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April 4, 2005

Via Electronic Mail to [Rule-Comments@sec.gov](mailto:Rule-Comments@sec.gov)

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

Re: Confirmation Requirements and Point of Sale Disclosure  
Requirements for Transactions in Certain Mutual Funds and Other  
Securities, Reopening of Comment Period and Supplemental  
Request for Comments, File No. S7-06-04

Dear Mr. Katz:

Legg Mason Wood Walker, Incorporated ("Legg Mason") appreciates the opportunity to comment on the additional questions and changes to the original Point of Sale and Confirmation rule changes proposed by the Commission.

As stated in our previous comment letter, dated April 15, 2004, we strongly support disclosure of additional information about fees and conflicts of interest to clients purchasing mutual funds. We have been actively involved in cross-industry efforts to develop new and better methods to improve the information available to fund investors in a cost effective manner. While we support the underlying disclosure goals of the proposed Point of Sale document, we believe that three changes are critical to making it an effective disclosure document for investors.

First, the Point of Sale document should be expanded so that information about fees and conflicts of interest is presented to investors "in context" in their investment decision-making process. The proposed document is limited to information about just two matters - fees and conflicts of interest. In our experience, however, investors typically evaluate and rely on additional information when deciding whether to invest in a fund, particularly investment-related information such as the fund's investment strategies, risks, and performance. We are concerned that the proposed document, if adopted, will cause investors to focus less on investment-related information which, in our

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view, is the most critical information for them to consider. Accordingly, we agree with the comment letter filed by the Securities Industry Association ("SIA") and others recommending that the Commission adopt the NASD Mutual Fund Task Force's "Profile Plus" proposal (the "Task Force Proposal"), which presents information about all of the critical items that investors should consider when buying a mutual fund, including information about fees and conflicts of interest.

Second, we recommend that a broker-dealer be required to provide the Point of Sale document on its web site and refer investors to the disclosure, unless an investor specifically requests paper delivery. Internet delivery will allow a broker-dealer to provide disclosure in a timely and comprehensible manner at the point of sale in a cost effective manner and will aid investors who wish to compare different mutual funds. We urge the Commission to issue interpretive guidance providing that an investor's access to the Point of Sale document through the Internet would constitute delivery of these documents for purposes of the federal securities laws. In our view, the Point of Sale document would be logically unworkable without such guidance.

Finally, we agree with the SIA that the Commission should not adopt the major changes it proposed to trade confirmations because they will not provide a meaningful benefit to clients, though they add considerably to the cost of the rule proposal. In our experience, investors do not view the confirmation as a document that is designed to provide them with disclosure about matters other than the date, amount, and price for their mutual fund transactions.

### **Point of Sale Disclosure**

The Task Force Proposal provides a single disclosure piece that covers all the critical items that an investor should consider when buying a mutual fund. The content of the Task Force Proposal was developed by a diverse group of knowledgeable industry participants. More importantly, the content was tested in investor studies along with the Commission's proposal, and investors found the Task Force Proposal to be a better choice.

We also believe that Internet delivery of such information is the best method to provide such disclosure, unless an investor specifically requests paper delivery. Indeed, without Internet delivery, we believe that the Commission's proposal would be logically unworkable. Testing relating to the Task Force Proposal found investors prefer Internet delivery. This allows the investor adequate time to review and the ability to compare funds and costs with other financial service providers. Internet delivery also has the added benefit of reducing the costs to providing such information. The Commission has used Internet delivery for several other key investor disclosure issues without negative impact.

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The Commission has announced plans to have a “top-to-bottom, full scale review of the mutual fund disclosure regime.” In light of the huge costs involved with implementing changes such as those proposed in this rule proposal, we hope the Commission sees the benefit of the broader nature of the Task Force Proposal and adopts that now, instead of making incremental changes to point of sale and confirm disclosure.

### **Confirmations**

Trade confirmation systems are very complex and expensive to change. Accordingly, we believe that the Commission should only make changes in this area if they will provide a meaningful benefit to investors. We believe that the Commission’s proposal would require broker-dealers to establish a separate process for the production of mutual fund confirmations that would not only increase costs significantly, but also would take away the added benefit of allowing confirmations for all product types to be brought together in a single package and format for investors. Adding anything other than sales charge information on the confirm is duplicative and provides the information too late to be useful to the investor. In our experience, investors look to the confirmation for information about the date, amount, and price for their mutual fund transactions. Absent evidence that investors look to confirmations for disclosure about other matters, we believe the Commission should defer action on this proposal.<sup>1</sup>

Suggested changes to the confirmations for 529 Savings Plans and Variable Annuity products are even more problematic. These products are sold by the completion of applications that come with substantial disclosure information. At present, the confirmations are produced by the plan recordkeeper or insurance carrier and not by the broker/dealer. Providing broker dealer specific information on confirmations would be extremely difficult to do.

The key to the success of any information disclosure program is that it provides information in a manner and form that the investor will readily use and

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<sup>1</sup> If the Commission determines to proceed with the proposed confirmation layout, it should be noted that the sample confirmations lack some basic data elements that would be needed. There is insufficient room for the client’s name, there is no room for the client’s name and address that would work with a window envelope, and there is no room for the registered representative’s name, branch address and phone numbers. If this rule is to replace rule 10b-10 for mutual funds, it should not lose basic confirm requirements in the process. The rule should also allow for flexibility by broker dealers to modify the format as long as the required parts are included.

In addition, if the Commission wishes to add additional requirements to the confirmation, we agree with SIA that disclosure of the sales charge in both percent and dollar figures can be accomplished using our current confirm systems, given an adequate transition period to make the extensive changes necessary to do so.

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be able to benefit from. Overly burdensome disclosure will have the unintended consequence of reducing the attractiveness of mutual funds, which for many clients are the best vehicle to meet their needs. Striking the proper balance of disclosure without negative consequences is a very real challenge, and we hope that the Commission takes this into account as it works to develop rules in this regard.

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We welcome the opportunity to provide these comments to the Commission and stand ready to assist the Commission in developing a workable Point of Sale disclosure document that is an effective disclosure document for investors.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Thomas P. Lemke".

Thomas P. Lemke  
Senior Vice President and  
General Counsel