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April 12, 2004

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

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

Dear Mr. Katz:

Thank you for the opportunity to submit comments on the new rules proposed by the Securities and Exchange Commission (the "SEC" or "Commission") to govern the information that broker-dealers are required to provide to their clients in transactions involving shares of mutual funds, unit investment trusts ("UITs"), and municipal fund securities used for education savings ("529 Plans"). Under the Commission's proposal (the "Proposing Release"), new rules 15c2-2 and 15c2-3 under the Securities Exchange Act of 1934 (the "Exchange Act") would require that significant amounts of information be disclosed to investors both at the point of sale and at the conclusion of transactions in such shares.

Although we agree with the Commission that investors should be provided with clearer disclosures in connection with their purchase of mutual fund, UIT and 529 Plan shares, we believe that the Proposed Release does not accomplish that objective. As a result, rather than serving as an aid to investors, the disclosures mandated by the Proposing Release are likely to mislead investors as they attempt to navigate the extensive information provided to them in connection with these transactions. In addition, the "dual disclosure" regime (at point of sale and again in the confirmation) proposed by the Commission will prove to be extraordinarily expensive for broker-dealers to implement, with the likely result that these higher administrative costs will be passed on to brokerage customers. As discussed more fully below, we believe that a more reasonable and effective alternative would be an expanded confirmation that gives investors clear, concise information at a single point of disclosure at the conclusion of each transaction, supplemented by additional information made available on each broker-dealer's website.

Background

UBS Financial Services Inc. ("UBSFS") is a U.S. broker-dealer that is part of one of the largest integrated financial services companies in the world. UBSFS and its affiliates include: (i) one of the nation's largest broker-dealers, which offers and sells approximately 3000 mutual funds representing over 150 fund families; (ii) a global asset management group that has approximately $434 billion in assets under management worldwide, including more than $58 billion in U.S. registered mutual fund assets; and (iii) a large retirement account group. UBSFS executes, on average, approximately 24,000 mutual fund trades per day, each of which requires a confirmation pursuant to current Rule 10b-10 under the Exchange Act. We estimate that in 2003 UBSFS completed and delivered approximately 4.5 million mutual fund confirmations. This confirmation process involves well-developed coordination between UBSFS's sales force and its back-office support group. Moreover, it requires a large and complex back-office organization that can quickly and accurately assimilate incoming sales data and provide the necessary disclosure information and documents within the short timeframe mandated by mutual fund sales rules. UBSFS had worked for many years to develop just such an effectively functioning system.

Because of our extensive operations in all facets of the fund industry, and because we are one of the country's largest broker-dealers in proprietary and non-proprietary mutual funds, we are extremely familiar with the systems and procedures that are necessary to comply with current confirmation rules and we will be significantly affected by the changes contemplated in the Proposing Release. Accordingly, we believe that we are well qualified to offer comments on those proposed amendments.

Overview

The Commission's proposals envision substantial changes in the manner and content of disclosures that must be provided by broker-dealers to their clients who purchase mutual fund, UIT and 529 Plan shares. New Rule 15c2-2 would dramatically increase the information required to be included in every confirmation sent to shareholders at the completion of every mutual fund transaction. In addition to the information currently required in confirmations (date of transaction, issuer and class of security purchased or sold, public offering price of the shares, number of shares purchased or sold, sales load imposed, etc.), Rule 15c2-2 would mandate: detailed disclosure of front-end and deferred sales loads, asset-based fees and other distribution-related costs; estimates regarding the effects of deferred sales on the transaction; discussion of any revenue sharing arrangements which the broker-dealer may have with the fund family involved in the transaction; similar discussion of any directed brokerage arrangements with the fund family; disclosure of any differential compensation paid to registered representatives of the broker-dealer for selling particular funds' shares; and additional transaction-specific information.

As if this expanded confirmation disclosure were not enough, new Rule 15c2-3 would also impose extensive "point of sale" disclosure with respect to every sale of

mutual fund, UIT and 529 Plan shares. These point of sale requirements would include, among other things: a discussion of front-end and deferred sales loads, asset-based fees and other distribution-related costs; estimates regarding the effects of deferred sales on the transaction; the amount of any dealer concession that the broker-dealer would earn on the transaction; a discussion of any revenue sharing arrangements that the broker-dealer may have with the fund family involved in the transaction; a discussion of any directed brokerage arrangements with the fund family; and disclosure of any differential compensation paid to registered representatives of the broker-dealer for selling particular funds' shares. Except in certain limited circumstances, this point of sale disclosure must be provided in writing immediately prior to the time that the broker-dealer accepts an order from the customer.

Structural Issues Regarding Proposed Rules 15c2-2 and 15c2-3

Even a cursory review of the new rules set forth in the Proposing Release raises several serious concerns. First, and most fundamentally, we believe that the level of detail of disclosure required by the new rules, and the requirement that disclosure occur at both the point of sale and at confirmation, will detract from the goal of clear and concise disclosure and serve as an impediment rather than an aid to the investor's understanding.

The complexity of these disclosure proposals is directly at odds with the Commission's recent drive toward simplification in prospectuses and other information given to investors. This movement, which the Commission has pursued for several years, is based on the premise that for disclosure information to be useful to investors it must be presented in clear and concise language and in a format that would be useful and comprehensible to the average mutual fund investor. Using these principles as a guide, the Commission has dramatically revamped the information presented to investors in prospectuses and other disclosure documents. This initiative has led to fund and broker-dealer information for investors that is useful, understandable and manageable in volume.

We view the Proposing Release as a large step backwards in the effort to provide investors with clear, concise information. We believe that most of the detailed information required in the point of sale disclosure and in the confirmation will be more confusing than illuminating to investors, which is precisely the result that the Commission in the past has tried to avoid. Rather than receiving a brief confirmation that allows the client quickly to check that the salient information related to his or her transaction is correct, we believe that clients would receive a great deal of extraneous information that they will find at best unhelpful and at worst confusing and misleading.

Moreover, requiring two points of disclosure does little to aid investors in making investment decisions. Investors are used to receiving and expect to receive a confirmation in connection with their mutual fund purchases, and providing relevant information in that document will sufficiently alert investors to sales load information and other compensation being paid to the broker-dealer. Mutual fund investors are typically "repeat investors" -- that is, they purchase additional shares of the same fund

again and again to accumulate positions gradually as financial resources become available to them. In our experience, it is an unusual mutual fund investor who makes a single, one-time purchase in a fund. As a result, providing the information that investors will find important regarding their broker-dealer's compensation and relationship to a specific fund complex can be meaningfully communicated through the confirmation. Investors will have access to this information to determine how much they paid for their shares and to communicate any related questions to their financial adviser. They will also be able to reference this information for subsequent purchases in the same fund.

Second, we are not entirely sure how the Commission expects the "point of sale" disclosures to operate in practice and are uncertain how we would go about implementing these requirements in a manner that would make sense for our clients. UBSFS clients, like those of any full-service broker-dealer, communicate buy and sell orders with their financial advisers in any number of ways. Some clients prefer in-person meetings, while others transmit their orders by telephone. Many clients use the mail to transmit their orders, while an increasing number of clients rely exclusively on email and electronic trading to communicate with their financial advisers. Some clients even fax their orders directly to their advisers.

The provisions of new Rule 15c2-3 do not seem adequately to account for these many forms of client communication and, more importantly, the fact that a large percentage of such communications are unsolicited buy and sell instructions from clients to their financial adviser. Clients frequently transmit their instructions by email, telephone or mail to their advisors with the expectation that the orders will be executed immediately. Leaving to one side for a moment the content of the disclosures required by Rule 15c2-3 (which we believe is highly duplicative of those disclosures found in Rule 15c2-2), the communication process apparently envisioned by Rule 15c2-3 will be extremely disruptive to normal client-adviser communications. As we understand the new Rule, a financial adviser would be prohibited from executing an unsolicited order received from a client without first making certain that the client has in hand the disclosures mandated by Rule 15c2-3 and new Schedule 15D. Communication of such information before each order, particularly those orders initiated by the client, will delay and disrupt the immediate execution of orders that clients have come to expect, especially in the context of electronic trading, which has become more and more prevalent among broker-dealers and their clients. Although in some cases the additional information would be welcomed by clients, we believe that in the large majority of cases clients will simply find the additional point of sale disclosures an intrusive delay that slows their normal investing process without commensurate benefit.

Finally, we are uncertain whether the Commission fully appreciates the costs associated with the new disclosure systems that it is proposing for confirmation and point of sale disclosure, many of which will inevitably be passed along to brokerage customers. These costs would result from several elements of the Proposing Release. The existing confirmation process employed by UBSFS (and undoubtedly by every other large broker-dealer that offers and sells proprietary and non-proprietary mutual funds) involves complex order entry and tracking systems and the creation of a physical confirmation for

each mutual fund transaction completed through the UBSFS system. This confirmation process occurs regardless whether the order comes through a retail brokerage account, an advisory account, a retirement account, or through another UBSFS channel. At the most fundamental level, it involves the integration of sales data with real-time information about each mutual fund, all of which must be accurately compiled and disseminated through UBSFS's customer tracking systems. The end result of this process is a physical confirmation that is mailed to each customer at the conclusion of each trade. This process is repeated thousands of times per day and millions of times per year by UBSFS.

The changes to the confirmation now being proposed by the Commission will require a great deal more real-time fund information to be integrated into and included with each confirmation. Furthermore, this information must then be assimilated, organized and set forth in a comprehensible manner on the confirmations mailed with each transaction. At UBSFS, we currently work very diligently to keep each mutual fund confirmation to a single page. This has the advantages of (a) presenting the information to clients in a familiar, concise format that is easily understood and digested, and (b) keeping the printing and mailing costs, a portion of which is ultimately borne by investors, to a minimum. The information that the Proposing Release would require to be included in the confirmation would, we believe, necessitate a less user-friendly, multi-page confirmation with dramatically higher mailing costs.

Although it is difficult to quantify the costs at this preliminary stage, we do know that the systems adjustments necessary to keep current and provide the required fund information on each confirmation, along with the supplemental printing and mailing costs, would be substantial. We suspect that other large broker-dealers will incur similar operational expenses. Some of these costs will be absorbed by the broker-dealer community, but the majority of these costs will undoubtedly be passed along to investors through higher brokerage fees. We would ask that the Commission carefully consider whether investors will view these increased costs as justified by the additional information that they will receive through the expanded confirmation envisioned by new Rule 15c2-2.

Finally, while the costs associated with the new point of sale disclosures are even more difficult to quantify, we anticipate that they will also be substantial. Like the confirmation process, the point of sale disclosures envisioned by the Commission would precede or accompany every purchase of mutual fund shares. Although the information required by Rule 15c2-3 is somewhat more generic than that the confirmation disclosures, it will still require separate transmission of extensive data to each client immediately prior to each mutual fund order. We expect that other large broker-dealers will incur similar expenses. Again, while some of these expenses will undoubtedly be absorbed by the broker-dealers, a substantial percentage will be passed along to their customers, thereby further increasing the costs associated with investing in mutual funds. The Commission should carefully weigh these economic burdens that would be imposed on investors against the perceived gain to investors from additional disclosure.

We believe that a more productive approach would be to move much of this proposed confirmation and point of sale disclosure information to the website of each broker-dealer. The confirmation could include a reference to such website, with instructions to clients to visit the website for information involving sales loads, revenue sharing, and other compensation items. We note that this website-based disclosure is the approach suggested by the National Association of Securities Dealers, Inc. (the "NASD") in its recently proposed amendments to NASD Rule 2830.

Comments on Specific Issues Raised in the Proposing Release

In addition to the general observations above, we have some more targeted comments on specific issues raised in the Proposing Release:

- Inclusion of banks and other mutual fund distribution channels. In several places in the Proposing Release, the Commission asks whether banks and other distribution channels for mutual funds should be included in the new confirmation and point of sale disclosure requirements. As discussed above, although we view many of the provisions of new Rules 15c2-2 and 15c2-3 as confusing and duplicative, we see no reason why banks and other entities that sell mutual fund, UIT and 529 Plan shares should not also have to comply with whatever confirmation and/or point of sale disclosure requirements the Commission eventually settles upon. We believe that investors who purchase mutual fund shares should receive the same level of disclosure no matter which distribution channel they select for purchasing those shares. Investors who use banks and other non-broker-dealer intermediaries are generally still subject to sales loads and should receive comparable disclosures about those loads. Similarly, banks and other intermediaries may receive revenue sharing and other sales-related payments that represent the same sorts of "conflicts of interest" that the Commission believes need to be disclosed to investors prior to or contemporaneously with purchase and sales activities.

- Difficulty of disclosing contingent deferred sales charges ("CDSCs") in an effective manner. We are concerned that the Commission may be underestimating the difficulty of disclosing sales load information, particularly CDSC information, in a way that is understandable and meaningful to investors. One of the reasons that the Commission originally permitted sales load information to be disclosed in the funds' prospectuses and statements of additional information ("SAIs") was that the amount of detail necessary to convey A, B and C share sales load information is very difficult to compress into a confirmation or point of sale document.

  To take a very simple example, consider the description necessary to explain to an investor how theoretical CDSC and Rule 12b-1 payments might combine over time for a $10,000 B share purchase. Depending on the length of time that a typical B share is held, an investor could pay varying back-end loads of between approximately 5% and 0% and 12b-1 payments of perhaps 1.00 % per

year until the conversion of the B share into an A share in year six or seven (at which time the CDSC disappears and the 12b-1 fees continue at a lower level). We believe that the extraordinary number of variations that are possible with any B share purchase make a concise summary of the estimated costs in the confirmation impossible and will result in very complicated disclosure that many, if not most, investors will find confusing.

- Revenue sharing information also difficult to disclose meaningfully. Similarly, we think that much of the information about revenue sharing that the Commission proposes be included in the confirmations and point of sale documents will provide investors with very little in the way of useful information. While we agree with the Commission that it may be relevant for an investor to know that its broker-dealer receives revenue sharing payments from some fund complexes and not from others, we also believe that the Commission should consider how this information could be most clearly presented to investors. For example, the gross amount of revenue sharing received from a fund company by a broker-dealer may not be as relevant as the percentage of the revenue sharing amounts that the broker-dealer receives from that fund company on a per share sold basis. Accordingly, we hope that the Commission will consider very carefully exactly what revenue sharing details would be most helpful to investors and limit the confirmation disclosures only to that information.

- Median and comparison ranges not particularly helpful to investors. Proposed Rule 15c2-2(e) purports to require disclosure of median and 95th percentile "comparison ranges" for a wide variety of the disclosure items covered by the Rule (*e.g.,* front-end sales loads, deferred sales loads, revenue sharing, and portfolio brokerage commissions). Frankly, we are not entirely certain what the Commission is trying to accomplish by requiring inclusion of this comparison range information. Many of these comparison numbers seem less relevant to the sales loads and commissions paid to broker-dealers (which are fairly constant with respect to, for example, the front-end sales charges of a Class A share of a particular fund offered by a particular fund family) and more of a comparison between the sales loads charged by the different fund families themselves. Put another way, this information seems unhelpful to investors trying to assess potential conflicts of interest, since there is a high likelihood that different broker-dealers selling the same mutual fund will be paid exactly the same commission. This information in reality permits investors to compare sales loads assessed by different funds and fund families, but that, we believe, is what prospectus and SAI disclosure is intended to address. In short, we do not see the relevance of this comparison information in the confirmation and believe that it will simply confuse investors.

- Application to advisory and brokerage programs involving discretion on the part of the intermediary. Finally, we are concerned about how proposed Rules 15c2-2 and 15c2-3 would apply in the context of advisory and brokerage programs in

which a financial intermediary has investment discretion. It would seem nonsensical to us to require the types of point of sale information envisioned by these Rules when clients have freely given investment discretion to their intermediaries, but we could find no exceptions for these types of programs in the Proposing Release. We would respectfully suggest that the Commission consider excepting such discretionary arrangements from coverage by the Rules.

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Thank you for the opportunity to offer our comments on proposed Rules 15c2-2 and 15c2-3. We wish that we could be more positive in our comments, but we believe that in many respects the disclosure regime outlined in the Proposing Release would be confusing to investors, disruptive to trading in mutual fund shares, and expensive to broker-dealers and their customers. We look forward to working with the Commission to develop other, more effective measures to provide mutual fund investors with the important information they need in connection with purchases and sales of mutual fund, UIT and 529 Plan shares.

Very truly yours,

Mark S. Shelton
General Counsel
UBS Financial Services Inc.