

Jonathon G. Katz, Secretary  
Securities and Exchange Commission  
450 Fifth St., NW  
Washington, D.C. 20549-0609

RE: Release Nos. 33-8358; 39-49148; File No. 57-06-04.

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  
File No.: S7-06-04  
Release Nos.: 34-49148; IC-26341

Dear Mr. Katz:

I have served as a consultant in plain language to the Securities and Exchange Commission, and I have worked with a number of corporations and mutual fund companies to revise their documents into plain language. I have also written extensively on plain language and clear communication.

I believe the SEC's proposal is an important step in the right direction. Providing this information will help investors determine the full cost of an investment. Both point of sale and confirmation of sale disclosure will certainly go far in revealing to investors just what they're paying in fees for a particular investment. However, I think the proposal, as good as it is, doesn't go far enough, and what it does propose doesn't help investors as much as it could or should.

### **Data versus information**

Right now investors face many problems in trying to figure out how much it will cost them to buy, hold, and sell shares in a mutual fund. First, they are overwhelmed with data, all kinds of data. Please note that I say "data" not "information." "Data" consists of all the numbers, facts, and statements that fill the prospectus and the statement of additional information. Not only is there a flood of data, but it's located in two places. So, assuming intrepid investors have carefully read the prospectus, and have even managed the Herculean task of reading the statement of additional information, just what have the investors learned? Who knows, because both documents offer "data" not "information."

Data is not information. Information is that which leads to understanding. In other words, data must be transformed into information. And who has the responsibility of performing that transformation? I would argue that the responsibility lies not with investors but with those who would sell investments such as mutual fund shares to investors. It is the responsibility of the seller to provide investors with information, not data.

### **Use information design to create forms**

Transforming data into information is the function of information design. Professionals in information design deal with designing everything from web sites to the instrument panels in civilian and military airplanes. They also design documents that communicate information. Indeed, in 1984 one entire issue of *Information Design Journal*, the international publication of

professional information designers, was devoted to “The Design of Forms and Official Information.” The editors of the journal said that this issue focused on the one question that concerned all citizens: how can complex organizations communicate with the public. Information designers have been working for over 20 years on the problems of designing documents that communicate complex information clearly. It would seem prudent, therefore, to use the skills of information designers when confronted with the challenge the SEC faces in designing its proposed set of disclosure forms.

Document design uses a variety of tools – from plain language to the best type face – to create a document that gives readers the information they need, and gives it to them simply, quickly, clearly, efficiently. Information design transforms data into information that readers can use. With information design, sellers can design disclosure documents that give investors not data but information.

### **Use usability testing to refine forms**

To insure that the forms they create do indeed communicate clearly and effectively, document designers evaluate their designs not theoretically but practically. They see how well the forms work when people use them. The procedure they use is called usability testing, and it’s a well established methodology that produces documents that meet the needs of those who use them. When joined with information design, usability testing produces documents that communicate, in every sense of that word. Data not only becomes information, it becomes information that people can use quickly, easily, and with a minimum of errors or misunderstanding.

Through usability testing, document designers discover what people want to know, and what they need to know in order to accomplish a specified task. Usability testing can help the SEC learn what information, if any, to leave out of the document because investors find it unnecessary, as well as learning what information investors want included. And I would like to stress that usability testing is a professional field, with proper procedures, standards, and protocols. (See, for example, Carol M. Barnum, *Usability Testing and Research*, Longman, 2002; Joseph Dumas and Janice Redish, *A Practical Guide to Usability Testing*, Ablex, 1993; Jeffrey Rubin, *Handbook of Usability Testing*, Wiley, 1994) Document design and usability testing can produce disclosure documents that mean investors would not have to root about the endless pages of dense, jargon filled prose of the statement of additional information. Nor would they have to piece together the information they need from the data scattered throughout the prospectus.

### **Problems with the proposed forms**

I am sure that usability testing would quickly reveal a fundamental problem with the SEC’s proposed disclosure forms: all the forms present disclosure from the point of view of the seller, not the buyer. The proposed forms are designed to insure that the broker conforms to the new rules about disclosure. They are not designed to communicate the information investors want and need to make informed decisions. Indeed, at this point no one, neither the SEC, I, nor anyone else, knows what investors want to know because as far as I know no one has asked them in a systematic, controlled way designed to elicit accurate, reliable information.

Now investors have to assemble data from the prospectus and the statement of additional information. While the new forms proposed by the SEC will ideally present the most important

cost data gathered from these two documents, we must remember that we are adding another document to the hierarchy of data for investors. These new forms should not replace the prospectus or the statement of additional information but should be designed to function as part of this hierarchy. The new forms should present in summary format the essential information about costs based on the statement of additional information and the prospectus, both of which should continue to be available to those investors who want to consult them. But the addition of these summary forms does not address the question of what information should be communicated to investors that it not now available.

To be sure, the SEC's call for comments on its proposed rules has elicited many comments, but these are from those people who just happened to learn about the proposed rules. These comments will certainly be helpful, but this procedure does not systematically engage investors in seeking to discover what they want to know. Document design and usability testing is a more effective, accurate, and reliable way to find out if these rules and the proposed disclosure forms will provide the information that investors need, what information investors want, what kind of forms will best communicate that information, and the best way to present the information so investors can use it.

### **What investors might want to know**

Generally speaking, I think investors want to know what I, as an investor, want to know:

1. what will it cost me to make this investment;
2. what will it cost me while I own it;
3. what will it cost me to sell it; and
4. are there alternatives that are better and cheaper for me?

These are the money issues, and it shouldn't be difficult to provide this information to investors. However, as *The Wall Street Journal* (March 17, 2004) pointed out, mutual fund investors may be paying significant transaction costs while they hold their shares, and they probably don't know they're paying them. These costs are difficult to locate because, in the words of the *Journal*, they're "buried." The SEC has discussed these hidden costs in its concept release number 33-4389 (December 19, 2003) "Request for Comments on Measures to Improve Disclosure of Mutual fund Transaction Costs." In this release, the SEC identifies the transaction costs of commissions, spread, market impact, and opportunity. While estimates of the magnitude of these costs vary, it is clear from the studies cited by the SEC that these transaction costs can add up to a significant expense, an expense which occurs yearly. These costs can substantially affect the rate of return for long term investors, as the *Journal* article dramatically illustrates in its hypothetical examples. Yet most of these costs are not revealed in any currently available documents for investors.

### **Proposed forms don't reveal all costs**

And this leads to another problem with the SEC's proposed disclosure forms. As presented, these forms imply that investors are being told of all the costs they're paying. Since the present proposal makes no provision for revealing these hidden costs in any disclosure form, investors are not informed of all the costs they're paying over the term of the investment. If these transaction costs are not included in the disclosure form, investors should be told that the

expenses as listed on the form do not include transactions costs over the life of the investment, and these costs may significantly affect the return on their investment.

### **Revised forms**

I am submitting with my statement sample revisions of the proposed disclosure form for a confirmation of a hypothetical purchase of a class A share and the proposed form for point of sale disclosure for a class share purchase (Attachments 1 and 4 to SEC Release No. 33-8358, January 29, 2004). These redesigned forms are the result of a term effort that included me, Nancy Smith (who previously served as Director of the SEC Office of Investor Education and Assistance) and the design team of Dan Koh, Trevor Eld, and Friederike Bothe of The Corporate Agenda, a document design firm in New York. I must stress that these are not a final copies because we didn't have time to conduct usability testing to refine them. We addressed what we saw as the design deficiencies in the proposed forms, and we've tried to produce documents where investors can see in one place all the information that is currently available. And we have tried to design forms that communicate quickly, clearly, efficiently using both plain language and good document design.

In our forms we tried to include all the data we thought important for investors and we tried to turn it into information that the investor can use. Since we did not have the opportunity to conduct usability testing on the forms, we don't know what information isn't included in our forms that investors would want included, nor do we know if investors would find unnecessary any of the information we've included. We did try to make the information clear, simple, and accessible. Among other techniques, we use serif type face, a readable type size, lots of white space, plain language and no jargon, and we defined in context any terms we thought needed to be defined. We simply eliminated the full page of definitions included with the proposed forms because it's been our experience that no one will read these definitions, let alone understand any of them. If a technical term is necessary in the disclosure form then it should be defined in the context in which it is used, but we found we could avoid technical language and still be clear and accurate. In short, we followed many of the principles of information design and plain language, principles that are listed and explained in the SEC's own publication, *A Plain English Handbook: How to create clear SEC disclosure documents*, which the SEC published in 1998 under the aegis of Nancy Smith and which I helped write.

### **Important to use document design and usability testing**

Let me repeat that I think the SEC's proposed disclosure rules are extremely important in improving disclosure to investors. But let me also repeat and emphasize that as proposed the disclosure forms simply aren't up to what should be the SEC's standards for clear and effective financial disclosure documents. I have suggested here what can and should be done to make these forms really disclose information in a way that investors can use. I have also included a sample to suggest ways in which the SEC can improve its proposed forms.

Finally, I would like to urge that given the importance of clear, effective communication in financial disclosure documents the SEC should incorporate document design and usability testing into its regular procedures for producing all such documents. Many federal agencies have already made extensive use of usability testing and document design to produce forms and documents, among them the Food and Drug Administration, Federal Trade Commission,

National Institutes of Health, Internal Revenue Service, Veterans Benefits Administration, Federal Aviation Administration, and the Department of Housing and Urban Development.

The SEC must do more than just give investors new and better information. It must give investors this information in a form and format that really communicates and doesn't simply present numbers. Document design is just as important as any other consideration when creating a financial disclosure document. I believe the SEC has done and continues to do an excellent job in providing American investors with access to more financial data than investors in just about any country in the world. Now the SEC needs to take the next step to ensure that this data is transformed into information that investors can use. We must always remember that disclosure isn't disclosure if it doesn't communicate.

Sincerely,

William Lutz, Ph.D., J.D.  
Professor of English  
Rutgers University

# Confirmation of Your Transaction

**Check this confirmation carefully.**

It covers your purchase price, fees, and whether your broker or brokerage firm received extra payments to sell you this security.

Prepared for  
**William Lutz**  
**104 North Second Street #103**  
**Philadelphia, PA**

Account number  
**1234-4556**

Date of transaction  
**Jan 01, 2004**

Prepared by  
**Acme Clearing, Inc.**

Brokerage firm  
**XX Brokerage**

## Details of your transaction

Amount you paid to buy <b>\$ 8,000.00</b>	Amount paid to buy per share <b>\$18.93</b>	Type of security <b>Mutual Fund</b>
Amount you invested in fund <b>\$ 7,580.00</b>	Amount invested per share (Net Asset Value or NAV) <b>\$17.94</b>	Security Issuer <b>BBB Equity</b>
Difference <b>\$ 420.00</b>	Number of shares bought <b>422.610</b>	Symbol <b>FGBHJ</b>
	CUSIP number <b>000000</b>	Class of shares <b>A</b>
	Type of transaction <b>Buy</b>	

Total fees you pay to buy and own this fund...	after 1 year	after 2 years	after 5 years	after 10 years
<b>Total fees you will have paid</b> to buy and own this fund assuming the fund increases in value by 5% a year and the fees identified below remain the same throughout the years.	<b>\$ 513.92</b>	<b>\$ 712.48</b>	<b>\$ 926.26</b>	<b>\$ 1,535.16</b>
Fund value after subtracting fees	\$ 7,865.08	\$ 8,467.82	\$ 9,116.75	\$ 10,965.05
<b>Total fees as a percentage of your investment</b>	<b>6.53%</b>	<b>8.41%</b>	<b>10.16%</b>	<b>14%</b>
<b>Similar funds charge</b>	<b>0.29% to 6.9%</b> \$ 25 to \$ 580	<b>0.94% to 8.94%</b> \$ 80 to \$ 757	<b>1.61% to 11.08%</b> \$ 147 to \$ 1,010	<b>2.75% to 14.59%</b> \$ 302 to \$ 1,600
<b>Where these fees go</b>				
Fees paid to broker/brokerage firm	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00
Fees paid to the fund	\$ 113.92	\$ 312.48	\$ 526.26	\$ 1,135.15

On the next page you will find a breakdown of your total fees.

## Facts you should know about conflicts of interest

*Can I transfer my shares in this fund to another brokerage account?*

**No.** You can hold these shares only in this brokerage account. If you want to close this account, you will have to sell your shares.

*Does my broker get paid more to sell me this fund?*

**Yes.** Your broker is paid more because you bought a fund offered by a company affiliated with XX Brokerage rather than another fund that may be better for you.

*Has the fund made other payments to my broker or XX Brokerage to sell me this fund?*

**Yes.** The fund paid your broker and XX Brokerage and additional \$X for selling you the fund. The fund will also make extra payments of \$X to them for each year that you own your shares in the fund.

The payment as a percentage of your investment: X%  
Similar funds pay: X% to X%

*Does the fund or its affiliates use XX Brokerage to execute trades?*

**Yes.** XX Brokerage receives trading business from the fund which may provide an incentive for your broker to sell you this fund instead of another fund.

## Breakdown of fees for the first year you own it

### What type of fees you pay

### Who gets the fees and why

### Compare these fees to what other people pay for similar shares

#### To Buy

The amount you paid to buy these shares (called a front-end sales load). This is a one time fee that will not recur.

**\$ 400.00** goes to your broker and the brokerage firm for advising you to buy it.

#### The fee as a percentage

of your investment: **4.18%**  
Similar funds cost: **1.45% to 4.56%**

**\$ 00.00** goes to the fund for X.

#### To Own

Here's what you are likely to pay to your broker, the brokerage firm, or the fund to own these shares. The fund will automatically deduct these fees from your shares, so you will not receive a separate bill.

#### Brokerage commissions

**\$ 45.36** goes to pay for the portfolio manager's trading commissions.

#### The fee as a percentage

of your investment: **X%**  
Similar funds cost: **X% to X%**

#### Other trading costs

**\$ 53.25** goes to pay for other trading costs of the portfolio manager.

#### The fee as a percentage

of your investment: **X%**  
Similar funds cost: **X% to X%**

You will pay these fees annually for as long as you own these shares. These fees will go up as the value of your investment increases.

#### Service fees (12b-1)

**\$ 19.20** goes to your brokerage firm for keeping account records of your fund investment.

#### The fee as a percentage

of your investment: **X%**  
Similar funds cost: **X% to X%**

#### Other expenses

**\$ XX** goes to X for X.

#### The fee as a percentage

of your investment: **X%**  
Similar funds cost: **X% to X%**

#### Total fees for first year

**\$ 513.92**

## Save on large purchases – did you get the discount you deserve?

If you or your family members buy a large number of mutual fund shares, you may be entitled to a reduction in your purchase price. Make sure you discuss with your broker if and when you are entitled to a discount. The fund's prospectus and its Web site also have information on how discounts work.

**The records we have on your holdings, and any family holdings we know of, show that you should pay a sales load of 4.17%.**

**You were charged a sales load of 4.18% because rounding to the nearest penny caused the percentage to increase.**

# Consider these fees before you decide to buy

## Ask before you buy!

Your broker is required to tell you about all the fees you'll pay to buy, own, and sell this fund before you decide to invest in it. Your broker must also tell you if he and Acme Brokerage get extra payments to sell you this fund instead of similar funds that may be less expensive.

## Ask about sales fees!

Sometimes, if a mutual fund doesn't charge a sales fee when you buy its shares (called a front-end sales load), it charges you high fees while you hold the shares, making them more expensive if you're a long-term investor. Also, a fund may offer discounts on its sales fees if you invest over a certain amount. Ask your broker to tell you about any discounts to which you might be entitled.

## The investment you are considering...

Name	Security you are considering
<b>John Doe</b>	<b>BBB Equity Fund, Class A shares</b>
Account number	Amount you may buy
<b>1222-3456</b>	<b>\$8,000.00</b>
Date of transaction	
<b>Jan 01, 2005</b>	

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