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WORKING FOR AMERICA'S RETIREMENT

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Comments on Mutual Fund Redemption Fees Release No. IC-27255 File No. S7-06-06

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The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to respond to the proposal by the Securities and Exchange Commission (Commission) to amend recently adopted Rule 22c-2.[1] Generally, Rule 22c-2 requires mutual funds to take certain steps to address potential abuses associated with short-term trading of mutual fund shares, including consideration of whether to adopt redemption fees and entering "shareholder information agreements" with "financial intermediaries" that submit purchase and redemption orders to the fund on behalf of other persons.

ASPPA represents approximately 6,000 retirement plan professionals who assist employers in establishing and maintaining tax-qualified 401(k) and similar defined contribution retirement plans (plans), including senior representatives of "third party administrators," banks, trust companies and insurance companies providing recordkeeping and other plan administration services ("plan recordkeepers and administrators"[2]). Retirement plans are significant investors in mutual funds. Plan recordkeepers and administrators that maintain participant records of plans that invest in mutual funds are "financial intermediaries" for Rule 22c-2 purposes. Accordingly, implementation of requirements under Rule 22c-2 has been and continues to be critically important to ASPPA members and their plan clients.

ASPPA welcomes the Commission's effort to reduce the costs of complying with requirements under Rule 22c-2 and to clarify the rule through the proposed amendments. In particular, clarifying that mutual funds need only enter shareholder information agreements with "first-tier" intermediaries strikes an appropriate balance between the burdens of negotiating and maintaining these agreements and funds' need for access to sufficient shareholder information to effectively address abusive short-term trading. Further, the proposed remedy for situations where first-tier and indirect intermediaries do not cooperate with mutual funds — the prohibition of future purchases of fund shares — would provide strong incentives to first-tier and indirect intermediaries to be responsive to funds' requests

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[1] Mutual Fund Redemption Fees, Release No. IC-27255 (Feb. 28, 2006), 71 Fed Reg 11351 (March 7, 2006) (proposed rule) (hereinafter, Proposed Rule Release).

[2] Third party administration firms providing plan recordkeeping services are often called "administrators" or "TPAs." However, as generally used in the retirement services industry, and in this comment letter, the "administrator" or "TPA" generally does not refer to the plan "administrator" defined in Section 3(16)(A) of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

for shareholder information. ASPPA strongly supports adoption of these proposed amendments.

However, requirements under Rule 22c-2 — including new mutual fund redemption fee programs, other limits on short-term trading in mutual fund shares, and the rule's information-sharing requirements — continue to pose significant issues for the retirement plan services industry. In particular, implementation, administration and communication (to employers and to plan participants) of fund programs, policies and procedures to meet requirements under Rule 22c-2 is complicated by mutual funds' non-uniform policies and procedures and because mutual funds are not willing to fully disclose what trading activities will be prohibited. To address this complexity, ASPPA urges the Commission to adopt additional measures to simplify the rule's requirements and costs, including the following:

- <u>Allow mutual funds to defer to trading limits adopted by plans in lieu of imposing their own fund policies</u>. Some plan administrators and recordkeepers are implementing plan level trading restrictions to prevent short-term trading by participants on their own automated plan recordkeeping and trade processing systems. The Commission should encourage funds to recognize these automated controls in lieu of a fund's own redemption fee program and other policies and procedures addressing abusive short-term trading, so long as the plan administrator or recordkeeper's systems are at least as strict as the fund's policies and procedures.

- <u>Establish *de minimis* requirements for imposing redemption fees and reporting transaction information</u>. ASPPA members are reporting that a significant majority of redemption fees collected are for *de minimis* amounts. The administrative expense of collecting *de minimis* fees far outweighs the benefit to funds of collecting these amounts. Similarly, if Rule 22c-2 information sharing requirements are limited to larger transactions, funds would be able to identify abuses that might harm shareholders, while reducing the costs of information sharing for intermediaries and fund management.

- <u>Restrict redemption fees and information sharing to participant-initiated transactions in the case of participant-directed plans</u>. In the case of participant-directed plans, participant-directed transfers and exchanges are the only transactions participants could use to engage in abusive "market-timing." Limiting redemption fee collections and information sharing requirements only to participant-initiated transactions would significantly reduce the costs of these requirements, without reducing the protection of fund shareholders.

- <u>Require funds to clearly disclose trading restrictions</u>. ASPPA members report that some mutual funds are not willing to fully disclose policies and procedures limiting trading activity by shareholders, but still may direct plan recordkeepers and administrators to suspend new purchases by individual participants or by a plan if the fund detects trading activity that violates its policies and procedures. A trading suspension where participants have not received notice of restrictions raises issues under certain provisions of ERISA and US Department of Labor regulations under ERISA.

Finally, ASPPA members have been actively engaged in working with mutual funds and other industry participants to implement requirements under Rule 22c-2. However, substantial efforts are still required to negotiate and finalize the required shareholder information agreements and to develop and implement automated systems supporting redemption fee programs and information sharing requirements. Based on this and the fact that these rule amendment proposals are pending, ASPPA believes that the October 16, 2006, compliance date is not realistic. Therefore, ASPPA respectfully requests that the Commission extend the compliance date to the later of April 16, 2007, or six months following the date that the proposed rule amendments are adopted.

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These comments are discussed in more detail. In addition, we provide information responding to questions posed by the Commission in its proposal to amend Rule 22c-2.

I. Comments on Proposed Amendments

The proposed rule amendments would provide that, generally, in the case of a "chain of intermediaries," mutual funds (or their principal underwriter, transfer agent or registered clearing agency) need to establish written shareholder information agreements only with the "first-tier" intermediaries, *i.e.*, intermediaries that submit orders to purchase or redeem shares directly to the fund, its principal underwriter, transfer agent or a registered clearing agency. These shareholder information agreements must require first-tier intermediaries to use "best efforts" to identify "indirect" intermediaries that hold fund shares through the first-tier intermediary. Upon the fund's request, the first-tier intermediary must provide (or arrange for the indirect intermediary to provide) shareholder identification and transaction information as required by Rule 22c-2 or, if the indirect intermediary does not cooperate, restrict or prohibit the indirect intermediary from purchasing the fund shares.

ASPPA strongly supports these proposed changes to Rule 22c-2 because they would substantially simplify and reduce the costs of negotiating and maintaining shareholder information agreements. First, the proposed rule amendment would allow much-needed flexibility for mutual funds receiving purchases and redemption orders from plans through a "chain of intermediaries." Without this clarification, mutual funds might be obligated to enter into written shareholder information agreements with all of the following "financial intermediaries" potentially involved in processing mutual fund transactions for a behalf of a plan — (i) an employer named as "administrator" of a plan [as defined by ERISA Section 3(16)(A)], (ii) a third party administration firm engaged by the employer to maintain the plan's participant records, (iii) a banking institution that serves as plan trustee and holds shares of the mutual funds for the plan in nominee name, and/or (iv) one or more of broker-dealers or other banks through which the plan's orders may be transmitted to the mutual funds.[3]

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[3] *See* Comment Letter of American Society of Pension Plan Professionals & Actuaries (May 9, 2005). As described in that letter some banks and broker-dealers, *i.e.*, first-tier intermediaries, may maintain omnibus positions with mutual funds. A single omnibus position might represent shares owned (a) beneficially by various "indirect" intermediaries, including plans or other clients of other banks or brokers that maintain an omnibus position with the first-tier intermediary bank or broke-dealer, and (b) shares owned beneficially by plans or other clients of the first-tier intermediary bank or broker-dealer.

Second, ASPPA agrees that additional written agreements between first-tier intermediaries and indirect (or "second-tier") intermediaries should not be mandatory. As a practical matter, ASPPA members believe that first-tier intermediaries receiving purchase and redemption orders from plan recordkeepers and administrators on behalf of plans are likely to establish written agreements with their indirect intermediaries; in fact, written agreements typically already exist among these parties. However, the rule should not require mutual funds to police whether such agreements are established. For example, it would be burdensome for funds and first-tier intermediaries to require funds to review these additional agreements. In addition, funds might attempt to impose requirements for such agreements, and first-tier intermediaries might find it difficult to accommodate a range of different requirements imposed by different funds.

Third, ASPPA members believe that the proposed rule appropriately puts the primary obligation to collect information from indirect intermediaries on first-tier intermediaries. Within the retirement plan services industry, first-tier intermediaries generally have regular contact with indirect intermediaries that submit orders to funds through them and typically already enter into written agreements with their indirect intermediaries for processing purchase and redemption orders and carrying out other functions. In addition, ASPPA also agrees that a "best efforts" standard is appropriate so that first-tier intermediaries that act in good faith are not unnecessarily penalized where an indirect intermediary fails to cooperate.

Importantly, the proposed remedy against non-cooperating financial intermediaries — *i.e.*, the prohibition of additional purchases of fund shares — involves substantial potential liability for plans and plan recordkeepers and administrators. Therefore, the approach developed in the proposed rule amendments should provide mutual funds sufficient information to effectively address abusive short-term trading, even though funds need only enter into written shareholder information agreements with first-tier intermediaries. Specifically, suspension of a plan's future share purchases raises legal compliance issues that may result in ERISA fiduciary claims or, with respect to non-fiduciary plan administrators and recordkeepers, breach of contract claims. For example, a suspension of purchases could interfere with the operation of a plan in accordance with the terms of its governing plan documents and applicable law and regulation. In the case of participant-directed plans designed to comply with US Department of Labor regulations under ERISA Section 404(c), restrictions or prohibitions on new share purchases may violate provisions under those regulations that provide that plan participants must be allowed to direct transactions for their plan accounts with a certain frequency. ASPPA believes that these risks make funds' obligations to suspend additional purchases a powerful tool in seeking cooperation from plan recordkeepers and administrators that are also financial intermediaries.

II. Commission Information Requests

ASPPA members are actively preparing for the implementation of requirements under Rule 22c-2. In response to the Commission's information requests, following is an overview of efforts in the retirement plan services industry to address Rule 22c-2 and its various requirements, including a discussion of costs.

A. Systems and processes under development to support redemption fee programs, information sharing and fund trading limits.

Some individual plan administrators and recordkeepers are already developing and implementing new automated processes and systems to implement redemption fees, satisfy information sharing requirements and address trading limitations imposed by mutual funds in advance of the final implementation of Rule 22c-2. Generally, these plan recordkeepers and administrators are among the industry's largest participants, have resources to respond to funds' requests, and would be "first-tier" intermediaries under the proposed rule amendments. The processes and systems that they are currently developing are designed to meet specific existing requests from certain fund complexes.

Other plan recordkeepers and administrators, which may have a smaller client base and more limited resources, are only in the initial stages of implementing processes and procedures to meet requirements imposed by mutual funds under Rule 22c-2. These firms typically rely on retirement plan industry technology providers that market recordkeeping and plan administration software and systems. These technology providers have begun projects to build functionality in their software and systems that would allow the imposition and collection of redemption fees and automated information sharing. However, these projects generally are not complete pending the adoption of final rules under Rule 22c-2 and the ongoing development of information sharing protocols among industry participants. Once technology providers have developed appropriate software and systems, individual plan recordkeepers and administrators still must purchase and install the software and systems.

ASPPA members anticipate that, on the expected compliance date of October 16, 2006, most smaller-sized plan recordkeepers and administrators will not be able to support the information sharing requirements under Rule 22c-2 with automated processes. Instead, they will be required to respond to mutual funds' information requests using expensive and burdensome manual processes until they can obtain and implement automated processes for the information sharing.

In addition to software and systems supporting redemption fee and information sharing programs, some retirement plan services industry participants are developing methods for detecting and preventing abusive short-term trading by plan participants. Generally, these methods would implement "trading limits" that mutual funds adopt to detect and prevent abusive short-term trading, in addition to or in lieu of redemption fee programs. For example, many funds' policies and procedures impose limits on the number of exchanges or the number of redemption and purchase transactions (*i.e.*, "roundtrip limits") permitted to each shareholder within a particular time period. Recordkeeping and trade processing system enhancements would support these types of limits with "exchange block" and "round-trip" functionality.

- An exchange block allows the recordkeeper to create a rule with respect to each fund offered under plan that is enforced at the participant account level. The exchange block restricts a participant's ability to exchange to and from a fund. For example, a fund has a policy that allows one exchange each 90 days. The participant performs an exchange on day 1. On day 45, the participant attempts to purchase back by exchange into the same fund. If an exchange block is applied, the participant-level order taking system will either issue a warning to the participant or prevent the purchase.

- Round trip rules allow a recordkeeper to create a rule with respect to a particular fund, enforced at the participant account level, which allows the participant to make a defined number of purchases and redemptions during a period before action is taken to either warn the participant or to block new transactions. This is a more problematic rule to apply and appropriate systems still need further development.

When a shareholder violates trading limits imposed by a mutual fund, the fund may suspend the shareholder from additional purchases of shares for a period of time or prohibit future purchases indefinitely. Plan recordkeepers and administrators are developing systems enhancements that would allow temporary suspensions or indefinite prohibitions on additional purchases of a particular fund's shares to be enforced against individual plan participants. However, some recordkeeping systems do not currently support blocks on fund purchases at the plan participant level. In that event, a plan's trades in the impacted mutual fund must be blocked to comply with the fund's suspension or prohibition on future purchases.

B. Costs of collecting shareholder information.

ASPPA members anticipate that collecting shareholder information and delivering this information to mutual funds will involve two types of costs. First, there are the initial costs of developing and implementing processes and systems to support information sharing requirements. These costs are expected to be substantial, although generally, one-time outlays. Recordkeepers that must initially implement manual processes to respond to requests and then transition to automated processes are expected to incur additional costs.

The second type of cost, which cannot be readily estimated, is the cost of supporting fund information requests on an ongoing basis. Plan administrators and recordkeepers do not yet have a clear understanding of how often funds are likely to request reports. For example, daily reporting requirements would be substantially more burdensome and expensive than less frequent reporting requirements (*i.e.*, weekly or monthly reporting). In addition, it is unclear whether mutual funds will require plan recordkeepers and administrators to provide the information through a proposed NSCC information clearinghouse. If so, per record charges imposed by NSCC may be significant if mutual funds request substantial numbers of records on an ongoing basis.[4]

Importantly, the costs of implementing programs for collecting and delivering shareholder information and ongoing efforts to support information sharing requirements will eventually be passed on to retirement plan participants through higher administrative fees charged by plan recordkeepers and administrators or through higher mutual fund expenses. These increased costs paid by plan participants will ultimately reduce retirement savings by American workers.

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[4] We understand that NSCC recently quoted a proposed charge of $0.25 for 100 records. Given that plans may have hundreds or thousands of participants, this small charge could prove costly if mutual funds make frequent records requests.

C. Impact of non-uniform fund policies and lack of disclosure.

Efforts in the retirement plan services industry to address the various requirements under Rule 22c-2 have been substantially complicated by two issues, specifically (1) lack of uniformity in mutual fund policies and procedures, and (2) insufficient disclosure and communication by mutual funds about their programs, policies and procedures.

First, fund complexes continue to structure redemption fees differently (even among funds within the same complex), imposing different fee rates (*i.e.*, 1% or 1.5% or 2%), applying the fees for different time periods (*e.g.*, 30 days, 60 days or more, and in some cases more than one year).[5] Some funds do not collect redemption fees less than the *de minimis* threshold, while others do not make any exceptions. Some funds agree that redemption fees only apply to participant-directed exchanges and transfers, but others insist on imposing redemption fees on any transaction, whether or not the participant requested the transaction and regardless of whether the transaction could be employed in a market-timing strategy.

Lack of uniformity is also a problem in the context of information sharing programs and the trading limits and other restrictions imposed by funds to detect and prevent abusive short-term trading. For example, some funds are already requiring daily delivery of transaction information through automated processes. Other funds are making infrequent requests for reports, or request plan recordkeepers to provide data with respect to particular sets of transactions. Funds are also establishing non-uniform policies imposing trading limits (such as exchange or round-trip limits as described above.)

Non-uniform redemption fee programs and trading limits increase the complexity and cost of communicating about redemption fees and limits on trading activity to plan participants and increases the likelihood that participants will find non-uniform requirements confusing and frustrating. Further, implementation of non-uniform redemption fee programs and trading limits and the need to respond to different information-sharing requirements requires additional programming of trade processing, recordkeeping and participant order taking systems, including automated voice response and Internet systems. On an ongoing basis, maintaining plan recordkeeping, order taking and trade processing systems to support non-uniform requirements will be more expensive and errors are more likely to occur, further increasing administrative costs and the liability risk of service providers. Therefore, non-uniform requirements are increasing plan costs and ultimately will impact retirement savings by American workers.

Second, ASPPA members report that funds (or their agents) are not fully disclosing their policies and procedures designed to address abusive short-term trading. In particular, ASPPA members have reported that mutual funds are often unwilling to provide detailed information about what trading activities will trigger a trading suspension under their policies and

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[5] We discussed our concerns about non-uniform redemption fee programs in detail in previous comments provided to the Commission in October 2004 and May 2005. *See* Comment Letter of the American Society of Pension Actuaries (Oct. 8, 2004) and Comment Letter of the American Society of Pension Professionals & Actuaries (May 9, 2005).

procedures. Moreover, most mutual fund prospectuses are ambiguous about whether and how redemption fee policies and trading limits apply to retirement plan participants.[6]

Lack of clear disclosure about redemption fee programs and limits on trading activity makes it difficult for plan recordkeepers and administrators to develop and implement systems and procedures to assist funds in enforcing their policies. Further, retirement plan fiduciaries and plan participants often do not receive reasonable notice of each mutual fund's existing policies against frequent short-term trading. This means that mutual funds may require plan recordkeepers and administrators to suspend or prohibit new purchases by a plan or particular participant in situations where the plan fiduciaries and participants have not received notice about what conduct could result in a suspension or prohibition on future trading. A suspension of trading where participants have not received reasonable notice about limits on trading activities could result in violations of requirements under US Department of Labor regulations under ERISA Section 404(c), (which establishes participant disclosure and other requirements for participant-directed plans), and ERISA Section 101(i), which requires advance notice of "black-outs" under participant-directed plans.[7]

III. Uniform Standards and Other Measures to Minimize Rule 22c-2 Burdens

ASPPA has already commented to Commission about the need to address issues raised in the retirement plan services industry by the non-uniform approaches taken by mutual funds to redemption fees. In this regard, the "open-architecture" model common today in the retirement plan industry allows participants of participant-directed plans to invest among a variety of mutual funds offered by different mutual fund complexes. This model provides plans and plan participants access to a broader range of investment choices, possibly improving their ability to save towards retirement. However, where plan investment options include mutual funds from different fund complexes, the plan faces added complexity in plan administration requirements and communications to plan participants because funds may impose a range of non-uniform requirements for Rule 22c-2 purposes.

ASPPA has previously encouraged the Commission to consider imposing uniform redemption fee requirements and reiterates its previous comments.[8] In particular, the following measures could substantially reduce the costs and burdens resulting from the implementation of requirements under Rule 22c-2.

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[6] Some ASPPA members also report that, even where prospectus information is not vague, funds may enforce their policies differently in practice than stated by the prospectus. This has led to disputes between plan recordkeepers and mutual funds, resulting in additional operations costs for both.

[7] *See* Statement of Assistant Secretary Ann L. Combs on the Duties of Fiduciaries in Light of Recent Mutual Fund Investigations (Feb. 17, 2004), *available at* www.dol.gov/ebsa/newsroom/sp021704.html.

[8] For example, the implementation and ongoing support of redemption fee programs would be substantially simpler if funds were required to impose either a standardized redemption fee (*e.g.*, 2% for 90 days) or no redemption fee at all. Standardization would make redemption fees simpler to program into plan recordkeeping and administration systems and to communicate to plan participants and, therefore, the process would be less costly to plans.

A. Encourage funds to defer to trading limits imposed by plan administrators in lieu of imposing their fund policies.

Uniformity could be established in the open architecture model by encouraging mutual funds to defer to appropriate policies and procedures adopted by a plan's administrator [as defined by ERISA Section 3(16)(A)] to prevent abusive short-term trading by plan participants.[9] For example, a plan administrator might impose plan-level rules allowing plan participants to direct exchanges or transfers among any plan investment options once every 30-day period.

In practice, generally, plan-level limits might be determined by the capabilities of recordkeeping systems used by the plan recordkeeper and adopted by the plan administrator. For example, the recordkeeping system might be capable of imposing an exchange limit within a period (*i.e.*, one trade in 30 days) but not able to impose round-trip limits. Also, plan-imposed trading limits might be more restrictive than a fund's requirements in order to accommodate policies imposed by the most restrictive fund. However, so long as the plan's trading limit is at least as restrictive as limitations imposed by the mutual funds in which the plan invests, mutual funds could defer to the plan's uniform rules rather than imposing their own non-uniform requirements. Protection for the funds' other shareholders still would be maintained.

The Commission should encourage mutual funds to recognize plan-level restrictions adopted by a plan administrator in lieu of imposing the funds' own redemption fee programs, trading limits or other policies and procedures addressing abusive short-term trading limits. In addition, if a plan recordkeeper or administrator imposes trading limits using an automated, auditable system, funds should not need to require systematic delivery of shareholder information. This approach would provide substantial relief to plans and to plan administrators and recordkeepers where automated systems are present to impose trading limits.

B. Establish *de minimis* requirements for imposing redemption fees and reporting transaction information.

Initially, the Commission proposed requiring or permitting funds to waive *de minimis* redemption fees of, *e.g.*, less than $50, which would allow redemptions of small amounts without redemption fees, *e.g.*, up to $2,500 from a fund imposing a 2% redemption fee.[10] In its comment letters, ASPPA has urged the Commission to adopt a *de minimis* exception because the administrative burdens and costs of monitoring and collecting redemption fees on small redemption transactions may exceed the value to the fund of any redemption fees collected. Similarly, if transaction information reporting is limited to larger transactions, funds will be able to identify abuses that might harm funds while reducing the costs of information sharing for intermediaries and fund management.

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[9] Courts reviewing the issue have concluded that the plan administrator of an ERISA-covered plan typically has authority to adopt and enforce reasonable restrictions on participant-initiated transactions. *See* Straus v. Prudential Employee Savings Plan, 253 F Supp 2d 438 (EDNY 2003). *See also* Borneman v. Principal Life Ins. Co., 291 F Supp 2d 935 (SD Iowa 2003).

[10] *See* Mandatory Redemption Fees for Redeemable Fund Securities, 69 Fed Reg 11762, 11765 (March 11, 2004).

ASPPA continues to urge the Commission to consider establishing a mandatory *de minimis* rule for redemption fee collections. In this regard, ASPPA members are reporting that a majority of redemption fees collected are for *de minimis* amounts that are well under $5, which is substantially lower than the $50 *de minimis* threshold proposed by the Commission. This is illustrated by data collected from third party administration (TPA) firms and set forth on the following chart.

TPA	**Dates of Sample**	**Total Redemption Fee Transactions During Sample Period**	**Value of Redemption Fees Collected Per Transaction (All transactions — each column is a total number)**					
			<$1	**<$2**	**<$5**	**<$10**	**<$20**	**Other**
#1	6-01-05 to 3-15-06	1,293		748			911	203 over $20
#2	1-01-06 to 3-21-06	218			Over 200			3 over $15
#3*	1-01-06 to 3-16-06	47	30		37	42		5 over $10
#4	1-01-06 to 3-18-06	36	21			34		2 over $10

*Fund families have agreed with this TPA to defer to the TPA's redemption fee policy, which only assesses fees on participant-directed transactions and does not assess fees on distributions, fund replacements, and recurring rebalancing transactions. This data represents redemption fees collected for the one fund that does not waive fees on any transactions and has no *de minimis* amount.

ASPPA believes that the administrative expense of collecting and remitting these *de minimis* fees far outweighs the benefit to funds of collecting these amounts and urges the Commission to consider adopting a mandatory *de minimis* standard for collecting and remitting redemption fees and shareholder transaction reporting requirements.

C. Restrict redemption fees and information sharing requirements to participant-initiated transactions in the case of participant-directed plans.

ASPPA has already argued to the Commission that, in the case of participant-directed plans, redemption fees should only apply to participant-directed exchanges and transfers among plan investment options.[11] This approach would mitigate the administrative complexity and cost of redemption fee programs in participant-directed plans, while still protecting mutual

[11] *See* Comment Letter of the American Society of Pension Actuaries (Oct. 8, 2004) and Comment Letter of the American Society of Pension Professionals & Actuaries (May 9, 2005).

fund shareholders from abusive short-term trading. Similarly, limiting the information sharing requirements under Rule 22c-2 to participant-directed transactions would substantially reduce the costs of responding to information sharing requirements on an ongoing basis.

Along with data provided to ASPPA in connection with its informal survey on the value of redemption fees collected, two TPAs reported information comparing whether redemption fees are typically being imposed on participant-initiated exchanges and transfers or on other plan transactions. One TPA reported that 170 of 218 redemption fees collected during the first quarter of 2006 resulted from one employer's decision to change the fund options offered under the plan; 32 redemption fees were imposed on plan distribution transactions, and only 16 were imposed with respect to participant-initiated transfer transactions. The other TPA indicated that during the first quarter of 2006, only 23 of a total of 47 redemption fees assessed related to participant-initiated transfers and 24 redemption fees were assessed on distribution transactions.

These numbers show that the application of redemption fees within participant-directed plans unfairly penalizes plan participants who did not intend to engage in short-term trading that would violate fund policies.

D. Require funds to clearly disclose trading restrictions.

As discussed, mutual funds are not clearly disclosing their policies and procedures to prevent and detect abusive short-term trading. As a result, retirement plan fiduciaries and plan participants often do not receive reasonable notice of funds' existing policies against short-term trading and market timing. Further, if a mutual fund suspends or prohibits additional purchases of fund shares where plan participants have not received reasonable notice, there could be violations of certain provisions under ERISA and US Labor Department regulations under ERISA. Therefore, ASPPA urges the Commission to require mutual funds to provide better information to plan recordkeepers and administrators, plans and plan participants about their policies and procedures to prevent and detect market timing to plan recordkeepers and administrators.

IV. Extension of Compliance Date

Generally, ASPPA members do not anticipate that all plan recordkeepers and administrators will have in place automated recordkeeping solutions that will support implementation of redemption fees, trading limits and information sharing requirements by all mutual funds as of October 16, 2006. In particular, small recordkeepers and administrators would be required to implement Rule 22c-2 requirements with costly manual processes if the effective date is October 16, 2006. In addition, substantial efforts are still required to establish the required shareholder information agreements between funds and first-tier intermediaries (or to amend existing agreements to incorporate Rule 22c-2 requirements), a process that is delayed by these pending rule amendments. As discussed herein, ASPPA also believes that the Commission should propose and adopt additional measures to minimize the burdens of Rule 22c-2 before making the rule effective.

Therefore, ASPPA encourages the Commission to extend the compliance date for Rule 22c-2, until the later of April 16, 2007, or six months after the proposed rule amendments are adopted.

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Thank you for your consideration of these additional comments. ASPPA appreciates the Commission's ongoing responsiveness to the retirement plan industry's concerns in connection with the implementation of Rule 22c-2. We are available to discuss these comments at your convenience.

Sincerely,

/s/

Brian H. Graff, Esq., APM
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