*The Commonwealth of Massachusetts*
*Secretary of the Commonwealth*
*State House, Boston, Massachusetts 02133*

*William Francis Galvin*
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Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

RE: Release Nos. 33-8358; 34-49148; IC- 26341; File No. S7-06-04
Proposed Rule: Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds

Dear Secretary Katz:

The Massachusetts Securities Division welcomes this opportunity to comment on the Commission's proposed rules to codify disclosure requirements for certain forms of compensation payable in connection with sales of mutual funds, unit investment trusts (including insurance securities), and municipal fund securities used for education savings ("529" plans). The most important of these rules would require brokers, dealers, and municipal securities dealers to provide to customers, both at the point of sale and in post-sale confirmations, more complete disclosure of the distribution-related costs they incur and the selling firms' conflicts of interest relating to the distribution of those securities. We strongly support the rule proposal.

Proposed Exchange Act rules 15c2-2 and 10b-10 would require disclosure in the post-sale confirmation of distribution-related costs and arrangements that pose conflicts of interest for securities firms and their personnel. The requirements include: (i) sales load and breakpoint disclosure, including maximum deferred sales loads; (ii) disclosures of "dealer concessions" payable by the issuer of the security to dealers; (iii) disclosure of revenue sharing and portfolio brokerage (soft dollar) arrangements as a percentage of total net asset value; and (iv) disclosure of differential compensation to associated persons.

Proposed Exchange Act rule 15c2-3 would require firms and their personnel to provide point of sale disclosures to customers about costs and conflicts of interest. These include quantitative information about: (i) sales loads; (ii) asset-based charges and service fees; (iii) maximum deferred sales loads if the fund shares are sold within one year; and (iv) disclosure of dealer concessions that the selling firm expects to receive in connection with fund transactions. The disclosures also include qualitative information about: (i) whether the broker receives revenue sharing or portfolio brokerage commissions from the fund complex; and (ii) whether the broker pays differential compensation to sales personnel in connection with fund sales.

The disclosures under rules 15c2-2 and 15c2-3 are complimentary. Customer confirmations will provide a high level of detail on fees and conflicts of interest on a post-sale basis, while the point of sale disclosures will give this information to investors before they decide whether to purchase the securities. All of this information will bring much-needed clarity to fund sales costs and conflicts. Many of the fees and practices targeted by the rule, such as differential compensation and sales-related revenue sharing arrangements, have been concealed from investors or presented obscurely.

The proposed point of sale disclosures are particularly valuable. If investors are clearly informed of fees and conflicts of interest when they are offered fund securities, many may simply decline to purchase them.

We support the Commission's proposed confirmation and point of sale disclosure forms (in the attachments to the proposal) for fees and conflicts interest in fund sales. The qualitative information in the forms should help investors understand the meaning and importance of the disclosures they receive.

Besides improving disclosure, these rules may have the beneficial effect of discouraging or stopping many problematic fund practices. We expect that many fund sponsors will drop practices that that involve severe conflicts of interest if funds will be required to disclose and explain them.

We note that small investors have posted hundreds of favorable responses to this rule proposal on the Commission's website. These responses demonstrate that investors want complete disclosure of fund selling fees, expenses, and conflicts of interest. This multitude of responses demonstrates that this information is material. These investors are more motivated and better informed on average, and they are stating clearly that this information would be important in their decision whether or not to buy a fund's securities.

The Commission states in the Executive Summary to the rule proposal that the proposed new point of sale and confirmation rules and rule amendments would clarify that these rules do not provide safe harbors for activity that would violate the antifraud provisions of the federal securities laws or other legal requirements. In several places in the rule proposal, the Commission states that the proposed disclosure rules are not determinative of, and do not exhaust, a broker's, dealer's or municipal securities dealer's disclosure

obligations under the antifraud provisions of the federal securities laws or under any other legal requirements (Section IV.B.1.a and Section V. and V.C). The Commission stresses that the proposal to require broker-dealers to disclose information about the receipt of portfolio brokerage commissions in no way should be read to condone favoring distribution of funds that pay portfolio brokerage commissions, and would not prevent a broker-dealer from being held liable for violating NASD Rule 2830(k)(1) (which bars broker-dealers from favoring the distribution of funds that pay portfolio commissions). The Commission stresses, moreover, that a mutual fund that uses brokerage commissions to promote the distribution of another mutual fund may also be in violation of the Investment Company Act; and the Commission stresses that the proposed rules would not protect a mutual fund firm from other forms of liability, such a liability under agency law principles. (Sec. IV.B.1.d.ii. (c)). We are in accord with these statements.

It is the position of the Massachusetts Securities Division that even without the Commission's proposed rules, many of the practices outlined in the rule proposal are actionable securities fraud because they involve failures to disclose material facts necessary in order for the disclosures not to be misleading to investors. For example, many of the practices relating to the sale of proprietary funds, such as the payment of bonuses and higher payout rates to selling persons, are facts investors would need to properly evaluate selling persons' recommendation to purchase a proprietary fund or B-shares.

The rule proposal asks whether the requirements for improved disclosures should also apply to products such as education savings "529" plans and variable annuity products. We urge that that the proposals should apply to those products. Variable annuities and "529" plans are pooled investment vehicles that resemble mutual funds, so the rules for selling those products should be the same as for funds. More importantly, because those products are used by small investors to save for basic life goals, such as retirement and college costs, investors should receive the fullest possible disclosure of expenses and conflicts.

Sincerely,

William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts