

VIA E-MAIL
Rule-comments@sec.gov

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

RE: SEC Release No. IC-27255
File No. S7-06-06

Dear Ms. Morris:

I am writing on behalf of Massachusetts Mutual Life Insurance Company (“MassMutual”) in response to the Securities and Exchange Commission’s request for comments in conjunction with the recently proposed amendments to Rule 22c-2 under the Investment Company Act of 1940 (the “1940 Act”), as amended (“Proposed Amendments”). MassMutual appreciates this opportunity to comment on the impact of the Rule and the Proposed Amendments on insurance companies and other similarly situated intermediaries, retirement plans and their participants, and variable insurance contractholders.

Executive Summary

MassMutual is a mutual life insurance company organized in 1851. It is a member of the MassMutual Financial Group, a diversified financial services organization with total assets under management in excess of \$395 billion. The companies that comprise the MassMutual Financial Group serve the needs of over ten million clients by providing a broad based portfolio of financial products and services including life insurance, annuities, disability income insurance, retirement savings products, mutual funds, money management and other financial products and services. Consequently, MassMutual is unusually well positioned to comment on the Rule and the Proposed Amendments because it offers mutual funds, is a first-tier intermediary in its capacity as a major provider to defined contribution retirement plans, maintains accounts of second-tier intermediaries and, in addition, offers variable annuity and variable life insurance products whose underlying assets are affiliated and unaffiliated mutual funds managed by some of the industry’s most respected advisors.

MassMutual commends the Securities and Exchange Commission (the “Commission”) for its efforts to protect investors and to restore investor confidence in mutual funds. We understand that Rule 22c-2 and the Proposed Amendments are designed to ensure that mutual funds and intermediaries take appropriate steps to prevent the harm that can result from market timing and excessive trading. MassMutual fully supports this goal and has itself had robust market timing and excessive trading control programs in place for several years. MassMutual has also worked cooperatively with many of the mutual fund families available under its products to ensure that our market timing and excessive trading control programs meet fund requirements.

Our comments here are intended to further the overarching goals of preventing the harm that can result from abusive trading activity, while at the same time minimizing the potential adverse consequences of the Rule to retirement plan participants, variable insurance contractholders and insurance company intermediaries as well as the significant costs that will be incurred if the Rule is not further amended. We believe that if the Rule and Proposed Amendments are implemented as currently written, it is very likely that the number and variety of investment options available to retirement plans and individual contractholders will decrease significantly and that the cost of those products will increase, reflecting the additional expenses incurred in complying with the Rule.

For the reasons noted above, we are proposing the following amendments to the Rule:

- The Rule should provide specific authorization for funds to continue to rely on uniform trading controls applied by intermediaries as an alternative to the fund's otherwise applicable redemption fees and/or trading restrictions.
- In order to be consistent with the "small intermediary" exception provided to funds, the Rule should be further amended to relieve first-tier intermediaries of the obligation to collect individual shareholder transaction data from small second-tier intermediaries.
- The Rule should be amended to eliminate the requirement that a first-tier intermediary prohibit further purchases by any second-tier intermediary that is unable to provide data within the time frame dictated by a fund and leave it to first-tier intermediaries to determine the most effective means of compelling compliance by second-tier intermediaries.
- The Rule should be amended to explicitly prohibit funds from using information obtained from intermediaries for any purpose other than monitoring trading activity for potential market timing and excessive trading.
- The Rule should be amended to exempt variable insurance products until such time as the contractual and regulatory impediments to compliance with respect to those products are resolved.

We are also responding to the following items with respect to which the Commission has requested comments:

- The Commission requested comments with respect to the costs to intermediaries of complying with the various requirements of the Rule. The lack of specificity in the Rule on certain matters and the uncertainty with respect to the positions funds will take on certain matters make it very difficult to accurately calculate costs. However, it is clear that the costs to intermediaries of initial and ongoing compliance will be significant and that those costs will ultimately be borne by shareholders.
- The Commission requested comments on whether funds, rather than first-tier intermediaries, should be responsible for collecting information from indirect

intermediaries. MassMutual believes that first-tier intermediaries are in a better position than funds to collect data from indirect intermediaries and therefore, does not believe the Rule should be changed in this regard.

- The Commission requested comments on whether the Proposed Amendments will result in funds receiving enough information to effectively address inappropriate short-term trading. MassMutual believes the Rule and the Proposed Amendments will achieve that goal but questions whether alternative means of prohibiting market timing and excessive trading would not be more cost effective.
- The Commission requested comments on whether first-tier intermediaries should be required to enter into explicit agreements with second-tier and other indirect intermediaries. MassMutual believes the rule should include such a requirement.

Finally, separate and apart from the substantive amendments we are proposing, we are urging that the Commission delay the compliance deadline under the Rule for a minimum of twelve months in order to give funds and intermediaries additional time to build the necessary reporting systems and to allow for the development of standardized trading controls and restrictions.

Rule 22c-2 is currently scheduled to take effect on October 16, 2006. As this compliance deadline approaches and funds and intermediaries prepare to meet their respective obligations under the Rule, it is clear that the costs and complexity of implementation will be greater than previously anticipated by funds or intermediaries and that a workable system for all parties to meet their obligations under the Rule has yet to emerge.

Although MassMutual and many other intermediaries have expended significant resources preparing to meet their obligations under the Rule, those efforts are hampered by the continuing uncertainty with respect to the frequency with which funds may request data from intermediaries, the criteria funds will apply to identify problematic trading activity and the specific restrictions funds will seek to impose on shareholders found to have violated the funds' rules. MassMutual and most other insurers are also constrained by individual variable contract provisions that prohibit them from applying redemption fees and/or trading restrictions that may be imposed by funds.

Our recommendations and concerns are discussed in detail below.

Uniformity

MassMutual offers a wide variety of individual variable insurance and variable annuity products as well as group retirement plan products that allow contractholders and retirement plan participants to invest in a wide array of both affiliated and unaffiliated mutual funds. MassMutual currently applies strict controls to discourage excessive trading in all of these products. Controls are uniform across all funds of similar style (i.e. global, international or domestic) offered under each product. We believe that maintaining this uniformity is essential to protecting the interests of shareholders and that it would be neither desirable nor even feasible to implement controls that vary on a fund-by-fund basis. Requiring shareholders to understand and

adhere to an ever-changing array of fund-by-fund rules would lead to confusion and to unintended violations of particular funds' policies, as well as unnecessary restrictions on shareholders' ability to effectively manage their investments. In the case of insurance and retirement plan products that offer dozens or even hundreds of investment options, the only feasible market timing control program from both the shareholder and intermediary perspectives is one that imposes a uniform set of controls across all investment options. MassMutual recommends that the Commission provide specific authorization and encouragement for funds to rely on uniform controls applied by an intermediary as an alternative to the fund's otherwise applicable redemption fees and/or trading restrictions.

Many fund families have reviewed MassMutual's market timing control programs and found them to be an effective means of ensuring compliance with the funds' policies. However, with the implementation of Rule 22c-2, funds may conclude it is incumbent upon them to require intermediaries to apply each fund's unique requirements. Again, we believe the Commission should amend the Rule and take additional action it deems necessary to avoid that result.

The Commission should also amend the Rule or issue guidance to the effect that, for both reporting and redemption fee purposes, mutual funds and financial intermediaries that serve participant-directed retirement plans must disregard all transactions other than participant-directed investment transfers. For example, in imposing a redemption fee, a fund should be required to disregard purchases and redemptions attributable to –

- (a) the plan's receipt of employee and employer contributions, rollovers, and loan payments,
- (b) distributions, withdrawals, rollovers and loans from the plan,
- (c) plan mergers, spin-offs, terminations and plan-to-plan transfers, and
- (d) automatic portfolio rebalancing.

Likewise, the administrators and recordkeepers of participant-directed individual account retirement plans should be required to disregard such transactions for reporting purposes under Rule 22c-2(a)(2)(i).

Small Second-Tier Intermediaries

The Proposed Amendments would revise the Rule to exclude from the definition of "financial intermediary" any intermediary that a fund treats as an individual investor for purposes of the fund's market timing/excessive trading policy. The effect of this change is that funds would not be required to contract with, or obtain underlying transaction information with respect to, these accounts. The Commission explained that this proposed change was in response to funds' concerns that they would otherwise be required to enter into agreements with a large number of small intermediaries. The Commission noted that when a fund places restrictions on transactions at the small intermediary level, "the fund is unlikely to need data about frequent trading by individual shareholders, because abusive short-term trading by the shareholders holding through the omnibus account would ordinarily trigger application of those policies." The Commission noted further "transparency regarding underlying shareholder transactions executed through these accounts is unnecessary to achieve the goals of the rule." MassMutual believes this logic supports, and that the Rule should include, a similar exception for small intermediaries trading through first-tier intermediaries. For example, a retirement plan provider that receives plan-level transactions from small plans and that applies its market timing control program to those plan-

level transactions should not be required to obtain, or to provide funds with, participant-level transaction data with respect to those accounts.

Purchase Restrictions on Second-Tier Intermediaries

MassMutual believes that prohibiting purchases by any intermediary that is unable to provide transaction data within the time frame dictated by a fund will have significant unintended consequences for shareholders, particularly retirement plans and participants. MassMutual recommends that the Commission revise the Rule to eliminate this purchase shut-off requirement or, as an alternative, leave it to first-tier intermediaries to determine the most effective means of compelling compliance by second-tier intermediaries. Furthermore, the purchase restriction provisions of the Rule should specifically exclude purchases resulting from periodic investment programs, retirement plan contributions, rebalancing and other automatic or regularly scheduled purchases that do not present a risk of abusive trading.

Privacy of Customer Information

MassMutual recommends that the Commission amend the Rule to explicitly prevent funds from using customer information supplied by intermediaries for any purpose other than policing potential market timing activity as required by the Rule. In many cases, fund companies and their affiliates are direct business competitors of the intermediaries from which they will obtain such information. Intermediaries are understandably concerned that such information could be used either intentionally or unintentionally for marketing to the intermediaries' customers or other unauthorized purposes. Therefore, the Rule should explicitly prohibit funds from using information obtained from intermediaries for any purpose other than as required by the Rule. The Rule should also require funds to take reasonable precautions to avoid unintentional misuse of the information.

Costs

The Commission requested comments with respect to the costs to intermediaries of complying with the various requirements of the Rule and the Proposed Amendments. Given the Rule's lack of specificity regarding the frequency and format of information requests, the extent to which funds may continue to rely on intermediaries' market timing control programs, and the trading restrictions to be imposed by funds, it is very difficult to estimate the total costs of compliance. MassMutual estimates that the first-year cost of building and administering a single-format reporting mechanism and responding to quarterly requests from each fund would alone be approximately two million dollars with respect to the various systems used to administer its retirement plan and individual variable insurance businesses. Each of these systems would require modifications to extract the transaction data that may be requested by funds and package this data in ways that the funds may require. These costs would be incurred again as administrative systems now in place are replaced in the future.

Further, the direct and indirect costs of communicating new fund requirements to shareholders and restricting trading as directed by funds as well as the on going costs of providing information

to funds as a first-tier intermediary and collecting information from second-tier intermediaries would be in addition to those indicated above and would be recurring expenses to intermediaries and shareholders.

Intermediary Chains

The Rule requires funds to enter into written agreements with intermediaries. The Proposed Amendments would require funds to enter into written agreements with only those intermediaries that submit orders directly to the fund, its principal underwriter or transfer agent or a registered clearing agency -- so called first-tier intermediaries. The agreements must obligate the first-tier intermediary to provide the fund with transaction and identifying information for any shareholder accounts held directly with the first-tier intermediary as well as those held through other, indirect, intermediaries. If an indirect intermediary is unable to provide the information, the agreement with the fund will obligate the first-tier intermediary to prohibit the indirect intermediary from purchasing additional shares on behalf of its customers. The Commission requested comments on whether funds, rather than first-tier intermediaries, should be responsible for collecting information from indirect intermediaries. MassMutual believes first-tier intermediaries are in a better position than funds to collect data from indirect intermediaries and therefore, does not believe the Rule should be changed in this regard.

The Commission requested comments on whether the Proposed Amendments will result in funds receiving enough information to effectively address inappropriate short-term trading. MassMutual believes the Rule and the Proposed Amendments will achieve that goal. The requirement on first-tier intermediaries to provide identification and transaction information for any shareholder accounts held directly or indirectly with the first-tier intermediary is sufficient to ensure that funds receive the information they need. However, MassMutual questions whether alternative means of prohibiting market timing and excessive trading are not more effective.

The Commission requested comments on whether first-tier intermediaries should be required to enter into explicit agreements with indirect intermediaries to provide information and meet the other requirements of the Rule. MassMutual recommends that the Rule include such a requirement. We believe such a requirement would help first-tier intermediaries ensure that indirect intermediaries meet their obligations.

Redemption Fees

As noted above, while the Rule does not require funds to impose redemptions fees or prohibit funds from continuing to waive fees for transactions made through intermediaries with effective market timing control programs, many funds may view the Rule as an endorsement by the Commission of redemption fees as the preferred method of controlling improper market timing and excessive trading. From the perspective of a large provider to defined contribution plans and variable insurance contracts, it is critical to our customers that we present them with an understandable uniform set of rules regarding frequent trading. If more funds look to impose redemption fees on transactions in retirement plans and insurance products, the effect will be to significantly reduce the number and variety of investment options available to plan participants and other investors, many of whom use these products as a primary means of saving for

retirement. In many cases, insurers and other intermediaries will drop funds that impose redemption fees from their investment platforms rather than impose those fees on customers and attempt to communicate a multiplicity of fund-by-fund rules that customers would find very confusing. MassMutual recommends that the Commission clarify that redemption fees are not the preferred approach to controlling abusive trading and provide specific authorization for funds that impose redemption fees to continue to waive those fees where the fund determines that an intermediary's trading controls are sufficient to discourage abusive trading.

Additional Concerns Relative to Variable Life and Annuity Contracts

MassMutual offers variable life insurance policies and variable annuity contracts to individual contract owners, as well as to corporations (the "Contracts") for non-qualified arrangements. Unless an exemption from registration is available, these products are registered with the Commission on Forms N-6 and N-4, as applicable, under the Securities Act of 1933 (the "1933 Act"). The separate accounts to which contractholder pay premiums in the case of life insurance, and purchase payments in the case of annuities (the "Separate Accounts") are applied are registered with the Commission as unit investment trusts under the 1940 Act. As a result, the Separate Accounts are subject to the Rule. The Separate Accounts invest in shares of variable insurance mutual funds. These variable insurance mutual funds are often versions of retail mutual funds but can only be purchased through a variable insurance product and, in limited cases, directly by a qualified plan. Since the Contracts are insurance products, they are subject to regulation as insurance by the insurance departments in the various states in which MassMutual offers the Contracts for sale. As a result of this hybrid nature of the Contracts, MassMutual, like other insurers offering variable life insurance and variable annuities, is subject to significant and sometimes conflicting regulatory requirements regarding the Contracts.

The Rule, as adopted, has a number of serious consequences for insurers offering variable insurance contracts. Without regulatory relief, these consequences, some of which are described below, may be resolved in ways that would be detrimental to Contractholders who are not engaged in frequent trading or market timing, as well as in ways that do not further the purposes of the Rule.

Contractual Impacts of the Rule

In its current form, the Rule does not recognize that insurers may not be able to unilaterally assess a redemption fee, at least not without the proper insurance contract filing, and in some cases not at all. Currently, the Contracts describe charges for the insurance aspects of the product, including certain Separate Account Charges, and charges of the underlying funds that are not charged directly to contractholders but which are factored into the net asset value for the funds. A redemption fee required to be imposed by a fund is different from any fee currently described in the Contracts. As a result, MassMutual believes an endorsement to the Contracts would have to be filed with the state insurance departments describing any fee that would be deducted from a Contractholder's account based on redemptions from a fund.¹ For Contracts in existence at the time an insurer receives approval of any such endorsement, use of the endorsement would be predicated on applicable contract containing language allowing a

¹ We have consulted with staff of an insurance department for a major jurisdiction and they expect to take this view.

unilateral modification of this type. If such language did not exist, unless an insurer paid redemption fees out of its own assets, the insurer would face the risk of litigation based on either unauthorized imposition of a new fee under the contract or breach of its agreements with the fund companies.² Clearly, an insurer's decision to pay the redemption fee from its own assets, while it solves the contractual concerns, does not remedy the problem the Commission intended to solve in promulgating the Rule. It appears the Commission did not fully consider these ramifications.

Consequently, we recommend that variable insurance products should be exempt from the application of the Rule to avoid subjecting insurers like MassMutual to risk of litigation based on extra contractual imposition of redemption fees, at least until such time as the Commission obtains agreement with the state insurance departments formally supporting the Commission's position that the Rule will not give rise to breach of contract claims by variable insurance contractholders.

Unintended Consequences of the Rule

Additionally, the Rule does not exempt transfers among the variable insurance mutual funds available through the Contracts that are not initiated by volitional contractholder action and which therefore are not conducive to or reflective of market timing or excessive trading. For example, certain MassMutual Contracts offer "dollar cost averaging", "asset rebalancing" and "systematic withdrawal" features. These features enable contractholders to establish programs for periodic, scheduled transfers/withdrawals within their Contracts and are elected by contractholders in advance of the time that transfers are performed via the selected feature. Currently, transfers resulting from the automatic activity of these features are not expressly exempt from the Rule and therefore could be subject to any redemption fee charged by a fund. If the transfer activity resulting from these features is finally subject to the redemption fee aspect of the Rule, MassMutual will be forced to consider whether to eliminate these features from its Contracts. We believe that eliminating these features will be detrimental to our contractholders but may be necessary if the alternative is to be forced to impose a redemption fee on the applicable transfers.

Additionally, for variable life policies, taking a policy loan results in a transfer from the Separate Account to the general investment account option available under the applicable policy. Policy loan provisions are contractual rights that MassMutual cannot eliminate unilaterally on existing policies. In the absence of an exemption for transfers out of the Separate Account due to the contractholder's exercise of a loan rights, MassMutual will be required to impose a redemption fee for those variable insurance mutual funds that apply such a fee when account value is transferred out of a Separate Account due to a policy loan.

² The litigation risk is based on breach of contract claims that a contractholder may assert as the result of a new fee being applied to a contract already in existence. This litigation risk has been described in commentary to the Commission throughout the history of the Rule's promulgation and again by NAVA and the American Council of Life Insurers in their current submissions on the Rule. We incorporate those descriptions by reference into this letter.

We respectfully request that the Commission clarify that any redemption fee that may be imposed by a variable insurance mutual fund only be applied to fund transfer/withdrawal requests actually initiated by contractholders.

Additional Costs

In addition to other costs discussed above, the costs associated with implementing various redemption fees for different funds are almost undeterminable. Should the variable insurance mutual funds MassMutual currently offers through its Contracts determine to impose redemption fees under the Rule, MassMutual may be forced to use those funds as “redemption only” funds or pursue substitution of those funds out of the Contracts due to the costs of implementing redemption fees. Each of these solutions may have a negative impact on Contractholders who will have certain choices removed from their consideration. To implement a substitution, MassMutual would be required to apply for a substitution order from the Commission, as well as make a variety of filings with state insurance departments. Pursuing a fund substitution would be another costly and time-consuming effort that would divert resources from other activities that could otherwise benefit our contractholders. Even if MassMutual determined to continue to offer a variable insurance mutual fund that imposed a redemption fee, MassMutual would incur the direct and opportunity costs of filing the necessary endorsements with state insurance departments as described above.

Compliance Date

MassMutual recommends that the Commission extend the compliance date under the Rule for a minimum of 12 months from the current deadline of October 16, 2006. Due to the many costs and complexities intermediaries and funds are encountering as they prepare to comply with the Rule, even those who have made a significant good faith effort to prepare will find it very difficult to comply fully by that date.

Furthermore, funds are only now beginning to seek agreements with intermediaries. The Rule is silent on, and leaves it to funds and intermediaries to negotiate, a variety of important matters including the scope and frequency of information requests, non-disclosure requirements, indemnification provisions, exempted transactions and trading restrictions funds may impose.³ Given that many funds and intermediaries will be required to enter into dozens and, in some cases, hundreds of agreements and that any intermediary that fails to enter into an agreement with a fund by the deadline may be prevented from purchasing additional shares, the deadline should be extended in order to avoid significant disruptions to shareholders.

³ The Investment Company Institute and The SPARK Institute (a group representing retirement plan service providers) have each developed forms of model agreements for use between funds and intermediaries. The fact that the models differ in important respects and leave many provisions to negotiation between the parties is evidence of the many issues that will need to be resolved either by further regulatory guidance or by negotiation between funds and intermediaries on a case-by-case basis. Among other matters, the models differ with regard to the anticipated frequency and content of data requests from funds, privacy protections and turnaround times.

Again, we commend the Commission for its efforts to reach a workable solution to protect investors from abusive trading activity and for your attention to our views. Please contact me at 413.744.2312 with any questions you may have.

Sincerely,

James S. Viola
Assistant Vice President and Counsel
Massachusetts Mutual Life Insurance Company