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**Wachovia Securities, LLC**

April 12, 2004

Jonathan Katz, Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW (6-9)  
Washington, DC 20549

**Re: Rule Proposals Concerning Confirmation and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities (S7-06-04)**

Dear Mr. Katz:

Wachovia Securities, LLC is pleased to submit the below comments concerning proposed rules 15c2-2 and 15c2-3 as well as amendments to rule 10b-10 and Form N-1A:

I. **Introduction and Overview**

Wachovia Securities is fully supportive of the principles underlying the SEC's rule proposals-- that investors receive improved access to important information about investments in mutual funds, unit investment trust securities and municipal fund securities used for education savings (better known as 529 plans). Notwithstanding the admirable goal, the proposals drafted by the SEC almost certainly will have unintended consequences that could alter the entire mutual fund industry to the detriment of those the Commission intends to aid, individual investors. The proposals and other developments actually illustrate the need to consider instead a comprehensive overhaul of the mutual fund system. In the absence of such a complete review, the proposals seem to ignore the burden the tremendous costs and fundamental systems changes will impose on the industry and, by logical extension, individual investors

## II. The Rule 15c2-2 Confirmation Proposals

### A. The Proposals Seem Too Cumbersome, Unwieldy and Confusing

As stated earlier, we agree that greater disclosures can be beneficial. In addition to offering protection to investors, properly done, they help a firm better manage and resolve customer complaints and claims. Thus, a system that makes available more disclosure on fees, expenses and potential conflicts works for all.

The disclosures recommended for the confirmation seem unnecessarily lengthy and complicated. We note first that the staff suggests requiring a full page of definitions. In this way, the current simplified confirmation would be transformed and loaded with additional information that might be difficult to calculate and is supplied at a time that makes it almost impossible to “comparison shop.” When any disclosure is overly long and complicated, it increases the risk that few really read it, thus effectively defeating the purpose of disclosure.

Under the present system used to distribute covered securities, investors receive information at several junctures of the process -- point of sale, the prospectus, confirms, periodic statements, mutual fund company periodic disclosures and investor newsletters. At each of these information points, there is information that is appropriate and useful. The SEC could propose simplifying the disclosures at these junctures so that investors receive information that is clear and understandable. Such comprehensive disclosure simplification might be an alternative to the current rule proposals that is both cost-effective and beneficial.

It is helpful to observe that under the proposal, investors will receive a confirm that will have some 16 additional data points of information with which they are to compare funds. The various permutations among those 16 items will force investors to decide, for example, whether a given amount of brokerage paid by a mutual fund expressed as a percentage of the investment makes a fund a *better* choice for them than another fund where the fund shares revenues with the broker dealer expressed in dollars as a percentage of the investment. The various possible comparisons likely will serve to confuse the investor more than clarify for them which investment is appropriate for their circumstances. The calculations will simply end up frustrating a majority of investors and subject them to a “paralysis of analysis.”

### B. Extensive Transaction by Transaction Confirm Disclosure May Be Unhelpful to Most

What runs throughout the Commission’s rule proposal appears to be a belief that the prospectus, for those buying mutual funds and other covered securities, fails to

convey information about costs and conflicts of interest. To the extent that comparison information needs to be communicated clearly to investors, choosing the confirmation route as the vehicle may not work. Much of the information and format of the sample confirmation attached to the rule proposal might look and work better as the basis of a simplified, oral point of sale disclosure. Coupled with a disclosure generally at account opening and perhaps yearly about the firm's distribution arrangements and potential conflicts of interest, such an alternative would have a means of giving investors the key information at a time where, if price comparison is a goal, they can use the information. In addition, a yearly reminder in a periodic statement serves to make it less likely that any investor is unaware of a firm's business arrangements that are important to that investor's selection or continued holding of the covered securities.

More importantly, the theory that detailed transaction disclosure, after the trade is completed, informs the investor seems to run counter to the basic purpose of confirmations. The confirm is in essence a receipt, making certain that an investor's order is as requested. To try to make the confirmation the prospectus, or prospectus-like, imposes a burden on that process that treats the covered securities vastly different than other securities such as common stocks. Confirmations should be similar across all investment products to minimize confusion and the likelihood that investors simply toss the documents due to information overload.

If the Commission insists on moving forward with the 15c2-2 proposals, it probably should give serious thought to the idea of substituting the proposed rule's "periodic disclosure alternative" for the transaction-by-transaction disclosure. Many investors in mutual funds and other covered securities purchase them in a manner similar to the investors in pension or retirement plans. Disclosure in keeping with the periodic disclosure alternative will give investors summary information in a form and at a frequency that may increase the likelihood that the investors use the information they read. The disclosures on a quarterly basis may increase the likelihood that investors, at that time, do comparisons between the costs and conflicts of one fund versus another.

### III. **The Point of Sale Proposal**

#### A. **The Proposal Should Require Only Oral Disclosure**

As cannot be said often enough, disclosure that is clear and simple is the most effective. In the case of the point of sale proposal, an oral disclosure fits better with the manner in which many funds are often sold. The rule proposal acknowledges that a point of sale disclosure must be practical, and if an investor gives the order over the phone, the disclosure is oral. There is no basis to allow

an oral disclosure over the phone, but require oral *and* written disclosure if the investor is present in person. That a broker dealer would decide, in its discretion, to use written and oral disclosure should be an option available to that firm. A blanket requirement, however, for a written disclosure simply becomes an opportunity to create exceptions as well as providing differential treatment to similarly situated investors. We ask that the Commission consider whether, after coupling oral disclosure together with changes in confirmations and the prospectus, a written disclosure may become merely impractical additional paperwork.

**B. The Point of Sale Disclosures Should Not Apply to Unsolicited Transactions**

The proposed 15c2-3 point of sale disclosure should contain an exception for unsolicited transactions. The staff's goal of having investors aware of information so that costs can be compared is less important where investors have decided in advance the fund product they wish to buy. It is fair to assume that when investors come to decide on a fund, *prior* to involvement with the broker, the investor has made the selection from among other funds based on factors important to that investor. To have a process that then takes the investor through a host of other issues that may not affect their investment decision will unnecessarily encumber the purchase process. The prospectus and confirmation can work together to give the investor sufficient information about the fund and to confirm the details of the purchase. Additional point of sale material probably adds little to an investment decision that has already been made.

IV. **The Proposals are Too Costly**

The confirmation rule proposals in particular are likely too costly and burdensome to justify their approval and implementation in the current form. By its own estimates, the Commission states that the one-time burden of reprogramming code and updating confirmation delivery systems is \$850 million. Ongoing costs are \$2 billion under the SEC's estimates. As data from the Securities Industry Association and others may show, the true costs could very well be closer to \$1.5 billion to start and \$3 billion to fully implement on annual basis. Just working with the Commission staff's own estimates, the staff arrives at the \$850 million figure with apparently no discussion of overtime, cost overruns, or travel and lodging for many technology experts in the industry who will have to import the necessary programming talent to underserved regions. The brokerage industry does not solely reside in New York or other major cities; yet, the cost of programming is not lower, and in fact might be higher, when one gets away from the metropolises.

Looking behind the nuts and bolts of the proposals, one can see easily how implementation costs of \$1.5 billion may be more realistic. Countless lines of code will be need to be crafted to change the nature of the current confirm. A high-ranking SEC official stated her belief that the changes would have to be completed and rolled out to the public in a 5 to 11 month window. The staff's proposal estimates a one-time burden based upon 15 million hours of work. To meet the 11-month time frame and stay within 15 million hours, one would require 7400 programmers working 5 hours of overtime every week with no time off for vacation, holidays or sick days for a full 11 months. To meet a 5-month implementation timetable, the number of programmers needed rises to 16,700 individuals working a similar schedule of overtime and no time off. It is unclear if the staff took this burden into account as it weighed the costs and benefits of this proposal. It is probably more likely than not that the total one-time cost for the conversion will exceed the SEC's somewhat modest estimate.

Even after reprogramming has been done, a review at a granular level shows greater ongoing costs for a new confirm that now will run at least two pages as opposed to the current half to one page confirm. Increased postage and handling will certainly result, even more so with each additional mutual fund purchase. Industry survey information that the Commission will require to be included on the confirm will also generate tremendous up front costs plus the additional costs of gathering and updating the information quarterly as the rule suggests.

The SEC staff estimates of cost burdens seem low when one views it from the standpoint of the full service broker dealer. In none of the estimates for reprogramming confirmation delivery software does the Commission account for full service firms offering the widest array of mutual fund choices to investors. A firm such as Wachovia Securities, in offering some several hundred funds, may incur one-time programming costs far in excess of the proposal's estimated one-time costs of \$157,407 and annual compliance costs of \$367,593.

Another key factor in the potential costliness of this proposal is the realization that both at the Commission and on Capitol Hill, many various proposed changes to the mutual fund distribution process are underway. The numerous rule proposals and legislation, if enacted, may alter the nature of many distribution costs and arrangements. To go forward with 15c2-2 as proposed only to have firms incur reprogramming costs for disclosures or features that are obsolete almost as soon as the rule is implemented possibly will exact a terrible, and avoidable, price from the brokerage industry, and by extension, investors.

Viewed as a whole, the proposed confirm rule 15c2-2 may not pass the basic cost-benefit analysis test. As described by the Commission, the benefit of the proposals is to permit investors to make better-informed decisions by learning

about distribution related costs that might reduce returns or create conflicts of interest. Information provided in a confirm *after* purchase, however, likely does not permit an investor to “compare costs” in a fashion that influences *that* investment choice. It, therefore, becomes difficult to conclude that the tremendous expense of the proposed confirm rule supports the benefit of learning about costs needed to “price shop” *after* a purchase is made. Stated differently, to achieve its goal of giving information so that an investor can price compare, the Commission will probably want to consider cost-efficient alternatives to the proposed confirm rule 15c2-2.

## V. A New Mutual Fund Sales System

In an indirect fashion, this and related recent rule proposals by the Commission evidence the Commission’s view that the current mutual fund (and that for other covered securities) prospectus disclosure system is ineffective to readily inform investors about distribution related costs and conflicts of interest. Investors themselves, by their large number of comment letters to this rule, also are expressing in essence the view that the prospectus is not the vehicle by which they prefer to gather key information for their purchases of covered securities. With that underlying belief, the staff must consider whether any amount of “band-aid” proposals is sufficient to save this ill patient. The staff may have reached a point where it is now time for the Commission to table this and the other current rule proposals, and alternatively consider measures to fundamentally and completely overhaul the system used to market and distribute mutual funds and other covered securities to investors.

As a point of departure for that examination, one could theorize that any new system needs to focus on three areas. First, the staff should revisit the role of the prospectus. It may be that in the current distribution system, automatically supplying the document with each fund purchase no longer works. Perhaps similar to the regulation of other mass consumer products, there could be a full prospectus review of funds by the SEC. Once done, an approved, shorter “snapshot” disclosure could furnish an investor with essential information to make that purchase or compare one fund with another. Full prospectuses for covered securities could then be treated like the Statements of Additional Information (SAIs) now filed with the SEC, posted on the issuer’s and broker dealer’s web site. Where requested, and in limited circumstances in which it is required, the issuer and broker dealer would supply the full prospectus to an investor electronically, or if need be, in hard copy.

Secondly, there should be clear, simple, point-of-sale disclosures that inform investors of the products’ costs and features. This document could be the same or similar to the snapshot disclosure discussed above. Additional disclosures

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concerning firm level issues such as potential conflicts of interest can be contained in a summary placard that is present at the point of sale, discussed orally and/or given as a take-away.

Thirdly, rather than fundamentally change the confirmation system just for certain securities, the current confirmation system can remain. Then, this simplified confirmation could be supplemented by a modification of the periodic confirmation alternative described in the rule proposal. A quarterly summary that discusses distribution costs and perhaps conflict of interest issues may be better received and better digested by investors as opposed to a flood of paper at or soon after purchase.

Simplifying the sales process of mutual funds this way will get to investors the information they need, at the time they need it, in a form that is understandable. Investors who feel they would like the assistance of a broker in making their purchases can be assured that they receive similar information to those who buy mutual funds without a broker's aid. More detailed information is readily available for those who request it, and periodically, all investors will receive a summary overview of what they purchased and the costs and potential conflicts that exist. In this fashion, the Commission would have a distribution system for the covered securities that both informs investors and yet creates a substantial cost savings to them in terms of the delivery of important details.

## **VI. Conclusion**

Clear and effective disclosures concerning investment products are a critical and necessary part of an efficient securities marketplace. As investors make decisions concerning what funds are best for them, it is essential that they get useful information. With the assistance of an investment professional or on their own, they must have information that they will read and use. The current rule proposal seems to continue an unwieldy system, just at a higher cost. The rules appear too costly to implement now and fail to provide information to investors in a manageable form. If the Commission insists on truly reforming the mutual fund sales process, it should table this proposal, work jointly with the industry, investors and others, and only then make fundamental changes to the entire mutual fund distribution system that will work in the twenty-first century and beyond.

Very truly yours,  
*Ronald C. Long*  
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