April 4, 2005

Mr. Jonathan G. Katz
Secretary
Securities & Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

RE: File No. S7-06-04

Dear Mr. Katz:

On February 28, 2005, the Securities & Exchange Commission distributed for comment the above-referenced file, thus reopening the comment period on proposed rules that originally were distributed in January 2004. Briefly, the lengthy proposal seeks comments on the issues of point-of-sale and confirmation disclosure to investors on a group of "Covered Securities" which includes mutual funds, 529 college savings plans and variable insurance products. In addition to requesting comments on the process of disclosure, the Commission is also eliciting comments on specific forms created by the Commission to implement the process.

Before making any comments, allow me to briefly describe my background and the perspective from which I am approaching the issues at hand. Having started in this profession as a stockbroker with a large wirehouse over twenty years ago, I have spent much of my career in home office positions with two broker/dealers that can be best classified as being past of the independent contractor channel. Currently, I am President of Sunset Financial Services, Inc. (SFS), a retail broker/dealer with about 700 registered representatives and the distributor of the Century II variable insurance products issued by Kansas City Life Insurance Company. So, my comments will reflect personal opinion on the impact of the proposed rules from these distinct perspectives.

Considering that the comment period for such an incredibly lengthy and comprehensive series of rules changes is short, my perception and concern is that the "die has already been cast." While I imagine that all industry participants, including myself, staunchly agree with the premise of full disclosure, I **do not** agree with the overall implementation of this goal as expressed both in the Proposing Release and in the Subsequent Release. My primary concerns are as follows, assuming that the proposal is implanted as currently designed:

1. **Anti-competitive**: Among the Covered Securities, SFS currently makes available to investors via our Registered Reps. mutual funds issued by more

than 60 fund families (or complexes), variable products from almost 50 companies and twenty-five (25) 529 college savings plans. Philosophically, the firm operates an "open platform" approach predicated upon allowing access to as many products and services that pass the firm's the firm's due diligence process. The firm itself does not "institutionally" push any product or product type, but allows each independent contractor rep to determine the optimum products to offer their clientele based on their particular market, using the variables that they deem most important.

If broker/dealers are required to create a point-of-sale (POS) document for every share class of every fund offered, along with simultaneous web disclosure, then the firm will have no choice but to severally limit product availability. More than likely, the firm would be forced to select 6 to 10 fund families to offer clients and the selection process would focus upon those complexes that would be willing to subsidize the tremendous increase in costs borne by the B/D to adhere to these pervasive new rules. Most likely, the 6 to 10 finalists would be the larger firms that have strategically decided to assist the broker/dealers and that want to control the output. On a macro level, hypothetically many fund families could be forced out of business if all B/Ds take this approach of limiting the size of their shelf space. Additionally, those manufacturers that make this strategic decision would then pass along these incremental (and duplicative) costs to the shareholder, thus making these products **more** expensive to the investor. This same scenario would play out with the other Covered Securities.

On a micro basis, the proposed rules could also have the unintended effect of limiting the diversification of any given portfolio, an idea that flies in the face of Modern Portfolio Theory and best practices of investment management. Because of the inundation of paperwork, both practitioners and investors may opt for a "path of least resistance" when it comes to point-of-sale, meaning a decision to discuss two ideas instead of, possibly, five ideas that would diversify the portfolio more appropriately.

2. **Prohibitively expensive:** Following on an earlier comment, personal "best efforts" assessment of the cost for SFS to comply with this current proposal would be an increase in corporate costs anywhere from 50% to 100% of the budget for the year 2005. There would obviously be huge development costs for all three key areas, i.e. POS, confirms, website, but the firm would also be required to employ increased levels of permanent, and professional, staff to monitor adherence to the regulations and to determine timely accuracy of the information.

Currently, our firm does not send confirmations to clients. In this sense, the firm operates strictly as a broker, because all Covered Securities sales not transacted through the clearing firm are made in a "check and application" format that are sent to fund complex and/or insurance company. These

product “manufacturers” then send the required information to the investor in confirmation format. Alternatively, a small percentage of our Covered Securities sales is transacted through our clearing firm, who in turn sends a confirmation of the transaction to the address of record. If our broker/dealer is required to send an **additional** confirmation to a client, with much of the information duplicating that of the issuer, then SFS will be expanding a tremendous amount of money to install a system, which contradicts the claim made in the Release that this endeavor would not warrant a large expense.

Why are we having to duplicate information that is already being sent and/or would be available either via the prospectus, a website or POS document? Envisioning these large impending outlays of resources also conjures up the image of having to close the firm’s doors.

3. **Liability:** Since the Commission has apparently decided that the burden of disclosure falls in the broker/dealer world, is there a “safe harbor” from civil litigation? The question is a natural one, because if the firms and their representatives are being asked to provide information on a “second-hand” basis, then mistakes in execution will undoubtedly be made. For instance, changes in expenses might be made at the manufacturer level which would not necessarily be immediately communicated to the registered representative; or, alternatively, the RR could make a calculation in mistake in determining client costs. Will there be protection from litigation, penalties, fines, etc. for situations where firms and their reps simply make mistakes and do not manipulate information and/or the requisite forms.

4. **Information Overload:** My first reaction after reading the proposal was that the point-of-sale interaction between investor (s) and RR will mirror the closing or re-financing of a house. The various parties involved in closing on a house **DO NOT** read the mountain of paperwork that is required to effect the transaction. Is not the underlying purpose here to clarify important concerns that some investors have? Aren’t we attempting to give clients easier information as opposed to more of the same?

These comments primarily refer to the expense and cost segment of the various disclosure documents in the proposal, information that is readily available, and fairly understandable, in the prospectus of each Covered Security. On the other hand, the prospectus only delves into potential “conflicts of interest” in generalities, since each distribution scenario can differ and can change between printings. The conflict of interest information needs to be conveyed to investors in a transparent manner, but my preference is to show the appropriate information through a broker/dealer website as the primary medium, as opposed to paper, allowing for the opportunity to request paper from the firm. By using a website as the primary vehicle, it would be unnecessary to include this information on a confirmation, since the

information is “ever-present” and it has already been communicated to the investor at point-of-sale.

Recently, I attended an event where senior executives from the NASD addressed a group of investors who were invited to a forum moderated by our local Congressman. When a comment was made regarding a need to move information to the web and minimize the flood of paperwork that investors need to sign and/or read, heads around my table were bobbing in agreement…and the majority of attendees were senior citizens.

5. **Investor and Advisor Flight:** Human nature being what it is, the tendency for centuries has been to avoid areas of over-regulation and search for alternatives where regulation is either manageable or non-existent. My fear is that with a dramatic increase in paperwork, both registered reps and clients will start to look elsewhere to fulfill their needs, which in many cases may mean products that are much riskier and questionable in terms of suitability.

   As for practitioners of the trade, my opinion is that, similar to the medical industry, many of the best and brightest will leave this part of the industry to pursue careers in areas that are less regulated, or they will leave the industry entirely.

6. **Misleading:** The complete focus of this proposal and the various forms solely on costs, expenses and conflicts of interest may mistakenly lead investors to believe that these are the only variables that should go into considering what investments to make when they have needs. What about other variables, such as risks, investment style, historical performance of the particular fund or asset class, to mention a few. Yes, direct product costs and potential conflicts of interest are important considerations in making decisions, but they are not the only ones and they are not necessarily the most important ones. Suitability does not equal cost!

7. **Suggestions:** My gracious appreciation to the Commission to allow public comment on these important issues, and I realize that my comments did not follow the requests made in the proposal. I simply did not have enough time to evaluate each and every item discussed because, frankly, the project was too massive. Instead, I felt that these comments made above are “big picture” issue that truly should be considered before tremendous damage is made to this wonderful industry. While many ideas expressed in the proposal have merit, the general focus is off the mark.

   My main suggestion concerns the idea of formulating a task force of both industry participants and investors to engage in a wholesale analysis of the various foundational Acts of this business, the first of which was ratified **over 70 years ago**. Perhaps, we are experiencing an issue of “different time, different needs”; but, instead of loading on the industry, and the investor, with

more regulations, additional costs and less clarity, why don't we try to modify the regulations that we currently have to make them more timely for today's investor. For instance, why not create a cover page for the prospectus that mirrors the point-of-sale form created for this proposal with the appropriate expense information clearly identified; if the client needs additional information, then they can look inside the prospectus. In our shop, a prospectus is always given to a prospective client when a specific product is discussed, so in this case, the pertinent data would be given prior to point-of-sale which means that the client has the information to evaluate before buying. As a follow-up, a website could then be provided to the prospect in order to fill in any conflict of interest "blanks" which would help the investor determine the motivation for the advice given.

Once again, thank you for the opportunity to comment.

Best regards,

Gregory E. Smith, CFA
President
Sunset Financial Services, Inc.