**Via E-Mail**

April 4, 2005

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

RE: File No. S7-06-04

Dear Mr. Katz:

This letter is submitted in response to the re-proposal published by the Securities and Exchange Commission (the "Commission") in SEC Release Nos. 33-8544 and 34-51274 (the "Re-Release"). The Re-Release reopens the comment period on proposed rules originally published in January, 2004, (the "Original Proposal") which would have required that broker-dealers provide additional information at both the point of sale and in transaction confirmations regarding certain costs and conflicts of interest in transactions involving mutual funds, unit investment trust interests (including variable insurance products) and municipal fund securities used for education savings (collectively, "Covered Securities").

This letter is respectfully submitted by counsel to, and on behalf of, MML Investors Services, Inc., ("MMLISI"), and MML Distributors, LLC ("MMLD"), broker-dealer subsidiaries of Massachusetts Mutual Life Insurance Company ("MassMutual"). MMLISI and MMLD are members of the MassMutual Financial Group, a global diversified financial services organization. MMLISI and MMLD distribute in excess of $4 billion of Covered Securities annually for MassMutual and other issuers of Covered Securities. Since our businesses involve the distribution of Covered Securities, MMLISI and MMLD have significant interests in ensuring that purchasers of Covered Securities receive meaningful, cost-effective and timely disclosures about their investment decisions.

## Overview

We continue to support the Commission's efforts to improve investor access to information regarding distribution costs and conflicts of interest in connection with the purchase of Covered Securities. In general, we find the point-of-sale disclosure forms published in the Re-Release to be a significant improvement over those set forth in the Original Release. However, the "fill-in-the-blanks" aspects of the point-of-sale documents would still impose unreasonable costs and burdens on broker-dealers that distribute Covered Securities and that do not have the technological infrastructure to prepare and print the disclosure documents at the point-of-sale.

We do not support transforming confirmations into supplemental disclosure documents. We believe that confirmations should provide investors with key details of their recently-completed purchase, not duplicate disclosures they have already received. The Commission's effort to transform confirmations into quasi-disclosure documents is ill-advised and should not be

implemented. If, however, new requirements for confirmations are established, issuers and broker-dealers should be permitted to use existing confirmation forms to incorporate newly-mandated data. They should not have to re-design their administrative systems to satisfy new formatting requirements.

**Point-of-Sale Forms**

The point-of-sale forms in the Re-Release are a significant improvement over the forms proposed in the Original Proposal. We appreciate the Commission's taking into account many of the objections that we raised in our comment letter on the Original Proposal. In particular, we believe that the following aspects of the Re-Release are noteworthy improvements:

- referring the investor to the broker-dealer's web-site for detailed information about revenue sharing practices, instead of trying to quantify such practices in the point-of-sale documents;
- utilizing, for the most part, standardized payment amounts as the basis for demonstrating potential costs of purchasing Covered Securities instead of requiring personalized calculations, and
- highlighting total costs of both purchasing and owning a Covered Security as opposed to focusing exclusively on the costs of purchasing a Covered Security.

These actions would reduce, but not eliminate, many of the unreasonable costs and burdens embedded in the Original Proposal.

Although we appreciate these improvements, we are still troubled by certain fundamental aspects of the Re-Release. We continue to believe that implementation of a disclosure process that parallels the prospectus disclosure process is not an appropriate course of action. Any actions that direct prospective investors' attention away from the prospectus is difficult to support.

The cornerstone of the federal regulatory plan for the offering of securities products has, for the past 70 years, been reliance on a formal prospectus to provide all required disclosures to investors. Recent SEC and NASD requirements mandating supplemental point-of-sale disclosures with respect to topics such as the availability of breakpoints, variations in share class purchases of mutual funds, privacy, money laundering procedures and now revenue-sharing divert investors' attention from the prospectus. By requiring these disclosures outside of the prospectus, the Commission and NASD appear to be telling investors that these point-of-sale disclosures "are the really important stuff" and that it is really not necessary to read the prospectus. Adoption of the proposed point-of-sale disclosure forms would exacerbate this trend, and continue undermining the long-standing and carefully-structured prospectus disclosure system.

By highlighting both the costs of purchasing and the costs of owning a Covered Security in a point-of-sale form, the Re-Release essentially duplicates critical information already in the prospectus. Existing prospectus disclosure regarding costs of ownership has been carefully developed and standardized over the years. If such disclosure is either problematic or unclear, the proper solution is addressing those deficiencies through amendments to the prospectus

requirements – not by creating a new, supplemental document with unique and untested terminology.

We believe that point-of-sale disclosure documents will result in prospective purchasers of Covered Securities being unwisely distracted from the prospectus. As a result, prospective investors may not focus on the most important information that they should be considering when making an investment: the investment objectives of, risks associated with and performance history of the Covered Security and the qualifications of the individuals managing the Covered Securities.

In addition to our general discomfort with the basic concept of extra-prospectus disclosure forms, we have the following concerns with the specific forms set forth in the Re-Release.

- The "fill in the blanks" concept will impose unacceptable potential liabilities on many broker-dealers. Although the Commission "does not expect private causes of action to result from non-fraudulent disclosures … if a broker-dealer erred by negligently transposing numbers between the prospectus and the information reported at the point of sale," Re-Release at 19, this optimistic (and unenforceable) assessment provides little comfort to us. Given the complexity of the mathematical calculations required to "fill in the blanks" with respect to both the costs of buying and the costs of owning Covered Securities, arithmetical mistakes will be made if registered representatives are required to perform those calculations at the point-of-sale. Customers will then obtain and possess documents with incorrect information, which will certainly provide them with bases for causes of action if they later become dissatisfied with the performance of their Covered Security. From an evidentiary perspective, we believe that it would be almost impossible to distinguish between simple mathematical calculation errors and fraudulent misrepresentations. Plaintiffs' attorneys will certainly have an easy time establishing at least a prima facie case against firms and their representatives.

  To avoid such exposures, broker-dealers would likely require that such "blanks" be filled in through utilization of broker-dealer designed and approved computer programs. For firms such as MMLISI where the overwhelming majority of sales take place during face-to-face interactions in clients' homes and businesses, the costs and burdens of developing such systems and ensuring their use by their widely-dispersed field forces would be significant. Broker-dealers that conduct business outside of a formal office environment generally do not have the technological infrastructure or resources to enable their sales personnel to prepare and print customized point-of-sale disclosure documents at the point-of-sale. Thus, broker-dealers would be forced to either revise their fundamental manner of conducting business or provide, at great expense, their sales representatives with the ability to prepare accurate point-of-sale disclosure documents via linkages to centralized computer systems.

  Mandating that customized disclosure documents with mathematical calculations be provided to customers at the point of sale would impose an inappropriate competitive disadvantage on broker-dealers that do not typically conduct their sales with easy access to the firm's central computers and printers. Broker-dealers could be forced out of

business by this aspect of the Re-Release. Moreover, it is questionable whether the information provided to prospective investors through this "fill-in-the-blanks" format will provide any meaningful or useful information to prospective purchasers. In fact, the recently published Report of the NASD's Mutual Fund Task Force on Mutual Fund Distribution argues that "this 'actual investment' disclosure could confuse or mislead investors, particularly with respect to ongoing expenses." *See* Report at fn. 9. For these reasons, the "fill in the blanks" aspects of the new point-of-sales forms should be eliminated.

- It is unclear from the Re-Release whether issuers or broker-dealers would be responsible for preparing the point-of-sale disclosure documents. The Commission should mandate that these forms be prepared by the issuer of the Covered Security. Otherwise, if such responsibilities are placed on the broker-dealers, then broker-dealers would be faced with the tremendous costs and challenges of preparing hundreds or thousands of these unique forms. (From the issuer's perspective, an issuer with hundreds of distributors would face the equally daunting challenge of ensuring accuracy and consistency among hundreds of individually prepared forms). Moreover, if broker-dealers are required to prepare such forms for each Covered Security that they distribute, it is likely that many broker-dealers will reduce the number of products they make available to their customers in an effort to try and reduce the tremendous administrative costs of developing and administering these forms. Reducing investor choice should not be the result of any Commission proposal.

- The Commission will need to better clarify the specific delivery requirements for the disclosure forms. The Re-Release specifies that "a broker-dealer would have to provide point-of-sale information with regard to all share classes that are under consideration at the point-of-sale". Re-Release at 12. MMLISI registered representatives are trained to conduct extensive fact-finding and needs analysis prior to recommending specific products for their customers. Our representatives often engage in lengthy discussions with their clients, frequently exploring a wide variety of possible investment solutions to the customers' needs. It is unclear as to at which point in this sales process the point-of-sale forms would have to be provided.

  We agree that "investors should receive information early enough in the sales process to give them adequate time to consider the information, but not so early that they receive multiple disclosures for the securities they may not be interested in purchasing." Re-Release at 34. Our recommendation is that the "point-of-sale" be defined as the point in time when the registered representative makes a specific recommendation that the customer purchase a specific Covered Security.

- In evaluating the benefits of any new "point-of-sale" forms, we urge the Commission to not ignore the costs and burdens that would be imposed on broker-dealers with respect to administering and keeping these "point-of-sale" forms up-to-date. It is not unusual for broker-dealers to make available several hundred Covered Securities for their clients. As contemplated by the Re-Release, each of these Covered Securities would have its own separate point-of-sale disclosure form. Maintaining and making all of these forms

available to representatives conducting business in thousands of locations will be a costly undertaking for many broker-dealers.

In response to some of the specific questions raised in the Re-Release we offer the following comments.

- If "point-of-sale" disclosure forms are adopted, we would support the addition of both "date lines" and "signature lines" to the forms. Adding such items to the forms will make it easier for broker-dealers to ensure that the forms are distributed as required.

- We believe that it would be appropriate to exclude from these forms the impact of letters of intent, rights of accumulation, purchases by related parties, or other customer-specific discounts in light of the additional costs and complexity that could be associated with their inclusion on the forms.

- The forms should include a statement that annual costs are not directly taken out of the investor's accounts, but rather are continuously paid out of the assets that the investor has purchased. Moreover, annual costs should not be subject to separate disclosure as they are incurred. We believe that investors perceive the economic impact of costs differently based on whether the costs are charged directly or deducted from fund assets.

- Point-of-sale disclosure of differential compensation practices should not cover situations in which issuers pay a relatively high dealer concession or commission to the broker-dealer as compared to issuers of similar products. In any spectrum of Covered Products offered by a broker-dealer there will almost always be one or more issuers with the lowest payable dealer compensation. The practical effect of treating differences in such dealer commissions as disclosable "differential compensation" would be to require such disclosure in connection with sales of every Covered Security expect the lowest paying issuer's. This would render such disclosure meaningless. Accordingly, such disclosures should be made only where the broker-dealer provides an extra financial incentive to its sales personnel for selling a Covered Security.

- Point-of-sale disclosure forms should not be required for subsequent purchases in a Covered Security where such a form was provided in connection with the initial sale. Requiring such forms to be provided in connection with subsequent sales would be duplicative and unlikely to promote informed decision making.

**Proposed New Confirmations**

In response to some of the specific questions raised in the Re-Release regarding confirmations we offer the following comments.

- General disclosures regarding the costs of owning a Covered Security or conflicts associated with the purchase of a Covered Security belong in the prospectus - not the confirmation. Using the confirmation as a "disclosure supplement or substitute" is puzzling. By the time the contract owner receives the confirmation, he/she has already

made a supposedly informed investment decision and agreed to purchase the Covered Security. Incorporating disclosures about conflicts of interests and other critical information about the costs of owning the product in the confirmation is, at best, simply redundant, and at worst, confusing. Such a course of action can only lead to increases in cancellations, reversals and other administrative problems.

We believe that the fundamental purpose of a confirmation should be to provide an investor with an immediate, post-sale record of the transaction he/she just executed. Basically, it is – and should remain - a record of the key details of the purchase.

- Broker-dealers should be allowed to use their own format for presentation of information in the confirmation as opposed to the Commission's mandating a specific format. The costs that would be incurred by broker-dealers in re-programming the many computer systems that they currently use to generate confirmations would be staggering. As long as the required information is disclosed, firms should be allowed to incorporate the required data into existing confirmations.

- We do not believe that information about revenue sharing payments should be quantified on confirmations. To the extent that such topics need to be addressed at all in the confirmations, supplementary Internet-based disclosure would serve as an appropriate and useful alternative to requiring discussion of these issues in the confirmation.

**Summary**

The Re-Release is a vast improvement over the Original Proposal. There are, however, still many issues that need to be resolved before our shared objective - providing investors, at reasonable cost, with a balanced perspective of proposed purchases of Covered Securities and the people and companies who sell those products to them – can be realized. We have outlined in this letter several ways in which the Re-Release should be modified in order to achieve this objective.

We would be pleased to discuss our views with representatives from the Commission at its convenience.

Sincerely,

Michael L. Kerley
Vice President & Associate General Counsel
Massachusetts Mutual Life Insurance Company