Robert G. Zack
Executive Vice President and
General Counsel
Telephone: 212-323-0250
Facsimile: 212-323-4070
E-mail: bzack@oppenheimerfunds.com

OppenheimerFunds®
OppenheimerFunds, Inc.
Two World Financial Center
225 Liberty Street, 11th Floor
New York, NY 10281
Tel 212.323.0200

May 9, 2005

VIA ELECTRONIC MAIL

Mr. Jonathan G. Katz
Secretary
U. S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0506

Re: Mutual Fund Redemption Fees
Release No. IC-26782, File No. S7-11-04

Dear Mr. Katz:

OppenheimerFunds, Inc. appreciates the opportunity to comment in response to new Rule 22c-2 (the "Rule") under the Investment Company Act of 1940, as amended (the "Investment Company Act") adopted by the Commission pursuant to Release No. IC-26782, effective May 23, 2005 (the "Adopting Release"). OppenheimerFunds, Inc. is the investment adviser to the more than 65 investment companies that comprise the Oppenheimer family of mutual funds, having more than 7.5 million shareholder accounts. Including its affiliates, OppenheimerFunds, Inc. manages assets in excess of $175 billion, including more than $160 billion of mutual fund assets. The Oppenheimer mutual funds are sold to members of the public primarily by or through broker-dealer firms, banks, trust companies, insurance companies, financial advisors, retirement plan administrators and other firms that have selling agreements with our subsidiary, OppenheimerFunds Distributor, Inc., a registered broker-dealer that acts as the general distributor for the Oppenheimer funds.

In addition to responding to the Commission's request for comments with respect to the possible adoption of uniform redemption fees, we also have comments and concerns about the Rule in the form it was adopted. We strongly support the efforts of the Commission to find ways to enable the mutual fund industry to use redemption fees as a tool in our efforts to curb excessive exchange activity and to help funds manage the costs associated with frequent trading in mutual fund shares. We initially supported, with some reservations, the Commission's initial proposal (as amended and contained in Release

No. IC-26375A, March 5, 2004 [the "Proposing Release"]) to impose mandatory redemption fees on certain transactions. The initial proposal contained in the Proposing Release was perhaps one of the most important rule proposals by the Commission to deal with the abuses that occurred in the fund industry as the result of late trading and "market timing" abuses.

However, the Rule, as adopted, varies significantly from the proposal in the Proposing Release, and, most significantly, adds new provisions, not discussed in the Proposing Release, that require funds (with limited exceptions) or their distributors to enter into agreements with financial intermediaries holding shares in nominee name. While we recognize that the Commission's intentions in adopting this new provision was to try to provide funds with tools to enforce their policies on exchanges and purchases and redemption activity, we believe that the unintended consequences of this provision will actually be detrimental to funds and their shareholders. We also concur with many of the concerns and comments in the letter to the Commission from the Investment Company Institute on the Rule, but we would go beyond those concerns in urging the Commission to re-examine the Rule.

For the reasons set forth below, we believe that the mandatory intermediary agreement provision of the Rule: (1) imposes unnecessary financial and business burdens on funds and their distributors, (2) unfairly imposes on funds and their distributors potential but unexplained liabilities and possible penalties, (3) fails to explain or deal with the consequences of the refusal of a financial intermediary to enter into such agreement, and (4) differs so substantially from the proposed rule in the Proposing Release that it should have been part of a re-proposal of the Rule by the Commission to allow public comment and a hearing.

We continue to believe that in order for the Commission to enable funds to exercise control over the imposition of redemption fees and the trading activity of customers of omnibus or nominee accounts, the Commission should instead adopt a rule that would require that such omnibus accounts may be established only through regulated entities subject to the Commission's inspection and enforcement process. The Rule does not mandate that financial intermediaries impose the redemption fees adopted by funds, nor are such intermediaries required to take any steps to facilitate the collection of those fees. This creates a "hole" in the potential effectiveness of the Rule as a tool to enable funds to help curb excessive trading activity.

For those reasons, we respectfully urge the Commission (1) to consider whether additional regulatory action is necessary to impose direct obligations on intermediaries to effect a fund's redemption fee policies, and (2) to withdraw subsections (a)(2) and section (c) of the Rule, and to re-propose them for public comment. We are mindful that the Commission has already expended considerable time and effort in developing the redemption fee Rule, and we do not lightly ask the Commission to reconsider a rule that it believes to be largely complete. Our analysis indicates, however, that the Rule is fundamentally flawed and does not reflect an adequate examination by the Commission of the responsibilities, costs and consequences imposed by the Rule in the form adopted.

In particular we are concerned about the provisions of the Rule that require each fund or its distributor to enter into a written agreement with each financial intermediary (defined broadly as any "broker, dealer, bank, *or other entity* that holds securities of record issued by the fund, in nominee name" [emphasis added]) under which such financial intermediary must provide, upon request by the fund, certain information about purchasers of the fund's securities and execute instructions from the fund to restrict or prohibit purchases or exchanges of fund shares by "shareholders" identified by the fund.[1] We believe that the administrative and financial consequences of that provision, in particular, would be so onerous and expensive for funds and their distributors that there would be an unfair burden placed on funds in administering omnibus ownership relationships compared to other financial products such as separate accounts, wrap accounts and brokerage accounts, to name a few. Additionally the failure of the Rule to provide clarity as to the consequences of inability or failure of a fund or its distributor to obtain such agreements is, in our view, fatal to the operation of the Rule as drafted. Our specific comments and observations are set forth below.

A. <u>Sub-section (a) of the Rule Fails to State Clear Standards for Compliance with the Rule and Contains Ambiguous Language about the Scope of the Effect on Redeemability</u>.

We first wish to point out what we believe is a "hidden" potential exposure to liability under the Investment Company Act contained in sub-section (a) of the Rule. Under sub-section (a)(1) of the Rule, it is unlawful for a fund issuing redeemable securities or its underwriter or any dealer to redeem the fund's shares within seven calendar days after the shares were purchased unless the fund's board of directors has determined whether or not to impose a redemption fee. One effect of that provision, not discussed in the Adopting Release, is that a fund whose board of directors does not take such action to consider whether or not to impose a redemption fee (or a fund whose board does consider such action but does not enter into the required agreements with financial intermediaries required by section (a)(2) of the Rule) would not be allowed to redeem shares within seven days of their purchase. That would cause the fund to violate Rule 22c-1 under the Investment Company Act as a result of the fund's delaying the processing of a redemption order more than seven days after the receipt of such order, thus violating the requirement to effect the request based on the net asset value next computed after receipt of the redemption request. We are also concerned that this could cause open-end funds offering redeemable securities to be in conflict with the definition of "redeemable security" in Section 2(a)(32) of the Investment Company Act. We are uncertain whether the Commission intended that result in adopting the Rule as so drafted.

Secondly, subsection (a)(1)(i) states that a fund's board of directors must either approve a redemption fee or determine that imposition of a redemption fee is either not necessary or appropriate. However, the provision fails to state whether a fund's board of directors, as part of that consideration, can establish exceptions to the imposition of a

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[1] In point of fact, investors who purchase shares of a fund through an intermediary that holds the shares in nominee or omnibus name are not "shareholders" of a fund but are beneficial owners of the securities owned by the nominee or omnibus registrant.

redemption fee, if adopted, thus raising the possibility that the fee would have to be applied in all cases, including redemptions made for hardships, redemptions required by court settlements, as well as in the case of any redemptions of shares made in an omnibus account or retirement plan account held in nominee or omnibus form. We believe that the provision should clearly state that the board may approve a redemption fee, "applied in or under such circumstances as the board may deem appropriate, and subject to such exceptions as the board may determine are reasonable, and in an amount . . . ." to remove such ambiguity.

Additionally, sub-section (a)(1)(i) states that any approved redemption fee must be "on shares redeemed within a time period (*but no less than seven calendar days*) . . . ." [emphasis added.] We are puzzled by the application of that parenthetical. It appears to set a minimum period within which shares may not be redeemed without imposition of the redemption fee, but fails to state within seven days of what date the limitation must apply. We note that in the Adopting Release the Commission states that the Rule authorizes the fund board to "approve a redemption fee on shares redeemed within seven or more calendar days after the shares were purchased" and the rule proposal included a clear reference to "five business days after the security was purchased." Unfortunately, the Rule as adopted does not contain such a clear statement. Even if we assume from the language of the Adopting Release that the Commission intended that reference point for the limitation to be the date of purchase of such shares in the Rule, we believe that the Rule should have so stated. Additionally, that provision bars a fund's board of directors from imposing a redemption fee on shares redeemed within less than seven days of their purchase. In effect, that would preclude a fund's board from exercising its business judgment to attempt to curtail redemptions within, for example, five days of purchase. We believe that decision would be better left to the board, exercising its business judgment as to what time period after purchase of shares is the appropriate time period for the fund to consider to evidence improper or excessive short-term trading.

If the purpose of the Commission was, as stated in the Adopting Release, to "authorize[] fund directors to impose a redemption fee of up to two percent of the amount redeemed when they determine that a fee is in the fund's best interest,"[2] we are puzzled by the language in the final Rule that mandates that a board consider whether or not to adopt such a fee and couples that requirement with a "penalty" against the fund if the board fails to do so. It would have seemed to us to have been adequate for the Commission to have authorized boards to exercise their judgment to consider adopting such a fee without requiring them to do so. There is no explanation in the Adopting Release for taking that approach in the final Rule.

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[2] Adopting Release, page 10.

B. <u>The "Financial Intermediary" Contract Requirement is Onerous and Unworkable.</u>

As written, Rule 22c-2(a)(2) will impose substantial costs and burdens on funds or their distributors to implement a mandatory "financial intermediary" agreement requirement. It is likely that those costs will be passed along to fund shareholders in higher fees and expenses. We believe that this approach is unnecessary to provide funds with the tools to regulate trading activity in omnibus accounts and will have negative unintended consequences on funds and their attractiveness to broker-dealers and retirement plans, making them less competitive with other types of investment products that are not subject to such requirements. Taken literally, this provision also imposes substantial penalties on funds for non-compliance with the requirement to obtain agreements with financial intermediaries, no matter what may be the level of materiality or cause of such non-compliance, and even where compliance could disadvantage fund shareholders.

Rule 22c-2(a) provides:

> It is unlawful for any fund issuing redeemable securities ... to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements:
>
> . . .
>
> (2) The fund or its principal underwriter must enter into a written agreement with each financial intermediary of the fund, under which the intermediary agrees to:
>
> (i) Provide, promptly upon request by the fund, the Taxpayer Identification Number of all shareholders that purchased, redeemed, transferred, or exchanged shares held through an account with the intermediary, and the amount, and dates of such shareholder purchases, redemptions, transfers and exchanges; and
>
> (ii) Execute any instructions from the fund to restrict or prohibit further purchases or exchanges of fund shares by a shareholder who has been identified by the fund as having engaged in transactions of fund shares (directly or indirectly through the intermediary's account) that violate policies established by the fund for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund.

If the conditions in subsection (2) are not met, a fund must suspend the rights of *all* of its shareholders to redeem shares within 7 days of purchase, even if the board has acted to consider whether or not to impose a redemption fee. This is a extraordinarily draconian penalty that would injure shareholders, including those who hold their shares directly and not through a financial intermediary, even where no evidence suggests that abusive trading activity has occurred. We believe that is an unfair and unwarranted result. This provision in effect diminishes the basic benefit of daily liquidity provided by mutual

fund shares. It is our view that the Rule as written will damage shareholders' rights, and the confidence that investors and financial intermediaries have in mutual funds will be severely impaired. This extreme result in most cases will have no bearing on any potential dilution of fund share value resulting from abusive trading, but rather could derive from failure by the fund to obtain and maintain a single agreement with a financial intermediary as required by the Rule.

Additionally, sub-section (2)(ii) limits the obligation of the intermediary to execute instructions from the fund to impose restrictions on shareholder trading activity only to the case in which such trading violates policies established expressly for the purpose of eliminating or reducing dilution to share value. However, it is possible that a board may have had other legitimate reasons and purposes in establishing trading limitation policies, other than the reduction or elimination of "dilution." Indeed, the Commission recognizes that the imposition of a redemption fee may be implemented by a fund's board "to offset the costs of short-term trading in fund shares, and/or to discourage market timing and other types of short-term trading strategies." We recognize that the Commission adopted the Rule pursuant to its authority under Section 22(c) of the Investment Company Act that permits it to adopt rules and regulations for investment companies covering the same subject matter as Section 22(a) of the Act. However, we do not believe that the reference in Section 22(a) of the Act that rules adopted thereunder be for the purpose of reducing or eliminating any dilution of the value of a fund's shares must be the only basis of a decision by the fund's board in carrying our the provisions of such rules as are adopted by the Commission to prevent such dilution. In our view, such limiting language may provide a "loophole" for intermediaries to refuse to carry out a fund's or distributor's instructions, if they argue that the purpose of the trading restrictions is not specifically intended to "limit dilution."

While the Proposing Release offered, as one of three alternatives for compliance with the implementation of the proposed mandatory redemption fee, a requirement that a fund enter into an agreement with a financial intermediary under which the intermediary must provide certain information to the fund to permit the fund to assess the redemption fee, and as a second alternative the requirement that the fund enter into an agreement with the financial intermediary whereby it would assess the redemption fee, the Rule as adopted completely changes the context of agreements between funds and intermediaries in such a way that virtually all funds covered by the Rule will be required to enter into agreements, not for the purpose of assessing a redemption fee, but to require the financial intermediary to provide other customer-level information to the fund. Additionally, (1) the original proposal did not condition the fund's ability to redeem shares upon entering into agreements with financial intermediaries, (2) the Rule expanded the definition of "financial intermediary" to include potentially every non-natural person holding shares of a fund, and (3) the Rule created new requirements for funds to enter into agreements with record keepers of participant-directed retirement plans with which they otherwise lack privity. Those revisions are so substantial and impose such substantial additional burdens and probable costs on funds that we believe they changed the very nature of the proposed rule and as a result the contents of the Rule as adopted should have been the subject of a re-proposal of the rule for public comment.

C. The Rule's Contract Requirement Places Extraordinary Administrative and Cost Burdens on Funds and their Distributors

1. *Determination of "Nominee" Ownership.* As the Rule is drafted, we believe that in order to assure compliance with the requirement to enter into an agreement with each financial intermediary holding shares of the fund, every fund will find it necessary to review the form of registration of every existing shareholder account to determine whether the account is owned by a "financial intermediary" and to establish procedures to determine whether new accounts are being purchased by a "financial intermediary." The process will be extraordinarily costly and cumbersome to execute, as discussed below.

The Rule defines the term "financial intermediary" as "any broker, dealer, bank, *or other entity* that holds securities of record issued by the fund, in nominee name [emphasis added]." That definition is so broad as to cover potentially every fund account that is not held in the name of a natural person. In effect, it imposes a substantive requirement on the fund to make an inquiry to every non-natural person owning shares to determine whether such shares are held "in nominee name." Among our concerns about the provision is the Rule's conspicuous lack of definition of the term "nominee name." It is not clear whether this term is defined anywhere else in federal securities laws or regulations, and, absent greater clarity from the Commission, the term must be interpreted by fund firms to include potentially every fund account held in the name of a non-natural person. For example, how will we know whether what appears to be a partnership holding fund shares in its name holds those shares as nominee for individual partners unless we make an inquiry? Funds will no doubt feel compelled to make specific written inquiry of all accounts held by entities other than natural persons to seek to avoid the drastic remedy the Rule imposes for failure to comply with any aspect of the Rule.

There are more efficient and cost-effective ways for our funds' transfer agent to monitor excessive trading activity at the account level, even in the case of omnibus accounts, without having to enter into agreements with those entities or to obtain specific customer-level information from the account owners. We already do so, by reviewing overall trading at the omnibus account level. This provision of the Rule imposes substantial operational burdens and costs on our funds without offering any substantial benefits that we can discern. It may even impose the obligation on funds and their distributors to request customer-account-level data from omnibus account owners to avoid potential liability for failing to take all steps offered by the Rule even in the absence of evidence of trading abuses. This would result in added administrative costs and burdens.

2. *The Rules Will Result in Substantial Costs and Burdens to Funds and their Distributors.* The costs of reviewing all such account registration formats and making such inquiries cannot be quantified at this time, but we estimate the initial cost as to existing accounts will be substantial and that the computer systems and settlement process changes that will be necessary to effect such inquiry for new accounts will also be substantial. There are more than 7.5 million shareholder accounts on our funds' books.

Thousands of "financial intermediaries" (not just brokers and dealers but "other entities," as defined in the Rule) offer shares of the Oppenheimer funds or hold them as nominees for their customers.

For example, there are more than 26,500 pension and profit-sharing plans (including 401(k) plans) on our transfer agent's books, registered in "omnibus" format for retirement plans administrators, including more than 16,000 plans that are not OppenheimerFunds prototype plans. Additionally, there are over 3,200 SAR/SEP plans. With respect the these retirement plan accounts, the provisions of the Rule appear to require us to inquire whether they use the services of a record-keeping administrator and, if we determine that they do, to enter into an agreement with that administrator.

Additionally, there are more than 2,300 firms have selling agreements for the Oppenheimer funds that potentially hold shares in nominee names for their customers on our funds' books. There are some 100 agreements with third-party administrators to provide retirement plan services for fees paid by our Transfer Agent, of which 6 of those TPAs are platforms for some 750 underlying TPAs which maintain accounts through those platforms. There are additionally some 54 insurance companies holding shares in Oppenheimer funds that offer shares for variable annuity and variable life insurance contracts. An additional 105,000 accounts (based upon our analysis of shareholder account registration codes) on the books of our funds' transfer agent represent accounts not held in the name of natural persons, and are therefore potential "nominee" accounts as to which an inquiry would have to be made, and as to which an agreement might be required.

Conservatively, we estimate it will take over four hours of employee time per account to (a) solicit each of those more than 137,000 entities or accounts for information as to their record-keeping or nominee ownership status, (b) follow-up to obtain any necessary agreement with those entities, and (c) code on our computer system, image the agreements (for record-keeping) and file the hard copies of such documents. The costs to implement merely that phase of the requirements imposed by the Rule will therefore be substantial. However, there are additional potential costs.

The Cost-Benefit analysis contained in the Adopting Release erroneously states that the costs of compliance with the Rule will be "one-time costs." In fact, the Rule will require (a) ongoing inquiry and monitoring of all new accounts to determine whether they are held by "financial intermediaries," (b) seeking to enter into agreements with such intermediaries, and (c) monitoring such financial intermediary nominee accounts for trading activity and seeking to regulate such activity. The estimate of $100,000 per fund to develop systems to "assemble the information" that funds may requests from intermediaries fails to take account of the fact that it will cost funds much more in overhead and personnel costs to review and analyze the data provided by intermediaries, and that many funds and distributors will probably feel it incumbent upon them to ask for the information on a regular, rather than on an *ad hoc* or occasional, basis. Our estimate of the initial cost to our funds to build or purchase a data warehouse for the information

on nominee accounts is between $672,000 -- $840,000, and the annual cost to store and review the data is estimated to be $3.7 million.

Additionally, there is the strong possibility that funds (or their distributors) in some cases may find the data they request to be incomplete or inadequate, thus requiring follow up with intermediaries. What is also likely to occur is that funds and their distributors will have to consider whether or not to attempt to "audit" such intermediaries or conduct compliance reviews of them to determine their compliance with the requirements of the agreements, rather than merely relying on whatever data is provided to them by the intermediaries. The costs of such compliance processes cannot be estimated at this time, but will be substantial.

The Rule puts all of the burdens and costs of compliance on funds and their distributors, but imposes no regulatory oversight or requirements, burdens or costs on financial intermediaries. By putting all of the burdens on funds to monitor excessive trading activity in omnibus or nominee accounts, the Commission's Rule assumes that the funds will be able to detect, from account-level activity, that there is possible excessive exchange activity *and then* request information from the "nominee" about the underlying beneficial ownership of shares to enable the fund to analyze whether certain accounts were engaging in such excessive trading. However, by that time, such activity will have already occurred, the "damage" if any from such trading will have already been done, and the process envisioned by the Rule will do nothing to have prevented such trading activity in the first place. The more effective and efficient way to prevent such excessive trading would have been to require intermediaries to enforce a fund's rules, which could be accomplished by requiring recordkeeping intermediaries to be registered entities subject to the Commission's inspection and enforcement jurisdiction.

The Adopting Release reflects the fact that the Commission grappled with the disagreement between intermediaries and the fund industry as to who should have the burden of monitoring customer trading activity in fund shares held in omnibus accounts and enforcing fund exchange policies. The Rule places that burden and its attendant costs squarely on the funds, ignoring the logic of having the intermediaries who have access to the underlying customer data and the capability of enforcing trading policies be the parties responsible for assuring compliance. The Adopting Release states that those modifications to the final Rule should reduce the costs of compliance to funds and financial intermediaries. We strongly disagree. It will reduce the costs only for financial intermediaries and substantially increase them for funds.

The "penalty" provisions of the Rule will operate against a fund even if only a single financial intermediary holding fund shares refuses or fails to execute such agreement, even if the number of shares held through such intermediary is very small. The customers of not just that intermediary, but all shareholders of the fund will be disadvantaged by the restriction on redemptions that will then be required to be imposed by the fund.

Additionally, this part of the Rule will affect the purchase and settlement process for fund shares purchased by or through financial intermediaries. Funds (and their distributors) will be required to make inquiries for all new accounts that are established after the implementation date of the Rule to determine whether the account is held in the name of a "financial intermediary" and to further determine whether that intermediary has an agreement with the fund in the form mandated by the Rule. That *de facto* requirement will pose special operational challenges: for trades that are processed through NSCC Fund/SERV, the fund's distributor will not have the opportunity to review the account registration format until after the trade has been processed and settled. If the distributor establishes the account on the fund's books without first obtaining the requisite agreement, the fund will be in violation of the Rule.

A similar challenge exists with respect to direct purchases of shares by financial intermediaries through the fund's distributor: the distributor might have to pend each trade or its settlement on the fund's books until it can ascertain whether the purchaser is a bank, broker, dealer, or other entity that will hold the purchased shares in nominee name (even where settlement occurs several days after the trade is entered) and obtain the requisite agreement. This could result in delays in effecting purchases and may dissuade some intermediaries from investing their clients' money in mutual fund shares.

2. *Lack of Clarity as to Consequences of Failure to Obtain Such Contracts*. The Rule throws onto funds and their distributors the burdens of obtaining, and the risks of not obtaining, such contracts from financial intermediaries as a condition to purchasing shares.

Funds and their distributors will also be faced with the dilemma of what to do about existing accounts held by intermediaries. What if an intermediary refuses to enter into an agreement with a fund or its distributor to provide the information the Rule mandates, or refuses to execute the instructions provided by the fund to restrict trading activity? The Rule and the Adopting Release offer no guidance on this point. The only "remedy" provided by the Rule for a fund's inability to obtain an agreement with any one intermediary is the suspension of the fund's ability to redeem shares within seven days (presumably of purchase), in effect forcing the fund to violate Rule 22c-1.

Funds cannot unilaterally redeem such accounts involuntarily unless their governing documents and prospectuses allow such involuntary redemptions in those circumstances, and effecting such redemptions would ultimately impose substantial hardships, including possible tax consequences, on the underlying investors holding the shares through a financial intermediary's account. In the case of retirement plans, such involuntary redemptions could result in premature distributions from such plan, causing tax penalties and other negative consequences to innocent investors. We do not believe that the Commission intended such possible consequences in adopting the Rule.

While the Rule requires such agreements with intermediaries to have provisions requiring the intermediaries to execute the fund's instruction, the rule lacks any regulatory enforcement "teeth" and places the burden and risk of assuring compliance on

the funds. We disagree with the statement in the Adopting Release that the requirement in the final Rule that the written agreement provide for the intermediary to execute the fund's instructions should address the concerns expressed by many in the fund industry in response to the proposed rule that a fund may not be able to prevail on intermediaries to enforce the fund's trading policies. The Rule places the enforcement burden and cost on the funds, and creates no risk of regulatory enforcement action on the intermediary that refuses to comply with such requests. To enforce such contractual provisions, funds may be compelled to consider legal action or to refuse to accept additional purchases of shares (which, in the case of retirement plans whose participants have payroll-deduction automated purchases, will create substantial hardships for such participants). This result could have been avoided by having the Rule mandate that intermediaries enforce the funds' policies.

3. *The Definitions of the Rule Require Agreements with Entities with which the Fund and its Distributor Lacks Privity.* Also of concern in the Rule's definition of "financial intermediary" is the requirement to maintain contractual arrangements with "any entity that maintains the plan's participant records" as specified in Rule 22c-2(c)(1)(iii). Like most in the fund industry, we offer many types of retirement plan products, and varying structures within each product type, designed to meet the variety of needs of plan sponsors. In certain retirement plan products, OppenheimerFunds does not have privity of contract with the entity or entities that provide recordkeeping services for plan participants. Yet section (c)(1)(iii) of the Rule includes within the definition of financial intermediary "any entity that maintains [a retirement] plan's participant records."

While that broad definition applies to record-keepers that hold the plan's shares in their names on the fund's books, it also appears to include even those record keepers that do not hold the plan's shares in their names on the fund's books and even those record-keeping entities with which neither the fund nor its distributor has any relationship, contractual or otherwise. The Rule would then appear to require each fund or its distributor to (a) determine whether an entity purchasing shares of the fund is a "participant-directed employee benefit plan, (b) inquire whether that plan has a record-keeping entity that maintains plan records, and (c) seek to enter into an agreement with that entity, *even if it does not hold the plan's shares in its name on the fund's books.* Thus, if the fund is unable to cause that record-keeping entity to enter into an agreement mandated by the Rule, the "penalty" provisions of the Rule operate.

Many of the participant-directed retirement plan accounts on our funds' books are small plans, with few participants, such as professional offices and small businesses. Expecting our funds or distributor to contact each of those plans to ask if they have a record-keeper and to obtain agreements with such record-keepers is unrealistic and would not serve the interests of deterring excessive trading activity, since the plan-level activity can be monitored currently for trading activity..

In addition, where an intermediary holds so-called "super-omnibus accounts", in which fund shares are registered as omnibus accounts with an intermediary that in turn

has an omnibus account on the fund's books, the actual recordkeeping may be performed at two or more layers or removed from the fund's or distributor's contractual relationships. It is quite possible that the entity holding such a "super-omnibus" account with the fund is also removed from the plan's recordkeeping entity or entities. We do not believe Rule 22c-2 takes into account the complexity of the marketplace and the realities of the contractual links among funds and their service providers. Funds and their distributors should not be expected or required to enter into agreements with entities that do not hold shares on a fund's books. Only in the case in which such record-keepers seek remuneration from the fund or the distributor for such record-keeping services is there an opportunity to mandate the type of contractual provisions contemplated by the Rule.

Although the Commission has sought comments on whether to limit a fund's need to obtain information from several layers of ownership down, the final Rule necessitates that this process be in place absent clarification in a further rulemaking.

The comment letter from the Investment Company Institute also addresses the concerns we have with respect to accounts held in the name of insurance company separate accounts for variable annuity/variable life insurance products. We echo the Institute's concerns that any changes to the "participation agreements" between the more than 36 insurance company sponsors that utilize certain Oppenheimer funds for their variable annuity/variable life insurance products to comply with the requirements of the Rule will require approval by the state insurance commissioners of the states in which such products are offered, or such insurance companies will not be in a position to carry out any instructions from the funds to limit trading activity by the insurance companies' underlying contract owners.

D The Rule as Adopted Differs so Substantially from the Proposed Rule that it Should Have Been Re-Proposed for Comment..

We believe that the final language of Rule 22c-2 differs so substantially from the proposed rule contained in the Proposing Release, and contains provisions not contemplated in the Proposing Release so as to have required that the Rule be re-proposed for public comment.

E. Request for Comments on Adopting Uniform Standards for Redemption Fees.

In our view, having uniform standards for redemption fees had appeal in the context of a rule that required all intermediaries to impose them. Such uniform standards would result in initial costs to all participants to implement compliance, but having uniform standards would simplify such compliance and reduce the costs of implementation. We do not hold that same view with respect to a rule that makes the adoption of redemption fees voluntary on the part of funds.

Having made the adoption of redemption fees voluntary, the Commission may create a disincentive for funds to adopt them by making the parameters of such rules standardized. For example, the share accounting method used to determine the

applicability of the fee should be left up to a fund and its board of directors, using their business judgment to determine the most appropriate way for that fund to apply the fee. Similarly, a fund's board, rather than the Commission, should determine whether to apply a de minimis waiver of the fee and, if so, what the relevant amount should be.

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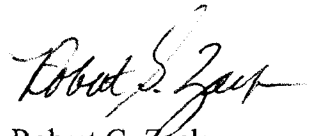
We urge the Commission to revisit and address the uncertainties created by Rule 22c-2 as adopted, in addition to considering comments on uniform standards that might be applied to fund redemption fees.

Thank you for considering our comments on the Rule, and we hope the Commission will find our letter constructive. Please direct any questions to the undersigned at 212-323-0250.

Sincerely,



Robert G. Zack
Executive Vice President and
General Counsel

cc: The Hon. William H. Donaldson, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Roel S. Campos, Commissioner
The Hon. Cynthia A. Glassman, Commissioner
The Hon. Harvey J. Goldschmid, Commissioner
Meyer Eisenberg, Acting Director, Division of Investment Management
Boards of Directors/Trustees of the Oppenheimer Funds
Mr. John V. Murphy, Chairman, President and CEO, OppenheimerFunds, Inc.

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