

**VIA ELECTRONIC MAIL**

April 4, 2005

Mr. 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 Secretary Katz:

The Financial Planning Association (“FPA®”)<sup>1</sup> commends the Commission for its proposal to enhance the information broker-dealers provide to their customers, at both the point of sale and in transaction confirmations, regarding the costs and conflicts of interest that arise from distribution of mutual fund shares, 529 college savings plan interests, and variable insurance products (collectively, “covered securities”). We welcome this opportunity to offer the following comments.

**Role of Financial Planners**

Making recommendations to clients – or assisting clients in their own research – concerning the selection of suitable investments from the more than 15,000 mutual funds currently available constitutes a significant part of the professional services offered by financial planners represented by FPA. In order to create investment portfolios that assist clients in reaching their personal and financial goals, this intermediary function between mutual fund companies and the investing public requires that financial planners have access to timely and accurate information.

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<sup>1</sup> The Financial Planning Association is the largest association in the United States representing financial planners and affiliated firms, with approximately 28,000 individual members. Most are affiliated with investment adviser firms registered with the Securities and Exchange Commission (“SEC” or “Commission”), state securities administrators, or both. FPA is incorporated and maintains an advocacy office in Washington, D.C. and its administrative headquarters in Denver.

In this regard, we note that registered investment advisers -- unlike broker-dealers who are subject to a lower “suitability” standard -- are subject to disclosure and fiduciary standards under the Investment Advisers Act of 1940. We note further that FPA members are subject to the professional standards of the CFP Board *Code of Ethics and Professional Responsibility* (“Code” or “Code of Ethics”).<sup>2</sup>

Full disclosure is a critical expression of FPA’s core values. The enhanced disclosure under consideration by the SEC would greatly assist financial planners in evaluating fund options for their clients and in satisfying the general requirements of Rule 704 of the *Code of Ethics*, which requires “reasonable investigation regarding the financial products recommended to clients.” Similarly, it would assist FPA members in complying with Rule 201 of the *Code*, which requires them to “exercise reasonable and prudent judgement in providing professional services.”

### Point of Sale Proposal

Proposed rule 15c2-3 would improve investment decision-making by providing investors at the point of sale with information about costs and conflicts of interests associated with purchases of covered securities. We applaud the Commission’s revisions to its original proposal that would require the disclosure of “management fees” and “other expenses” of the covered security and that would also address the use of oral point of sale disclosures, the timing of delivery of point of sale disclosures, exceptions to the requirement to deliver point of sale disclosures, and special issues related to variable insurance products.

#### - Content and Format of Proposed Point of Sale Disclosure

FPA commends the Commission for its use of in-depth investor interviews and focus group testing in developing the revised forms that broker-dealers would be required to deliver before a customer purchases a covered security and for using plain English in the forms rather than industry jargon.

Consistent with investors’ views that disclosure should be targeted, broker-dealers would not be required to use a “one size fits all” form, but would instead be required to disclose specific categories of information in a required format to the extent those categories are applicable. We believe that this approach strikes a reasonable balance between providing useful information and standardization and that it would limit “information overload” that can undercut the effectiveness of disclosure.

We are especially gratified that the Commission would require dollar-based point of sale disclosure that includes information about fund management fees and other non-distribution costs. While such disclosure is hypothetical (because these costs vary over time), it will allow customers to make better investment decisions.

Under the Commission’s proposal, costs associated with investments would be shown using standardized \$1,000, \$50,000 and \$100,000 amounts. If requested by customers, broker-dealers would also be required to use “fill in the blank” boxes to disclose cost information specific to the anticipated amount of their purchase. Again, FPA believes that this dual approach strikes a reasonable balance between the use of standardized disclosure and the ability for interested investors to receive more personalized information.

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<sup>2</sup> Rules 401, 402, 403 and 404 of the CFP Board *Code of Ethics and Professional Responsibility* all address disclosure. FPA members are also obligated to “act in the interest of the client” under Rule 202 of the *Code*.

#### - Sales Fee Disclosure

Based on the standardized payment (or investment) amounts, broker-dealers would be required to disclose on the forms sales fees in dollars and as a percentage of the amount invested. Broker-dealers would also be required to disclose the back-end sales fee on the form as a maximum, reflecting the highest back-end fee a customer could pay if the investment did not appreciate or depreciate. Finally, broker-dealers would be required to disclose a brief statement about the availability of breakpoint discounts (referred to on the forms as “volume discounts”). These disclosures will significantly enhance the ability of customers to make sound investment decisions.

#### - Annual Cost Disclosure

The Commission has revised its original proposal and would require broker-dealers to disclose information about all the costs associated with the investment, including mutual fund “management fees” and “other expenses” that are disclosed in the prospectus. The disclosure of these costs, broken down by category, would be made in both dollar terms and as a percentage of the investment amount. FPA commends the Commission for including these new disclosure requirements in the Proposed Rule.

#### - Revenue Sharing and Special Incentives Disclosure

Broker-dealers would be required to disclose as a conflict of interest the existence of revenue sharing payments they receive for promoting mutual funds. Although they would not be required to disclose the amounts or sources of these payments on the point of sale disclosure forms, they would be required to disclose a website and toll-free telephone number customers can use to get this information. If broker-dealers offer their sales personnel differential compensation for selling certain mutual funds or share classes than others, broker-dealers would also have to disclose this fact and where customers could find more detailed information.

While we share concerns about the imposition of excessive or impractical burdens, FPA believes that the Commission should also consider the feasibility of requiring disclosure about revenue sharing payments and special incentives received by the broker-dealer on the point of sale disclosure forms.

#### - 529 Savings Plans

For 529 savings plans, broker-dealers would be required to include disclosure of any age-based or other portfolio within the plan and the name of the state that sponsors the plan. FPA applauds the Commission for also requiring brief text reminding customers to consider the potential tax benefits of investing in the plan of their home state.

#### - Variable Annuities and Life Insurance

The Commission has proposed use of disclosure form tailored to reflect the unique features of variable annuities and variable life insurance products. Among other things, it would require disclosure of associated insurance-related costs, and would alert investors to the existence of the “free look” right available to them under state law. We believe that the Commission’s approach would enhance investor understanding of these products and that it is both reasonable and appropriate.

#### - Oral Disclosure of Point of Sale Information

FPA has grave concerns about the Commission's proposed requirement that would allow point of sale information to be disclosed orally when the point of sale occurs over the telephone as opposed to an in-person meeting. Oral disclosure would not give customers a meaningful opportunity to consider the disclosed information in their investment decisions. It would also make it extraordinarily difficult to monitor compliance. We urge the Commission to re-consider its proposal and require broker-dealers to provide written point of sale disclosure following an oral recommendation if the investor expresses interest in following up on the recommendation.

#### -Timing of Point of Sale Disclosure

We note with concern that the proposed rule would require disclosure "immediately prior" to acceptance of the order. Only in circumstances where the broker-dealer could solicit transactions without opening customer accounts or handling customer orders, would the Commission require delivery of the disclosures upon initial communication with a customer.

FPA believes that investors must have sufficient time to consider the information that would be provided in the point of sale disclosures in making their investment decisions. Accordingly, we urge the Commission to adopt a time-of-recommendation trigger to the disclosure timing requirement.

#### Confirmation Proposal

The proposed confirmation disclosure form would include general transaction information (*e.g.*, price and net asset value) plus purchase-specific information about distribution costs, broker-dealer compensation, differential compensation, and breakpoint discounts. It would also require information about the potential amount of any asset-based sales charges and service fees that would be incurred by the issuer of the covered security in connection with the purchased shares or units.

FPA believes that the Commission should retain the provisions of its original proposal that would require confirmation disclosure of the amount of dealer concessions earned by the broker-dealer in connection with the transaction, as well as information about revenue sharing and portfolio commissions that a broker-dealer or its affiliates receive from persons within the fund complex. Consistent with the comments above, FPA believes that this disclosure should also include information about ownership costs, beyond distribution costs, including fund management fees and other expenses.

FPA would be pleased to provide any additional information requested by the Commission. Please do not hesitate to contact the undersigned at 202-626-8558 or [neil.simon@fpanet.org](mailto:neil.simon@fpanet.org).

Sincerely,

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Director of Government Relations