

In the Firm's opinion, there is no reason to require delivery of the disclosure document after the order has been accepted (as suggested in the New Release for Internet or telephonic transactions). In this situation, providing the customer with the disclosure form will not satisfy the SEC's stated objectives for the disclosure, and will merely result in production of an irrelevant document.

Once again, ProEquities wishes to emphasize that Internet- and prospectus-based disclosures are preferable to the paper disclosure regime suggested by the New Release. The comments set forth above apply only if, despite the Firm's strong misgivings, the SEC decides to require delivery of a new disclosure document.

VII. Revision of the Confirmation Process, As Proposed in the New Release, Is Neither Necessary Nor Cost-Effective.

The New Release appears to assume that a broker/dealer will normally generate and mail a confirmation for a transaction in a covered security. In fact, the broker/dealer (or its clearing firm) will normally produce a confirmation only if the transaction occurs inside a brokerage account. In "check and app" business done directly with the product sponsor (which is common for mutual funds, and the predominant practice for VA's, VUL's and Section 529 plans), the product sponsor generates and mails the confirmation, pursuant to standard industry practice as set forth in the contract arrangements between the product sponsor and broker/dealer, and in accordance with NASD and SEC guidance. This common practice has developed from a simple reality—in many cases, the product sponsor, not the broker/dealer, possesses the information required for the confirmation.

The proposed confirmation forms require certain information that could be obtained ***only*** from the product sponsor – for example, the amount invested per share (for mutual funds) or the accumulation unit values and number of units acquired (for VA's). On the other hand, the proposed confirmation forms also require certain information that could be obtained ***only*** from the broker/dealer— whether the broker/dealer pays its personnel extra for selling the investment, and whether the broker/dealer pays its personnel extra for selling particular classes of mutual funds. The industry does not have systems in place to provide for communication of this information among broker/dealers and product sponsors, and requiring it to do so will result in enormous operational challenges and an extraordinary increase in processing costs. It is inevitable that these costs will be passed on to customers.

ProEquities does not believe that the proposed revisions to the customer confirmations will improve an investor's understanding of a transaction in any meaningful way, and encourages the SEC not to adopt them. Information about ongoing fees and expenses and potential conflicts of interest should be available to investors when they can use that information - before the transaction. These disclosures are best made in the prospectus and on broker/dealer and product sponsor Internet sites. If the SEC decides that revisions to the confirmation process are necessary, it is imperative that the SEC take steps to require product sponsors to provide the necessary confirmations, and to give the securities industry adequate time—no less than two years—to prepare the necessary systems and conduct the appropriate training.

VIII. If Implemented as Proposed, the New Point of Sale Disclosure Rules Would Have a Negative Impact on Customers, Particularly Customers with Small Amounts to Invest.

ProEquities could not do an extensive cost/benefit analysis within the limited time set forth for the reopening of the comment period on point of sale disclosures. Nonetheless, it is obvious that the costs of implementation of point of sale disclosure rules similar to those contemplated by the New Release would be enormous. Furthermore, the complexity of the disclosure requirements would be a significant burden. In the Firm's opinion, the costs and complexity of the rules would be likely to have at least three unfortunate side effects—a reduction in products available to customers, a reduction in mutual fund sales, and a reduction in financial services available to the small investor.

As noted above, many broker/dealers (including ProEquities) have selling agreements with numerous covered securities product sponsors. Some very large product sponsors may have the systems and other resources needed to help broker/dealers meet the new requirements; many other product sponsors will not. The Firm believes that broker/dealers would gravitate towards doing business with product sponsors that could help minimize the prodigious operating costs and compliance burdens that the point of sale disclosures would create. This, in turn, would reduce the number of investment products that registered representatives of that broker/dealer could sell. It could also result in a reduction of the number of product sponsors that are offering investment products for sale—not because of the quality of their products, but because they lack the economies of scale necessary to assume an unreasonable operations and compliance burden.

Second, the Firm believes that adoption of the proposed point of sale rules would adversely affect one of the best investment choices for the average investor—mutual funds. Mutual funds provide investors with diversification, professional money management, and recordkeeping services at a reasonable cost. If the SEC makes it too difficult for registered representatives to sell mutual funds as an investment class, it is possible that they will migrate to other types of investment (such as individual stocks and bonds) that may not be as good for the investor, but would still be "reasonably suitable" under applicable legal standards. Alternatively, registered representatives might make a conscious effort to reduce the number of investment choices and alternative investment programs that they present to customers, in order to reduce the number of forms they would have to complete. This does not automatically mean (in either case) that the customer would be purchasing an unsuitable investment, but it does mean that the customer might make a decision that is "O.K." instead of "good" or "great."

Finally, and in a related matter, ProEquities believes that investors with little to invest would be hurt by the point of sale disclosure requirements. Mutual funds are often the best choice for these investors; furthermore, many representatives would not feel comfortable recommending that a customer invest a small amount of money in individual securities. If the customer had a limited amount to invest, and if the registered representative (or his or her broker/dealer) believed that the mutual fund sales process required an excessive amount of time and document production or that there was an excessive compliance risk in making routine mutual fund recommendations, the representative (or broker/dealer) would be likely to simply refuse to handle the customer's account.

IX. Recommendations and Suggestions.

A. The SEC needs to more thoroughly explain and document the problems that it is trying to address. In both the Original Release and the New Release, the SEC made vague references to concerns faced by "investors", "some investors" or "many investors". In the New Release, the SEC attempted to validate the approach taken in the New Release by reference to an extremely small focus group that did not even consider, in detail, several types of covered securities. The SEC's exclusive focus on a few investment features, without trying to address the numerous factors that impact investment decisions, have led it to make a proposal that would adversely affect a large percentage of the investing public, while addressing a problem that has not been quantified. At this point, the SEC has failed to justify, through the use of objective data, the benefits of the proposed disclosures when compared to the staggering costs of implementing those proposals.

B. The SEC needs to coordinate its efforts with other regulatory bodies, in order to enhance the effectiveness and reduce the costs of securities disclosures. Disclosures regarding covered securities are now under consideration by a number of regulatory bodies. For example, the SEC is considering the myriad of proposals, questions, and issues set forth in the Original Release and the New Release; the National Association of Securities Dealers ("NASD") has proposed that broker/dealers deliver a "risk disclosure document" in connection with VA sales; the NASD has also proposed use of a "Profile Plus" disclosure document that would summarize some of the information provided in the prospectus; and state insurance regulators have their own required forms for VA and VUL sales (particularly for exchange transactions). If each outstanding proposal is implemented in some form, covered securities transactions will begin to resemble a mortgage closing. In a typical VA sale, for example, the customer would receive (in addition to the application and other forms required by the insurance company product sponsor) a prospectus, an SEC point of sale disclosure form, an NASD risk disclosure document, a Profile Plus disclosure document, and a state insurance department disclosure document. Fees and expenses would be disclosed on each of these forms, often in different ways and using different terminology.

ProEquities believes it is essential that the SEC coordinate its efforts with these other regulatory bodies. Ideally, some effort will be made to ensure that customers receive consistent, non-duplicative, balanced and accurate disclosures. Disclosures should use the same terms to explain identical concepts, to reduce confusion of the customer. If delivery of other documents is ultimately required, it is essential that the customer understand that the prospectus is the document that the customer must refer ultimately refer to, and that the other documents merely highlight certain aspects of the information provided therein.

C. ProEquities believes that the SEC needs to focus on the disclosure document contemplated by the securities laws—the prospectus. The securities laws are based on the notion that product sponsors will prepare, broker/dealers will distribute, and investors will read the prospectus. The prospectus is the only document that the investor (and the registered representative selling the investment) is expected to rely on for a fair, accurate, and balanced discussion of the benefits, features, costs and risks of the investment. The prospectus is prepared by the product sponsor, which has more information about the investment than anyone else. The SEC has the authority to require product sponsors to write prospectuses in a manner which, in the SEC's judgment, best presents the information that investors need. If the SEC believes that customers are not receiving accurate or useful information about an investment, then it needs to consider the prospectus first.

The New Release strongly implies (but never states) that the proposed point of sale disclosure rules are needed because investors do not read, or do not understand, the prospectus. To some extent, the first problem is not within the control of either the SEC or broker/dealers —investors cannot be forced to read anything that they do not wish to read. On the other hand, if prospectuses are written in a way that the interested reader finds difficult to comprehend, the SEC has the power and the responsibility to take action.

In the Firm's opinion, prospectuses generally contain enough information about fees, expenses and product distribution, and present this information clearly enough, that the average interested investor can either understand the information or know enough to ask intelligent questions. If the SEC disagrees, or if it simply wishes to improve the current disclosure system, the best place to start is with the prospectus, and not with the creation of new documents and document delivery systems. The Firm encourages the SEC to undertake an all-inclusive review of the prospectus disclosure requirements, to consider revisions to the disclosures regarding fees, expenses and distribution in conjunction with any other changes to prospectus disclosure that might be appropriate, and to submit its proposals for public comment. Furthermore, it should undergo this process before adopting a new point of sale disclosure requirement that would overemphasize one facet of a proposed investment, would be misleading and duplicative of other information received by the investor, would be costly to implement, and would hurt small investors. If this approach is followed, the party that is the most familiar with the product (the product sponsor) will prepare the prospectus, containing balanced and complete disclosures under uniform standards that are developed after public input and considered cost/benefit analysis.

D. If the SEC concludes that an additional, duplicative point of sale disclosure document is needed, the Firm strongly recommends that the document be less product- and transaction-specific than the document described in the New Release. For example, the requirement for a transaction-specific disclosure for every mutual fund transaction is simply unnecessary—the vast majority of customers who are interested in the disclosure will be able to draw an appropriate conclusion from the presentation of the standard investment amounts. Also, it is essential that the SEC revise the document to make it clear that it is presenting only a limited amount of information, that the information (as presented) is more properly and fully disclosed in the prospectus, and that other features of the investment (such as the underlying assets in the investment, the holding period of the investment, tax consequences, and market volatility) are likely to be more important to the investor's total return.

E. The Internet should be the primary means of communicating many of the proposed disclosures to investors. In the Firm's opinion, the SEC's contention that the Internet is not an appropriate means of disclosure is clearly erroneous. The SEC itself has stated that about 75% of American investors have Internet access. Product sponsors (with respect to all product information, including information about product fees and expenses) and broker/dealers (with respect to information about "conflicts of interest" such as marketing arrangements) can, at a reasonable cost, create and maintain accurate disclosures on the Internet with respect to information that they currently have in their possession. Customers can access these disclosures at any time. Broker/dealers can, of course, be required to provide a paper disclosure if the customer requests. Use of the Internet for these purposes would enable investors to "shop" among broker/dealer firms, product sponsors, and particular investments (for example, different share classes of one mutual fund) at little cost. This use of twenty-first century technology, instead of nineteenth century paper, would result in more timely, more accurate and less expensive disclosure than the disclosure delivery system proposed in the New Release.

X. Conclusion

ProEquities appreciates this opportunity to comment on the New Release. We commend the SEC for trying to improve the quality and usefulness of covered securities disclosures. As noted above, however, we believe that other, preferable solutions exist. If you wish to discuss the New Release, this letter, or any thoughts, comments, questions or suggestions that you may have, please call me at (205) 268-5144.

Very truly yours,

PROEQUITIES, INC.

By: ______________________
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President

60271
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