

April 12, 2004

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

**Re: File No. S7-06-04**

Dear Secretary Katz,

DALBAR appreciates the opportunity to submit comments regarding the SEC's proposed rule regarding confirmation and point of sale disclosure requirements for mutual fund transactions.

DALBAR fully supports the Commissions' objective - to give investors fully understandable and transparent disclosure of the costs and conflicts of interest associated with their investments, so they can make informed investment decisions.

This letter focuses on the Commission's proposed confirmation design, with the goal of ensuring that the new confirmation effectively meets the objective established by the Commission. We have focused on the confirmation as it is:

- A highly read document
- The document that publicly and ultimately implements the proposed regulation

DALBAR has over 20 years of experience measuring the effectiveness and efficiency of financial service communications and defining the content and design elements required to meet objectives for financial service communications.

DALBAR has applied its measurement systems and expertise in financial service communications to the Commissions' proposed confirmation. We have evaluated the document according to standards for effectiveness and efficiency. The results of the evaluation highlight:

- Significant barriers to achieving the intended objective, and
- Significant unintended consequences after implementation

The barriers to achieving the intended consequences are the proposed confirmations' misalignment with Congress' and the Commissions' mandate on improving the effectiveness of financial service communications, that is, requiring that they be "calculated to be understood" by average investors.

The resulting unintended consequences include:

- Unmeasured but significant costs for distributors of adopting the proposed confirmation.
- Increase in costs that will be borne by consumers.

Specific elements of the proposed confirmation that are NOT “calculated to be understood”, include:

- The language used on the confirmation renders disclosure of costs and conflict of interest incomprehensible to average investors. Investors are confused by terms that have been common to the industry for more than 50 years, such as “loads,” and “NAV.” The vast majority of mutual fund investors are unfamiliar with these terms as well as concepts such as “revenue sharing,” “portfolio brokerage commissions,” “asset-based sales charges”. Investors who are confused, or even panicked, are more likely to make imprudent or irrational decisions.
- Investors seldom read information on the reverse side of the confirmation and avoid areas of dense text.<sup>1</sup> By both of these measures, the definitions provided on the back of the proposed confirmation will be missed or ignored.
- Documentation that the transaction was executed is the most critical element of the confirmation.<sup>2</sup> This content is de-emphasized at the expense of prioritizing costs and conflicts of interest.
- Investors are highly interested in the cost associated with their holdings and expect this to be documented.<sup>3</sup> However, their expectation is unmet when they do not understand the presentation.

The confusion and questions caused by the proposed confirmation will result in undesirable investor behavior, including:

- Confused and panicked calls to call centers
- Confused and panicked calls to advisors
- Increase in rescission as investors misunderstand what they pay vs. payment the broker/dealer receives from the fund or affiliates

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<sup>1</sup> Based on DALBAR’s “Consumer Demand for Mutual Fund Transaction Confirmations”

<sup>2</sup> Based on DALBAR’s “Consumer Demand for Mutual Fund Transaction Confirmations”

<sup>3</sup> Based on DALBAR’s “Consumer Statement Preferences” and “Consumer Demand for Mutual Fund Transaction Confirmations”

Resulting unmeasured and unintended consequences for distributors include:

- Increase call center staffing
- Increase in customer service activity for advisors
- Additional training for call center staff and advisors to handle new concerns and questions from investors

The costs associated with the unintended consequences above significantly increases the overall cost of implementing the proposed confirmation beyond the Commissions' estimates.

It is alarming that these costs will ultimately be borne by the investor, while s/he will receive no benefit, due to the inability to comprehend the confirmation.

With the Commission's adoption of the proposed confirmation requirements, DALBAR plans to take action to:

- Increase the new confirmation's effectiveness in meeting the objective, that is, communicate costs and conflicts of interest in a manner that is understandable to the average investor.
- Decrease unintended consequences for distributors and investors.
- Proactively inform distributors of the unavoidable consequences of the new confirmation.

Planned actions include:

- Gain Commission approval of a DALBAR confirmation design that meets requirements of the proposal.
- Establish industry benchmarks for the cost of producing the confirmation as a guide to distributors.
- Guide the industry towards increasing acceptance of e-delivery, to reduce costs borne by investors and distributors.
- Quantify investor behavior inspired by the new confirmation to proactively prepare distributors to respond.

In summary, while DALBAR fully supports the Commission's objective, our data and expertise proves that the current communication will fail to achieve the objective.

We appreciate the opportunity to comment on such an important matter, and make ourselves fully available to the Commission for any assistance necessary.

Sincerely,

/s/

Laura Boothroyd  
Director, Communications Division, DALBAR