Office of the General Counsel

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Via E-Mail and First Class Mail

April 12, 2004

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

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RE: File No. S7-06-04

Dear Mr. Katz:

This letter is submitted in response to the proposal set forth by the Securities and Exchange Commission (the "Commission") in SEC Release Nos. 33-8358 and 34-49148 (January 29, 2004) (the "Release"). The Release discusses possible new rules (the "Proposal") under the Securities Exchange Act of 1934 to require 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 Massachusetts Mutual Life Insurance Company ("MassMutual") and MML Investors Services, Inc., ("MMLISI"), a wholly-owned broker-dealer subsidiary of MassMutual. MassMutual and MMLISI are members of the MassMutual Financial Group, a global diversified financial services organization. MassMutual is an issuer of variable annuity and variable life insurance contracts, and distributes those products though a nationwide network of affiliated and non-affiliated broker-dealers and insurance agencies. MMLISI distributes in excess of $4 billion of Covered Securities annually for MassMutual and other issuers of Covered Securities. Since our businesses involve the manufacture and distribution of Covered Securities, MassMutual and MMLISI have significant interests in ensuring that purchasers of Covered Securities receive meaningful, cost-effective and timely disclosures about their investment decisions.

OVERVIEW OF COMMENTS

We 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. Some aspects of the Proposal arguably provide useful information to purchasers of Covered Securities. Critical components of both the proposed new confirmation requirements and the proposed new point of sale disclosure requirements, however, are fundamentally flawed. If adopted, these onerous requirements will impose severe burdens and costs on both issuers and distributors of Covered Securities without providing meaningful benefits to purchasers of these products.

The new confirmation requirements would confuse many investors. These requirements would combine the costs of purchasing and owning Covered Securities into a single document that has always been used simply to confirm the costs of purchasing a product. They would overwhelm investors with unreliable, speculative projections, distract investors from the most important factors they should be considering and present a distorted view of variable life and annuity products. The Commission's effort to transform confirmations into quasi-disclosure documents is ill-advised and should not be implemented.

The point-of-sale components of the Proposal would impose unreasonable costs and burdens on many broker-dealers. Many broker-dealers that distribute Covered Securities do not have the technological infrastructure to prepare and print the required disclosure documents at the point-of-sale since the overwhelming majority of their sales take place outside of a formal office environment. Mandating that customized disclosure documents containing extensive mathematical calculations be provided to customers at the point of sale would impose an intolerable competitive disadvantage on firms that do not typically conduct their sales with easy access to the firm's central computers and printers.

In short, the Proposal should not be adopted. We support the Commission's and the industry's shared goal of improving investor awareness of the costs and conflicts of interest associated with purchasing Covered Securities. We firmly believe, however, that efforts in this area should, when the dust settles, produce - at a reasonable cost - better-informed investors who get a fair and balanced perspective of their proposed investments and the people and companies who sell those products to them. The Proposal would not accomplish this objective.

Proposed New Confirmation Rule

The confirmation requirements in the Proposal contain several provisions that either would impose unreasonable burdens on issuers and distributors or present misleading impressions to purchasers of Covered Products.

1. ***Net Amount Invested.*** Proposed rule 15c2-2(b) would require that confirmations include a variety of specific data, including the "net amount invested". Although this calculation appears to be appropriate for mutual funds, it is inappropriate to require this calculation in confirmations for variable life insurance products or for variable annuities. As the Commission noted, "customers who purchase a variable life insurance policy will buy an insurance component as well as make an investment, and ... the investment component initially may be relatively small. That would be reflected in disclosure of net amount invested."[1] By focusing purchasers' attention on the "net amount invested", the confirmation would present a misleading picture of the product. The insurance aspects of

[1] See footnote 70 of the Release.

the product would not be recognized, and thus the product would be placed in an unfavorable light.

With respect to variable annuities, it is unclear whether amounts that are allocated to the insurer's guaranteed account would be included in the "net amount invested". Excluding such amounts would significantly distort the picture presented to the annuity owner. Including such amounts would present a different - but equally unacceptable - problem. By classifying such amounts as being "invested," the confirmation would be implying that these amounts in the guaranteed account are as susceptible to market risks as those funds placed in the non-guaranteed accounts. For these reasons, the "net amount invested" should not be required for variable life products or for variable annuities.

2. ***Estimated First Year Charges.*** The proposed requirement that confirmations include the amounts of "expected first year asset-based sales charges and service fees" is not sound. Since the amount of such charges fluctuates with NAV, requiring that firms include such a speculative number in the confirmation appears unwise. The actual amount that the customer indirectly pays for such charges will very likely be any number **other than** the one listed in the confirmation.[2]

Most of the other numbers and dollar amounts set out in the confirmation are actual, real numbers directly related to the purchaser's transaction. Including indefinite and speculative numbers alongside the real, hard numbers is likely to mislead many investors, causing them to question the accuracy of the real numbers. A general statement in the confirmation regarding the existence of such charges would be a far more appropriate manner of disclosure.

Moreover, the format and wording of the proposed disclosure for such charges gives the impression that these amounts are direct charges for which the customer can expect to be billed. Obviously, this is an incorrect inference, but one which is likely to arise and which could deter individuals from investing in Covered Securities. If it retains the proposed calculation of an anticipated, speculative dollar amount in the confirmation, the Commission must clearly and directly specify that the customer will not be billed for these charges.

Making this calculation for variable products would be a difficult and speculative endeavor. Most variable products have numerous (30 - 40) investment selections, all with differing 12b-1 plans, and customers typically allocate (and frequently re-allocate) their investments among several of the available options. At the time that the confirmation is prepared, the customer may not have made his/her investment selections and thus it would be impossible for the issuer to determine an allocation upon which a projection could be made.

[2] Since the Commission repeatedly opines in the Release that total compliance with the proposed new confirmation requirements "would not function as a safe harbor for non disclosure", see page 13 of the Release, firms preparing these confirmations would likely be inclined to add detailed performance warnings to cost calculations which are likely to fluctuate. These supplemental disclosures will expand the length and complexity of the confirmations and very likely reduce their usefulness to investors.

Moreover, even if the issuer knows the customer's initial allocation among the sub-accounts, providing an estimated amount based on the customer's initial allocations would require the issuer to calculate each individual projected charge for each sub-account and then combine them. This would certainly have to be accompanied by detailed disclaimers describing the assumptions used in making the projection. Given that it is quite unlikely that this amount will be equal to the actual amount that the customer pays at the end of the first year, this number has little value to the purchaser and thus should not be required.

Basically, requiring disclosure in the confirmation of estimated first year charges creates confusion between the costs of purchasing a Covered Security and the costs of owning that Covered Security. Moreover, the costs of ownership are not completely disclosed because the other fees and charges (e.g. the management fees) are not proposed to be also disclosed. Thus, the purchaser is receiving an incomplete and thus misleading picture of the costs of ownership. We firmly believe that the appropriate time to consider and evaluate the costs of owning a Covered Security is prior to purchasing that product, not after having made the purchase. The appropriate venue for such disclosure is the prospectus.

3. ***Sales Load Comparisons***. The Proposal would require that for transactions in share classes without a front-end sales load, the confirmation must disclose information about the sales load that would have been charged had a share class with a front-end load been purchased.[3] It is difficult to understand why a customer who bought B shares and paid no front-end sales load would be interested in knowing the amount of the sales charge that he/she did not pay - but would have paid - if he/she had purchased A shares. Customers will likely be confused by disclosure which tells them they would have paid more had they purchased a different share class. If such disclosure is intended to cause the purchaser to question the suitability of his/her B share purchase, telling him/her that they paid no sales load on their purchase - but would have paid one if they had purchased an A share - does not seem reasonably designed to accomplish that objective. Once again, by adding information about hypothetical and speculative situations to the confirmation, the Proposal seriously undermines the effectiveness of the confirmation, much to the detriment of the investor.[4]

Another problem with this particular requirement arises with variable products. Most variable annuity products are sold without a front-end sales load, and there are no "loaded" product equivalents against which the product could be measured. It is questionable, therefore, how this particular requirement would be satisfied for these products since there are no front-end load equivalents against which the purchase could

[3] Page 19 of the Release.

[4] We recognize that the Commission and NASD have taken a dim view of Class B shares. If B shares are becoming per se unsuitable, then such regulatory concerns should be clearly communicated to, or at a mimimum, discussed with the industry. Creating misleading and confusing disclosure after a mutual fund sale has been completed does nothing to address the suitability of the purchase.

be hypothetically compared. Accordingly, the Proposal should be clarified to indicate that this comparison is not required for purchases of variable products.

5. ***Back-end sales loads.*** The requirement to include the amount of the anticipated back-end sales load that the purchaser would pay if he/she sold shares in various future years is, likewise, potentially misleading to customers. Such disclosures are contained under a heading in the proposed new confirmation of: "*what you pay (directly and indirectly) for purch*ases". Yet, the back-end sales loads are triggered only on future *sales,* not for *purchases*.

Moreover, some mutual funds exclude the value of reinvested dividends and capital gains distributions in calculating the fund's market value for purposes of determining their back-end sale loads. The proposed methodology does not account for this type of calculation. Thus, once again, the Commission's attempt to transform the confirmation into an omnibus disclosure document will, in all likelihood, generate far more confusion than clarity for many investors.

This requirement also would not work for many variable annuity transactions. Some variable annuities, for example, having rolling surrender charges wherein each specific payment is assigned a new schedule of sales charges. The surrender charges are based on each payment, not on the number of years that the contract has been in force. Conforming this type of calculation to the proposed disclosure requirements for back-end sales loads would be particularly difficult for the insurer and confusing for the investor.

6. ***Sales fee***. Proposed rule 15c2-2(c)(4) would require disclosure of any dealer concession that the broker-dealer earns in connection with the transaction, expressed in dollars and as a percentage of the net amount invested. The basic problem with this aspect of the Proposal is that the amount earned by the broker-dealer will generally not be equivalent to the amount of the front-end sales load (which has been disclosed elsewhere in the confirmation).[5] Customers will not be able to determine the relationship between these two charges without referring to the prospectus. Moreover, since the Proposal would characterize this dealer concession as *"equivalent to X% of your investment"*, many customers may erroneously conclude that the dealer concession is a separate charge, apart from the sales charge he/she has already paid. If retained, this component of the Proposal should be clarified to ensure that it is readily apparent to the investor that this amount is paid out of the sales load.

Compensation paid to broker-dealers for variable life transactions cannot be easily reduced to a fixed "dealer concession". Traditional insurance compensation includes basic commissions, overrides, and allowances. Some of this compensation (such as allowances) is often paid in arrears or adjusted as certain sales levels are reached, and thus may not be readily available at the time the confirmation is prepared.

For some variable life transactions, total compensation may well approach or exceed the total amount of the investor's initial investment. While some customers may find it

[5] The Commission acknowledges the existence of this situation. See footnote 84 of the Release.

peculiar or interesting to know that the "sales fee" is more than 100% of their initial premium, such impressions are misleading.[6] Frequently, the insurer makes a significant up-front investment in this compensation to compensate the salesperson for the tremendous effort put forth in selling such a complicated product. Funding for such payments comes out of the insurance company's assets, and not out of the investor's investments. Variable life purchasers will be unable to reconcile all of the different compensation numbers that would be presented in the confirmation.

7. ***Revenue sharing.*** The proposed requirement that the confirmation list, in specific dollar terms, the amount of "revenue sharing" that the selling broker-dealer may receive in connection with the purchase of a Covered Security would be misleading to some investors. The Proposal would be suggesting to investors that a broker-dealer's receipt of revenue sharing in the past has some sort of relationship (direct or otherwise) to the investment then being made by the investor. In many cases, however, there is simply no relationship between the investor's purchase and the amount of revenue sharing that the broker-dealer may have received in the past.

Many revenue sharing programs are not prospective in nature. That is, a broker-dealer frequently has no guarantee from an issuer that it will receive any specified level of revenue sharing payments in the future. Yet, if the Proposal is adopted, a customer will be misled into believing that his broker-dealer and/or salesperson will continue to benefit at the same rate in the future when, in fact, the broker-dealer may not receive any such revenue sharing payments. Moreover, classifying such revenue sharing amounts as a "percentage of the investor's payment" creates the false impression that the investor is being charged for, or somehow paying, these revenue sharing items.

Also, the proposed definition of "revenue sharing" is too broad. This definition encompasses even small items such as dinners, drinks and other routine business courtesies that a wholesaler employed by an issuer of a Covered Security may provide to a salesperson of the broker-dealer. If such a concept is to survive in any final rule, the Commission must establish a minimum threshold of payments which are beyond the scope of disclosure.

Another major flaw with this particular aspect of the Proposal is that "associated persons" of the broker-dealer are included in the category of recipients of "revenue sharing." Thus, a broker-dealer would have to include in its calculation of revenue sharing any payments that a sponsor of a Covered Security is making to any affiliate of the broker-dealer. In a large, multi-faceted financial services enterprise such as MassMutual Financial Group, a sponsor may have financial relationships with numerous members of the enterprise. The broker-dealer may not, in fact, be aware of these arrangements or benefit from them. The proposed disclosure would inappropriately and incorrectly be advising a prospective purchaser of a Covered Security that his/her broker-dealer or registered representative was somehow benefiting from, or being influenced by,

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[6] Many insurers annualize the commissions paid to broker-dealers when the purchaser of the variable contract elects to pay his/her premiums on a monthly basis. Thus, if a customer's initial payment is for one month's premium, and the broker-dealer annualizes the commissions for that sale, the "sales charge" percentage could be as high as 1200%.

payments from the issuer of that Covered Security to some remote affiliate of which neither the broker-dealer nor the registered representative was even aware. Such disclosure would be immaterial and misleading.

Mandating such disclosure for unit investment trusts such as the separate accounts for variable annuities and variable life products is particularly inappropriate. A registered representative's compensation for the sale of these products is determined at the product level, not at the sub-account level. Thus, a registered representative has no financial stake in how the customer allocates his/her premium among the available sub-funds.

Revenue sharing for variable products occurs generally only at the underlying fund level. Mandating disclosure of the revenue sharing made by the fund sponsors to the insurance company for including those funds as a sub-account option in the variable product creates an erroneous impression that the registered representative (or his/her broker-dealer) is somehow being rewarded or influenced by such payments. That is an inappropriate inference.

Meaningful disclosure of revenue sharing can - and should - be provided through a process not involving the confirmation and not creating false and misleading impressions. NASD Notice to Members 2003 - 54 provides one such option. The "approximate percentage ranges, possibly in conjunction with checkboxes" format discussed in the Release provides another, but not as attractive, alternative.[7]

8. Differential Compensation. While not particularly burdensome, the "check the box" format for requiring disclosure of the payment of special compensation to broker-dealer personnel is not particularly meaningful either. As the Commission notes,[8] the Proposal would not require disclosure of financial incentives which are attributable to the fact that one Covered Security may offer a higher dealer concession than another Covered Security. If such discrepancies are not deemed to merit disclosure,[9] then advising investors that a salesperson's commissions for selling B shares may be higher, in some circumstances, than his/her commissions for selling A shares seems particularly curious. A salesperson seeking to avoid this disclosure could easily do so simply by selling a higher priced fund. We question the usefulness of this particular disclosure.

Moreover, under no circumstances should the specific amount of the differential compensation have to be disclosed in the confirmation. Given the wide variety of differential compensation arrangements utilized by broker-dealers, and the de minimus nature of many of these benefits, the costs and burdens associated with calculating many items of differential compensation will far outweigh any benefit a prospective investor may have in learning about the actual dollar amount of such compensation.

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[7] See page 25 of the Release.

[8] See footnote 106 of the Release.

[9] We are in no way advocating disclosure of such discrepancies. The logical conclusion of any efforts in this area would lead to a complete discussion of "load" versus "no-load" mutual funds.

9. ***Comparison range disclosure.*** Proposed rule 15c2-2 would require that confirmations also provide median and 95th percentile range information for sales loads, asset-based sales charges and service fees, dealer concessions, revenue sharing, and portfolio brokerage commissions for transactions involving Covered Securities. Placing mutual funds into the appropriate "industry norm" would be an extremely complicated and ultimately subjective process for the Commission. A single growth fund might be properly lumped in with all equity funds, all domestic equity funds, all actively managed domestic equity funds, all actively managed domestic equity growth funds or many other groups. Depending on the universe of comparison, the results of the comparison may be quite different, yet none of these comparisons would be more "correct" than another.

Given the relative complexity of variable insurance products, it would be a challenging, if not impossible, task to determine what is an equivalent product for purposes of providing the comparison range. For example, variable annuities are frequently sold on an "unbundled" basis which permits purchasers to select from a menu of optional product features. These optional features include bonuses, enhanced or stepped-up death benefits, guaranteed minimum income benefits, guaranteed minimum accumulation benefits, and guaranteed minimum withdrawal benefits, with a number of variations available within each type of feature. Each optional feature generally has a charge associated with it.

As a result, we do not see how a meaningful comparison group of variable annuity or variable life insurance contracts can be constructed for purposes of making a comparison between "industry norms" and the fees and charges incurred with a particular transaction. Should the sales charges and service fees disclosed in a confirmation for the purchase of a variable annuity be compared with those incurred in purchases of all variable annuity contracts, regardless of features or options, or only those with similar or identical features? If all contracts are included, we question whether they would truly represent "comparable securities." If the latter, how is the determination made as to whether contract features are similar enough to the contract being confirmed to be used to calculate industry norms?

The prospectuses for Covered Securities currently contain fee tables that list all charges, including the range of certain charges. This enables the purchaser to review a number of prospectuses for similar products and compare charges before deciding which product to buy. This approach is far more uniform and effective, and certainly would be (and is) far less costly to develop.

Many aspects of the Proposal appear to reflect the Commission's apparent interest in re-characterizing the nature and role of confirmations. We believe that the fundamental business purpose of confirmations should be to provide an investor with an immediate, post-sale record of the transaction he/she has just executed. Basically, it is a record of the costs of purchasing the product. The Commission's contention in footnote 86 of the Release that the "confirmation should inform an investor of the potential conflicts of interest that confront a broker-dealer" represents an unprecedented and drastic expansion of the fundamental purpose of such documents.

General disclosures regarding the costs of owning the security or conflicts associated with the purchase of the security belong in the prospectus - not the confirmation. For example, the proposed inclusion in the confirmation of an entire page of "explanations and definitions" for 12 different terms and concepts over-complicates the confirmation and would distract the investor. Such explanatory items are more akin to traditional disclosure items that should be included in the prospectus, not the confirmation. If such items were set out in the prospectus, then the confirmation could simply refer investors to the appropriate language in the prospectus. This would reduce the length and complexity of the confirmation, while still ensuring that investors had access to timely information.

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, tremendously confusing. Such a course of action can only lead to increases in cancellations, reversals and other administrative problems.

Proposed New Point-of-Sale Rule

The point-of-sale components of the Proposal would impose severe and unreasonable costs and burdens on broker-dealers that conduct business outside of a formal office environment. In the business model employed by these firms (such as MMLISI), the overwhelming majority of sales take place during face-to-face interactions in clients' homes and businesses. These broker-dealers 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.

The Proposal would require the broker-dealer to deliver information about distribution-related costs that the investor may bear and the dealer concession that the broker-dealer may expect to receive in connection with the transaction, combined with qualitative information about practices that lead to conflicts of interest in connection with the transaction. In particular, the broker-dealer would have to incorporate into the point-of-sale document the specific amount of distribution-related costs that the customer would be expected to incur, the amount of the sales load, estimated asset-based sales charges and asset-based service fees paid out of fund assets in the following year, and the maximum amount of any deferred sales load that would be associated with the purchase if the shares were sold within one year.

To minimize the tremendous liability that would be associated with providing incorrect information in this document, firms would need to automate this process.[10] Such automation would involve extensive coordination with the firm's home office administrative systems to ensure that appropriate breakpoint calculations were made and disclosed. Such extensive

[10] We note again the Commission's insistence that literal compliance with the point-of-sale rule would provide no "safe harbor" against non-disclosure liability.

calculations could not reasonably be accomplished by relying on a sales representative's mathematical abilities. Thus, firms would be forced to either revise their fundamental manner of conducting business or provide their sales representatives with the ability to prepare accurate point-of-sale disclosure documents via linkages to centralized computer systems.[11]

Even if, however, such automated solutions could be developed, it would still be necessary for such firms to enable sales representatives to print out such documents at the point-of-sale. Firms would be required to invest in portable printers, another significant expense.

Mandating that customized disclosure documents with extensive mathematical calculations be provided to customers at the point of sale would impose an intolerable competitive disadvantage on firms that do not typically conduct their sales with easy access to the firm's central computers and printers. Firms could be forced out of business by this aspect of the Proposal.

We will not repeat here all of our technical objections to the format of the disclosure for the front-end sales load, the amount of sales fee received by the broker-dealer, the estimated first-year asset-based distribution or service fees and the other specific items that would have to be disclosed at the point-of-sale. The concerns which we identified in connection with these items in the proposed confirmation rule also apply to the point-of-sale disclosure document.

Although a generalized (i.e. a non-customer-specific) point-of-sale disclosure document would certainly be less disruptive to many broker-dealers, the implementation of a disclosure process that parallels the prospectus disclosure process is quite troublesome. This aspect of the Proposal exacerbates a very disturbing trend by the Commission and the NASD to direct prospective investors' attention away from the prospectus. As a result, purchasers of Covered Securities are being unwisely distracted from 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.

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. By mandating disclosures outside of the prospectus at the point-of-sale for specific topics such as the availability of breakpoints, variations in share class purchases of mutual funds, privacy, money laundering procedures and now revenue-sharing, it appears that investors are being told that "this is the really important stuff".[12] It would be neither unreasonable nor surprising if, faced with this avalanche of extra-prospectus disclosure documents, investors began ignoring the prospectus completely. Adoption of the proposed point-of-sale disclosure document would exacerbate this trend, and continue the undermining of the long-standing and carefully-structured prospectus disclosure system.

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[11] We question how the actual dollar amount of the front-end load can be calculated when the specific NAV associated with the proposed transaction will not be determined until after the purchase has been effected.

[12] The reasonableness of this belief would be reinforced by the investor's subsequent receipt of a confirmation that, in effect, merely duplicates the information he/she received at the point of sale.

Summary

The Proposal should not be adopted. The design flaws and unintended consequences of the Proposal will cause more harm than good. In any event, if the Proposal is adopted, the industry will need a very long transition period (a minimum of two years) to adapt its systems and procedures to ensure compliance with this drastic revision to the distribution process for Covered Securities.

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