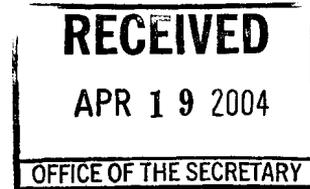


Nancy M. Smith  
6423 Lakeview Drive  
Falls Church, VA 22041  
703 642-1836  
April 12, 2004

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

RE: File No. S7-06-04

Dear Mr. Katz:

The Securities and Exchange Commission has proposed rules to improve the disclosure investors receive when they buy and sell mutual funds. The SEC provided examples of new point of sale and confirmation forms and invited the public to suggest improvements to the forms: "We want to know whether the forms clearly communicate the information that investors need, at the time they need it."

My comments include new prototypes of these forms for individuals buying Class A shares. Working with a noted expert on plain English, William Lutz, and an accomplished design team at The Corporate Agenda in New York City, David Stewart, Daniel Koh, Friederike Bothe, and Trevor Eld, we designed prototypes that embody the principles of plain English and information design.

If you view our forms and the SEC's forms side-by-side you will notice immediately that they look different. And then you will notice they contain different information. I will explain why our forms differ in many important aspects from those created by the SEC but first I would like to make brief comments about disclosure and recommendations to the SEC on improving disclosure.

The current disclosure regime fails to protect a vast number of investors because it is not designed to bring important information to the attention of investors at the time they are making an investment decision.

As a former state securities regulator for the State of New Mexico, and former director of the SEC's Office of Investor Education and Assistance, who helped to lead the SEC's efforts on plain English in the late nineties, I have had first-hand experience with our current disclosure regime and its failings. The overall system is badly broken and needs to be fixed. Regulators, the securities industry, and investors are paying too high a price for a system that just doesn't work.

## **Recommendations for improving disclosure**

### **1) Create the SEC Office on Improving Disclosure**

Federal securities laws and regulations protect investors largely through requiring the disclosure of information. Many investors do not enjoy these protections because the disclosures are either incomprehensible, come after they make investment decisions, or both. As a result, whole segments of our retail markets are largely undisciplined by market forces because of a severe lack of transparency caused by ineffective disclosure. Opaque disclosure leads to inefficient markets, abusive sale practices, and investor losses.

While the SEC and the securities industry have undertaken efforts in the past to create plain-English documents, now is the time to expand and put greater resources and institutional weight behind efforts to improve disclosure and the delivery of disclosure.

The SEC should create the Office of Improving Disclosure to lead and execute the SEC's efforts to improve and assure the creation of effective disclosure. A separate office could bring energy, commitment, and badly needed expertise to attacking this huge problem. The Office could work with all the divisions and offices at the SEC, spreading its knowledge of the latest developments in information design and testing, and assuring a consistent approach to improving disclosure is applied throughout the SEC.

### **2) Use Information Design Professionals**

As bad as this situation is, it's good news that a profession exists to tackle this problem. It is the job of information design professionals to make complex information understandable and difficult tasks easier to complete. Information designers know how to solicit useful information from investors, securities lawyers, accountants, and investment professionals, and to take that information and craft it into effective disclosures. Through well-established and disciplined protocols and testing regimes, they know how to create, test, and design disclosures that work for individual investors. Information designers know the importance of testing disclosures and methods of delivery on investors. Without testing, you simply do not know what works and what doesn't. Some of the most useful testing, usability testing,

occurs when trained professionals watch investors use disclosure to accomplish various tasks in simulations of real-life situations.

Especially in today's environment, different disclosures and delivery methods must be tested. One size does not fit all. The effectiveness of disclosures may vary greatly depending on the methods of delivery: printed documents, Edgar filings, Web pages, e-mails, face-to-face meetings, phone calls, or faxes.

To fix the problems with the current disclosure regime, the SEC must employ information design professionals and use their techniques to produce effective disclosure documents and methods of delivery.

### **Prototypes of Point of Sale and Confirmation Forms for Class A Shares**

My colleagues and I created these prototypes to show how the principles of information design, including plain English, can be applied to improve the SEC proposed forms. The next step in the process is testing the prototypes on individual investors. The testing process would lead to improvements and assure the forms meet the needs of a large number of investors.

I would like to draw your attention to several key differences between our prototypes and the SEC's:

#### **1) Show investors the total fee picture**

Experts agree that one of the most important items for investors to consider before they invest are the total costs of buying and owning a fund and how those numbers compare to similar funds.

Despite the importance of this information, it's mission impossible for investors. Why? Because some of the information is in the prospectus, some in the statement of additional information, some in periodic reports, and some portfolio transaction costs are not disclosed at all.

Unfortunately, the new forms proposed by the SEC require the disclosure of fees and costs related only to the broker and the brokerage firm. The forms leave out the fees and costs of the fund.

The flaws of this multi-document, piecemeal approach to disclosing fees should be painfully self-evident. How many investors have the drive, stamina, and know-how to find all these documents, do the mathematical calculations, and draw this picture for themselves? Very few. Investors deserve one document that paints the complete picture, all the information they need to grasp and understand what is going on with fees and conflicts of interest. In our prototypes, they can see the total fees they pay and then a breakdown of who gets which fees and why.

## **2) Investors need the full picture before they invest**

Investors deserve to get the information before they make their investment decisions. The SEC is moving in the right direction by requiring a point of sale document, but the information in the point of sale document needs to be expanded to include a summary of all the costs and fees.

The point of sale document should also be delivered to investors at the point of recommendation. To be useful, investors need to factor the information into their decision-making process. It will be next to useless if it becomes just another piece of paper, ritually turned over to investors after the sale is closed but before the order is placed.

## **3) Fee information needs to be comparative to be meaningful**

The SEC should also be commended for proposing to present information to investors on industry norms when it comes to fees. A number by itself is meaningless. You cannot make a judgment unless you know how it compares to similar funds.

## **4) Show fees over time**

The full picture of fees and their impacts on returns is incomplete unless investors see how those fees add up over time. Our prototypes show total fees as a percentage of an investment over time.

## **5) Use plain English and clear graphic designs**

The proposed SEC forms use jargon and rely on a full page of definitions to explain the jargon. Investors will have little patience with a form that requires them to study and remember difficult definitions. We dispensed with the jargon and used terms that are understandable on their own or explained them in context.

The design of a document determines whether it will be easy or hard to read and understand. Graphic designers are our greatest allies in producing documents that protect investors. They are an indispensable part of the team that is needed to produce effective disclosure.

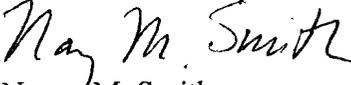
## **Conclusion**

I appreciate the opportunity to comment on the SEC proposal and submit two prototypes of the forms for Class A shares.

I hope that you open your minds to thinking more broadly about the need to improve the state of disclosure across the board. Whether it be mutual funds, MD&A, or financial footnotes, any type of disclosure could be greatly improved by the work

of an office at the SEC dedicated to producing disclosure that investors can readily use and understand. A sustained commitment and a dedicated team of professionals could bring benefits to millions of investors.

Sincerely yours,

  
Nancy M. Smith

Attachments

cc:

The Honorable William H. Donaldson  
The Honorable Cynthia A. Glassman  
The Honorable Harvey J. Goldschmid  
The Honorable Paul S. Atkins  
The Honorable Roel C. Campos

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

## Total fees you pay to buy and own this fund...

	after 1 year	after 3 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.

# 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 3 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>
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## 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 an 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.

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.

#### Management fees

**\$ XX** goes to the fund's investment adviser who manages the fund and selects its portfolio of securities.

#### The fee as a percentage

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

#### Trading costs

**\$ 96.61** goes to pay for trading by the fund's portfolio manager.

#### The fee as a percentage

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

#### 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.**