Via E-mail

April 4, 2005

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

Re: File No. S7-06-04: Reopened Comment Period and Supplemental Request for Comments on the Proposed 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:

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") appreciates the opportunity to comment on the supplemental request for comments[1] regarding the new rules and rule amendments that the Securities and Exchange Commission (the "SEC" or "Commission") has proposed with respect to rule 15c2-2, rule 15c2-3, and rule 10b-10 under the Securities Exchange Act of 1934 ("Exchange Act") and amendments to Form N-1A under the Securities Act of 1933 ("Securities Act") and the Investment Company Act of 1940 ("Investment Company Act").[2] The Commission has proposed, among other things, substantial changes to the transaction confirmation requirements and the creation of new "point of sale" disclosure requirements in connection with the sale of certain mutual fund shares (the "Initial Proposal" or the "Proposal").

As discussed in our comment letter to the Proposing Release, while we share the Commission's desire to provide greater transparency in connection with the purchase and sale of mutual fund shares, we believe that specific modifications to the Proposal will more effectively achieve the intended result of providing mutual fund investors with meaningful and actionable information. We believe that the modifications we recommend will be a more effective and a less costly way, in terms of both investors' time and costs, to achieve the desired objectives.

---

1 *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,* Release Nos. 33-8544; 34-51274; IC-26778 (March 1, 2005) ("Reopening Release").

2 *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*, Release Nos. 33-8358, 34-49148, IC-26341 (January 29, 2004) ("Proposing Release").

Further, due to the abbreviated comment period in the Reopening Release, we have been unable to fully respond to the specific requests from the Commission and must limit our comments to those more salient requests for supplemental comments and otherwise to a more general nature.

By way of background, Merrill Lynch is registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934, as amended (the "1934 Act"), and as an investment adviser under Section 203 of the Investment Advisers Act of 1940, as amended (the "Advisers Act"). In addition to offering Merrill Lynch proprietary funds, Merrill Lynch supports approximately 140 fund companies and currently offers approximately 12,250 individual mutual fund share classes on behalf of its customers. Merrill Lynch has approximately 11.7 million customer positions in retail brokerage accounts that are invested in mutual funds and serves approximately 6.2 million additional retirement plan participant positions that have mutual fund investments. In 2004, Merrill Lynch executed over 140 million mutual fund transactions (excluding money market transactions) for these customers. Currently, Merrill Lynch supports the transactions of over $300 billion in mutual fund assets. Merrill Lynch is also a major distributor of variable insurance products. In 2004, Merrill Lynch's sales of such insurance products were approximately $5.4 billion, with assets aggregating to approximately $42 billion. Merrill Lynch also distributes Section 529 plans. Merrill Lynch is the Program Manager for the NextGen College Investing Plan, sponsored by the state of Maine with over $3 billion in assets as of March 2005.

Merrill Lynch is a wholly owned subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."), one of the world's largest financial services firms. Its affiliates include Financial Data Services, Inc. ("FDS"), a registered transfer agent that serves as the transfer agent for Merrill Lynch's proprietary mutual funds, and Merrill Lynch Investment Managers ("MLIM"), the investment management unit of ML&Co.

I. ALTERNATIVE TO THE PROPOSAL

We have reviewed the recommendations provided by the NASD Mutual Fund Task Force as a complementing alternative to the Proposal.[3] This alternative embodies the use of a "Profile Plus" form made available via websites of firms selling mutual funds to investors. The Profile Plus form is designed to combine fee, expense, and conflict of interest disclosures together with meaningful investor information concerning the mutual fund, and is a desirable alternative to the Proposal. We strongly endorse the NASD Mutual Fund Task Force's proposal and support it as a viable and more cost-efficient alternative to the Proposal.

We believe the recommendations provided by the NASD Mutual Fund Task Force accomplish each of the objectives set out in the Proposal and closely align with our basic beliefs in providing investors with complete, accessible, and accurate product information prior to the order execution.

The NASD Mutual Fund Task Force tackled many difficult challenges in making its recommendation and has forged a recommendation that has clear definition and broad industry

[3] A senior manager of Merrill Lynch participated in the NASD's Mutual Fund Task Force.

commitment to timely implementation. Further, we believe that adoption of the Profile Plus alternative should be mandated by regulation for regulated firms selling mutual funds to investors and that the Commission work with other agencies with a common goal of ensuring that all intermediaries provide point of sale information to all investors.

Further, the NASD developed the Profile Plus form with the assistance of a research and consulting company and vetted the Profile Plus form with a broad group of investors. The Profile Plus has been well received by the investor community and is viewed as a significant enhancement.

II. THE COMMISSION SHOULD NOT REQUIRE PHYSICAL DELIVERY

We believe the NASD Mutual Fund Task Force has suggested a solution for mutual fund prospectus delivery that is creative and consistent with other models being supported by the Commission. Not only will the "access equals delivery" model improve efficiency, but the mutual fund investor will realize all of the benefits of the cost savings resulting from not needing to print and mail hard copy prospectuses.

As the NASD Mutual Fund Task Force has pointed out, Internet access today is widespread and investors welcome the ability to read and print documents and information as they wish. A great advantage of Internet access is the added ability for investors to quickly and conveniently compare the attributes of different mutual funds.

Moreover, delivery of mutual fund disclosure material and related prospectuses via the Internet would be a boon for investors as the timeliness of disclosure delivery and the comparability of mutual funds would be greatly enhanced. All those involved in the distribution of mutual funds - mutual fund complexes, transfer agents, broker-dealers, and investors – would benefit from the substantial reduction in paper requirements, mailing expenses, and, for investors in particular, the time required to obtain and identify meaningful information from disclosure documents. Internet delivery would enable investors far more than paper documents, allowing investors to scan and compare information they individually find important and print and retain such information as each desires. Still, investors who did not have Internet access or who want to receive paper disclosures and documents could still elect to do so. We believe that most investors would opt for Internet delivery of mutual fund disclosures and prospectuses and that the number of such investors will only grow over time.

We also believe that, with respect to the proposed point of sale disclosure document, there should be no need to require the physical delivery of a document reflecting the information discussed during a telephone conversation by an investor and his or her financial advisor.[4]

Any required point of sale disclosure must allow for oral delivery (e.g., as contemplated in the Proposal when there is a telephone communication between a customer and a financial advisor) and there should not be a requirement that any form or document be signed by the customer. We believe that such a requirement would be quite burdensome on both the investor

[4] We have used the term "financial advisor" throughout this letter to mean all individuals directly involved with public customers in the sale of mutual funds shares and other "covered securities", including registered representatives and those in similar positions even if currently exempt from registration.

and financial advisor with very limited compliance value. Further, by requiring that paper work supplement each discussion and matching such paper work with an executed transaction is dependent upon dated and inefficient processes, both internal to the industry and external to the industry.

III. ADDITIONAL COMMENTS

We remain committed to the belief that investor access to essential product information in making investment decisions is of paramount importance. This basic premise incorporates access to information in advance of the order, information that is easily accessible and comparable, information that is readily available, information that is accurate, and information that can be segmented based upon individual investor discretion as to the degree of importance.

We believe that our previous comments remain germane and we continue to voice our concerns that the costs associated with the Proposal – both the point of sale and the confirmation components - will be substantial and believe that the estimates of those costs are significantly understated in the Proposing Release. We note that the Reopening Release did not provide any cost estimates for implementation or cost estimates for continuing operations. Further, there were no projections as to when a solution could be reasonably implemented. Based upon our understanding of both the Proposing Release and the Reopening Release, we believe that the costs to implement and maintain such reporting infrastructures will increase significantly over that of the estimates we provided for the Initial Proposal.

We also believe that standardized conflicts of interest and/or relevant distribution-related expense disclosures would be more informative for prospective investors than select personalized expense disclosure. Such advance, standardized disclosures would allow investors to track and compare distributors on an apples-to-apples basis.

The Proposal's position that an order would only be an "indication of interest" pending receipt of the point of sale disclosure is inappropriate and will likely lead to unwarranted reneges of *bona fide* trades by forgetful or even dishonest investors, as well as become an avenue for aggressive short-term trading. We strongly urge that the "indication of interest" concept be removed from the Proposal. In addition, the time required and risks associated with each transaction will likely have the unintended consequence of prompting many investment professionals away from selling mutual fund shares and drive them toward other suitable products (including products that may not have all the potential benefits of mutual funds) with less burdensome requirements attendant to their sale.

A "safe harbor" should be adopted to address the possibilities of vexatious and/or frivolous law suits by investors who, simply disappointed by investment returns, seek to rescind a transaction because of a perceived lapse from what would be required by the Proposal.

All investors should be afforded the opportunity to "opt out" from being provided with the detailed disclosures at the point of sale, whether on an *ad hoc* basis or generally. Moreover, we are concerned that only frustration, confusion, and disappointment will likely result if customers are unable to execute mutual fund transactions in a prompt manner because they must be provided detailed point of sale information whenever they want to purchase or exchange

mutual fund shares, whether the customers want to be apprised of the information or not at that time. This will only be exacerbated during periods of market volatility and later in the trading day, when even reaching a financial advisor will likely be made more difficult by a rigid requirement to always provide lengthy disclosures to other investors.

Any rule adopted should also allow for a class of customers and for types of transactions to be exempt from the requirements of the point of sale proposal, including, (1) mutual fund investments by investment professionals with discretionary authority, (2) institutional investors [which should include all non-natural persons and those who would qualify as either Qualified Buyers or Accredited Investors or at least as set forth in Section 3(a)(54) of the Securities Exchange Act of 1934, as amended], (3) unsolicited orders, (4) money market mutual funds, (5) automated investment programs, and (6) subsequent purchases (including dividend reinvestments) of mutual funds already owned by an investor should be exempt from the point of sale disclosure requirements.

We firmly believe that the information provided should closely correlate with what is meaningful to the investor making an investment decision and the information should be provided in a medium that allows for thoughtful and reasoned analysis. We also firmly believe that Internet disclosures are the least costly for investors and investment professionals, and are efficient and effective. How and whether the Proposal would provide for this in other than unusual or atypical face-to-face situations is unclear. If the Commission chooses not to embrace the NASD Mutual Fund Task Force's proposal, we believe that the most effective way of delivering such diverse and complex information is (as described in our previous comment letter to the Proposing Release) via an investor disclosure document at the opening of an account and thereafter via the Internet.

We welcome the recognition of the likelihood of "information overload" by the Commission, but fear that its effects have not yet fully recognized or adequately addressed in the Reopening Release.[5] Our understanding of the Reopening Release includes expanding the product information, data, and pricing illustration alternatives to be distributed to an investor. The Reopening Release material still provides minimal capability for the client to filter the data into information the investor deems critical in making a sound investment decision.

We are concerned that significant elements within the Proposal will make it difficult and improbable to achieve accurate and comprehensive implementation in the near term, or for that matter, in an extended time horizon. The Proposing Release and Reopening Release have not addressed significant elements of implementation complications. These structural details, although tedious, are essential in establishing a foundation of the necessary conventions required to enact any plausible solution. Such elements include a clear definition of each contributing party's (investment company, distributor, insurance carrier, broker-dealer, transfer agent, and industry utility) obligations for data provisioning, data accuracy, data delivery media, and data timeliness. Without any clear definition of roles, responsibilities, and obligations,

---

[5] See, *e.g.*, remarks of John D. Hawke, Jr., Comptroller of the Currency, before the Independent Community Bankers of America, Orlando, Florida, March 4, 2003 at http://www.occ.treas.gov/ftp/release/2003-17a.pdf, in which, in connection with disclosures required in the consumer banking context, the Comptroller noted that the extensive albeit well-intentioned disclosures simply engendered "confusion or cynicism" among the recipient consumers.

implementation, unfortunately, may be an aspiration without an effective means of accomplishment. We believe there needs to be a clear demarcation of responsibilities in providing information between the manufacturing segment and the distribution segment. Each party must be able to rely on the other party to provide accurate information. We believe that the party originating the information must ensure its accuracy to the party receiving the information and that receiving party may rely upon such information in aggregating for future dissemination to the ultimate investor.

We continue to strongly believe that the Proposal should apply to all sellers of mutual fund shares, whether they are brokers, dealers, banks, distributors, mutual fund complexes, investment advisors, or otherwise. We believe that anyone assisting in a mutual fund transaction may have certain conflicts of interest that merit disclosure. Further, the expanded information to be disclosed are important to all investors and certain investors should not be deprived of that information. Anything less than uniform application of the rule would result in inequities among the firms that sell mutual funds, confusion among investors, and disadvantages to those underserved.

As stated earlier, the costs associated with obtaining and processing the data for the proposed confirmations for mutual funds will be substantial. We continue to question the utility of the data which will likely be sent in a packet along with prospectus for the mutual fund. We believe that web-based internet disclosures of more detailed data would be less expensive and more meaningful if made available via the Internet

We also believe that the Commission's confirmation proposal is too complicated and the required data's relationship to any specific transaction far too remote to be of use to investors. Confirmation disclosures should be brief and simple to understand. We believe that if the proper tools and disclosures are enacted at the point of sale, then many of the modifications to the confirmation process are redundant and unnecessary. Long and complicated confirmation documents will be a challenge for mutual fund sellers to develop and deliver and confusing for investors – another example of potential "information overload" for investors. As with the point of sale proposal, we believe that investors would be better served if standardized distributor-related disclosures and conflicts of interest information were made available to investors in a pamphlet written in plain English at or about the time of account opening and/or annually thereafter, as well as made available on the firm's website.

We strongly believe that section 529 plans and variable insurance products are so fundamentally different from mutual funds in general that they should not be considered "covered securities" in the Proposal but, if warranted, be addressed in separate proposals.

IV. CONCLUSION

As stated above, we share the Commission's desire to provide greater transparency in connection with the purchase and sale of mutual fund shares. However, we believe there are more effective and more efficient ways to achieve this than contemplated by the Commission, one of which is as we originally proposed in response to the Proposing Release and another is contained in the NASD Mutual Fund Task Force's proposal. We urge the Commission to consider these and other alternatives that are more effective and less burdensome.

Thank you for the opportunity to comment again on these proposed significant rule changes. We wish that there was more time to review, analyze, and comment on the specific requests contained in the Reopening Release.

Very truly yours,

William A. Bridy
First Vice President