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Filed Electronically

May 1, 2006

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: Mutual Fund Redemption Fees & Ongoing
Monitoring of Implementation - File No. S7-06-06

Dear Ms. Morris:

The SPARK Institute, Inc. ("SPARK")[1] appreciates the opportunity to submit this supplemental letter regarding our position on the U.S. Securities and Exchange Commission ("SEC") Release No. IC-27255 with respect to Mutual Fund Redemption Fees, dated February 28, 2006 ("Amending Release"), which proposes to amend Rule 22c-2 under the Investment Company Act of 1940, as amended ("Rule 22c-2" or the "Rule").[2] As we noted in our letter dated April 10, 2006, we worked closely with our members to develop the views that are summarized in this

[1] SPARK represents the interests of a broad-based cross section of retirement plan service providers, including members that are banks, mutual fund companies, insurance companies, third-party administrators and benefits consultants. SPARK members include all of the largest service providers in the retirement plan industry and the combined membership services more than 95% of all defined contribution plan participants.

[2] 17 CFR 270.22c-2.

supplemental letter.[3] Our members are the retirement plan service providers that will be considered "first tier intermediaries" under the proposed amendments, and as such will be required to enter into "information sharing agreements" and provide information to the funds. Accordingly, we respectfully request that you consider each of the issues we raise below.

I. Summary of SEC Guidance Requested by SPARK

SPARK respectfully requests that the SEC amend Rule 22c-2 and provide the following guidance in order to establish a more workable, equitable, and cost effective framework for the mutual fund and retirement plan industries to work together to minimize abusive market timing and excessive trading. Each of our requests is discussed in detail herein.

A. Expressly provide that the information sharing requirements of Rule 22c-2 should be limited to only those transactions that are vulnerable to abusive market timing and frequent trading (i.e., participant-initiated transactions);

B. Allow retirement plan intermediaries to designate certain indirect intermediaries as "individual investors" to the same extent as the proposed amendment in the Amending Release would enable the funds to do for certain of its first tier intermediaries;

C. Allow funds to outsource certain trade monitoring functions to retirement plan intermediaries as an alternative to the current shareholder information sharing requirements;

D. Allow retirement plan intermediaries to communicate taxpayer and customer identification information in an alternative format to minimize privacy concerns and protect retirement plan customer confidentiality. Additionally, expressly state that an intermediary will not violate privacy rules by sharing private information with a fund based solely on the contractual obligations of the intermediary with the fund (i.e., when the intermediary is not otherwise subject to SEC jurisdiction or the Rule);

E. Expressly recognize alternatives for deterring and preventing abusive trading other than the imposition of redemption fees; and

F. Extend the compliance date of Rule 22c-2 by 18 months to allow the SEC adequate time to carefully compare the costs and benefits of the Rule and to allow industry participants adequate time to collaborate and determine the most efficient means of implementing the Rule.

[3] As part of the information-gathering and consensus-building process, SPARK distributed a detailed questionnaire to each of its members regarding various aspects of the Amending Release. Through the questionnaire, we solicited member input on over 40 different issues, including the practical business and operational implications of the Rule, short and long-term cost estimates, privacy concerns, and timing considerations. Once we collected and tabulated the results of the questionnaire, we followed up with certain members to clarify their positions on specific issues. The results of this questionnaire and the targeted follow up formed the basis of our comments for this letter. A copy of the SPARK Rule 22c-2 Member Questionnaire is attached hereto as Attachment A.

II. SPARK Member Issues Regarding the Amendments to Rule 22c-2

A. Information Sharing

(1) The proposed amendments offer little guidance regarding the information sharing process while imposing substantial additional burdens on financial intermediaries.

Although the current information sharing requirement under Rule 22c-2 establishes a mechanism for identifying shareholders who have engaged in abusive frequent trading, the lack of SEC guidance and standardization creates the potential for inefficiencies in its implementation. As written, Rule 22c-2 requires financial intermediaries to collect, retain, and transmit substantial amounts of shareholder information to the funds, which in turn, determine what action to take or penalty to impose. Although the Rule was intended to foster (and its effectiveness relies upon) cooperation among fund companies and intermediaries toward the common goal of reducing abusive trading, in reality, the proposed amendments have placed the intermediaries and the fund companies at odds with each other.[4] By placing such significant burdens of information collection, retention, and transmission on the intermediaries while permitting fund companies to dictate the extent of these responsibilities,[5] the SEC's proposal creates little, if any, incentive for fund companies to limit their information requests, consider practical limitations, or adopt cost-efficient approaches.[6]

The SEC could substantially reduce the burdens and costs associated with the information sharing requirements if it limited those requirements to only those transactions that are vulnerable to market-timing activity. We agree with the statement made by the ICI that "market-

[4] Ultimately, such inefficiencies will adversely impact the fund shareholders.

[5] Both the frequency and scope of the information sharing process have the potential to seriously impact retirement plan intermediaries and be disruptive to the retirement plans and participants they service. Several of our members have expressed concerns that they may not have the system capacity or required staff to handle the additional reporting burdens they may face during retirement plan processing time frames that are already critical. For example, if a fund company were to request information on a calendar quarter basis, the obligation would conflict with the other existing, significant, and time consuming obligations that the retirement plan intermediaries have (e.g., participant quarterly statements, and investment rebalancing). Year-end reporting requirements will conflict with additional and even more significant existing obligations, such as annual compliance testing and processing required under Internal Revenue Service rules and annual tax reporting.

[6] Although some may argue and believe that market competitive forces will resolve these issues, certain existing industry realities should not be ignored. Retirement plan intermediaries already hold significant positions in many fund complexes on behalf of their customers and cannot simply threaten to move the funds to other companies as a bargaining chip. Existing contractual obligations to their plans and, in many instances, fiduciary obligations under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") would prohibit such leverage. Additionally, for many service providers, the amount of assets they have with any single fund may be significant to the service provider and its customers; however, such amounts may not be considered significant by the fund, particularly a very large one. The SEC should not assume that market forces will be able to resolve these issues appropriately without additional guidance.

timing transactions are properly thought to be shareholder-driven. . . ."[7] Yet, as written, the information sharing requirements cover transactions common to our members where the participants have no ability to market-time, including employee/employer contributions, loan repayments, systematic withdrawals and rebalancing trades. By including these transactions in Rule 22c-2 regulation, the SEC has significantly increased the information sharing burden on the retirement plan intermediaries without furthering the goal of reducing market-timing activities.[8] Thus, we believe that the SEC should amend the information sharing requirements of the Rule so that they apply only to participant-initiated fund transfers.

Finally, with respect to the general information sharing requirements outlined in the Amending Release, we request that the SEC clarify and support the ability of financial intermediaries to designate certain indirect intermediaries as "individual investors" in the same manner as the SEC proposed to permit the fund companies to designate certain of their first tier intermediaries. If an indirect intermediary agrees to such a designation, the plan-level data should be sufficient to monitor trading activity in those plans. This clarification would also result in substantial cost-savings for our members.

(2) Rule 22c-2 should allow fund companies to outsource or delegate certain trade monitoring functions to retirement plan intermediaries.

SPARK believes that the SEC should consider amending Rule 22c-2 to permit fund companies and intermediaries to allocate the trade monitoring functions among themselves. In particular, we believe that Rule 22c-2 should allow funds to outsource certain monitoring functions to retirement plan intermediaries as an alternative to the cumbersome and costly information sharing requirements. The Rule should allow the parties to allocate these functions by contract in a manner that requires intermediaries to provide reasonable and consistent monitoring services, even if the intermediaries use trade parameters that vary from the policies the funds employ for other investors (*e.g.*, retail and direct shareholders).[9]

In order to foster such an alternative, The SPARK Institute Market Timing Controls Task Force (comprised of retirement plan industry service providers, including representatives from mutual fund companies) developed a sample standardized "Frequent Trading Policy for Retirement Plan

[7] *See* Letter from Elizabeth Krentzman, General Counsel, Investment Company Institute ("ICI"), to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission (Apr. 10, 2006) [hereinafter ICI Letter].

[8] According to our members, participant-initiated fund transfers constitute a very small percentage of the transaction they process (e.g., only 5% of all transactions according to one service provider with over 2 million participants on its systems).

[9] SPARK notes that it appears that certain commentators have misinterpreted the nature of this aspect of our proposal. The outsourcing concept is not intended to usurp or disenfranchise the ultimate responsibility of each fund board for establishing a frequent trading policy. Additionally, our proposal is not intended to make intermediaries responsible for determining the appropriateness of a trade monitoring policy for any given fund. To the contrary, we have developed a framework under which intermediaries will offer certain monitoring services to the funds, but each fund must ultimately decide for itself if such services and the approach are acceptable to it based on the fund's own policies.

Service Providers" (the "Frequent Trading Policy).[10] Under the Frequent Trading Policy, which is intended to be used with the "Sample Contract Language with Data Standards for Retirement Plan Service Providers" that the same SPARK task force prepared,[11] retirement plan service providers can agree to provide frequent trading monitoring services to the fund companies in exchange for less cumbersome information sharing requirements. This arrangement would still enable fund companies to maintain compliance oversight by reviewing the monitoring activities of the financial intermediaries on a periodic basis.[12] The process would be less burdensome and less costly for all parties involved, however, because it would reduce the need for financial intermediaries to develop and support an expensive infrastructure for providing trading information in multiple formats to fund companies.

Although we recognize that there are other sample forms being circulated in the industry,[13] the SPARK Institute Markey Timing Controls Task Force developed the Frequent Trading Policy as an alternative approach because of several unique and significant concerns of our members that the other forms did not adequately address.[14] The SPARK sample documents provide for a more flexible and equitable approach to these arrangements and address certain specific concerns expressed by our members, including the following:

- Protect intermediaries from potentially conflicting requirements resulting from a contractual obligation to provide information to a fund that it is prohibited from providing under applicable law (Sample Contract Language Section A);

- Allow intermediaries to reasonably limit the look-back period of an information request and the frequency of such requests in the absence of a showing of "good cause" by a fund (Sample Contract Language Sections A, 1 and C, 2);

[10] *See* Letter from Robert G. Wuelfing, President, The SPARK Institute, and Larry H. Goldbrum, General Counsel, The Spark Institute, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission (Apr. 10, 2006) [hereinafter Initial SPARK Letter]. As noted in the Initial SPARK Letter, the Frequent Trading Policy was developed and released prior to the Amending Release and will be revised as needed.

[11] *See* Initial SPARK Letter. As noted in the Initial SPARK Letter, the Sample Contract Language With Data Standards for Retirement Plan Service Providers was developed and released prior to the Amending Release and will be revised as needed.

[12] Audit firms could develop a "22c-2 compliance/certification" program such that audit data for a sampling of fund policies could serve as certification for all funds that utilize a financial intermediary's frequent trading services. Audit firms could conduct such reviews in conjunction with SAS-70 reviews that they already perform for many retirement plan intermediaries.

[13] *See* ICI Letter, *supra* note 3. *See also* Letter from Jan M. Jacobson, Director-Retirement Policy, American Benefits Council, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission (Apr. 10, 2006).

[14] SPARK provided comments to the ICI regarding its concerns with the ICI's proposed sample contract language in late 2005 prior to its public release, and provided suggested changes in an effort to promote cross-industry cooperation among retirement plan service providers and funds. The ICI summarily rejected our concerns and changes over our voiced concerns that both industries would be better served by mutually agreed upon model forms for the retirement plan industry. We understand from another large industry trade association that the ICI also rejected their comments and concerns that were comparable to SPARK's.

- Allow intermediaries to limit a fund's ability to use the information it receives for any purpose other than compliance with Rule 22c-2 (Sample Contract Language Section A, 3);

- Allow intermediaries to be reimbursed for expenses associated with extraordinary information requests (Sample Contract Language Section A, 4);

- Replace specific time deadlines (e.g., five business days) for intermediaries to respond to information requests (Sample Contract Language Section A, 2) with a more flexible standard. As discussed herein, intermediaries may be unable to meet specific and short time deadlines because of system capacity and staff limitation during already high volume processing periods that are likely to coincide with certain reporting requests (e.g., quarter and year ends);

- Allow intermediaries to require funds to provide them with a brief written explanation of their frequent trading policies for the intermediaries to provide to the shareholders they service (Sample Contract Language Section B, 4). Additionally, allow intermediaries to require a fund to provide a brief explanation that can be provided to the plan sponsor and participant whenever a fund instructs an intermediary to restrict a shareholder's trading rights (Sample Contract Language Section B, 1). Many of our members have advised us that they have difficulty obtaining such explanations from certain fund companies, which in turn creates difficulties for them with plan sponsors and participants;

- Identify the reportable data that most retirement plan intermediaries have readily available and can provide as reasonably requested (Sample Contract Language Attachment A). The list represents the consensus opinion of our members;

- Eliminate requirements to provide investment professional information to a fund, even if known by a retirement plan intermediary. Such information is of marginal relevance in the context of employee retirement accounts, and would involve a manual and costly effort to provide on a regular basis;

- Eliminate requirements to provide shareholder information in any report with respect to shareholders who did not initiate any transactions during the period covered by the report; and

- Establish a means for funds to outsource certain monitoring functions to retirement plan intermediaries, while still allowing the funds to maintain necessary oversight and flexibility (Frequent Trading Policy).

Based on the information we have gathered to date, all of our members intend to use some or all of the SPARK sample contract language and concepts as the primary basis for their trading and information sharing agreements with their fund trading partners. Additionally, a majority of our members have indicated that they intend to adopt the retirement plan service provider frequent trading monitor approach as a means of minimizing the cumbersome information reporting requirements.[15]

(3) There are significant advantages to permitting alternatives to information sharing.

(i) It would allow the market to more fairly distribute the costs of compliance.

The proposed amendments shift certain burdens of market timing and excessive trading compliance from the funds to intermediaries. Rather than reducing the overall burden of compliance, this shift merely reassigns certain complex and cumbersome aspects of compliance from the funds to the intermediaries. Although the proposed amendments make implementation of Rule 22c-2 more efficient for fund companies, the amendments achieve this by shifting significant cost burdens and responsibilities to the intermediaries. SPARK disagrees with the assumption in the Amending Release that first tier intermediaries, as a group, are in a better position than the funds themselves to collect and transmit shareholder information from indirect intermediaries. Many first tier intermediaries only receive aggregated orders from their customers who are indirect intermediaries (e.g., third party administrators "TPA"). Such first tier intermediaries do not receive individual participant transaction data and do not have the systems or capabilities in place to collect and share this information. Just like the original Rule required funds to do, the amended Rule requires all first tier intermediaries to develop this capability from scratch. Our members are not in a better position to develop such capabilities. Additionally, it is our understanding that the NSCC system under development to facilitate information sharing between the funds and first tier intermediaries does not solve the problem that first tier intermediaries have to collect information from their indirect intermediaries.

Due to the high costs of complying with the information sharing requirements, intermediaries will be forced to choose between bearing the costs themselves at substantial risk to profitability or attempting to pass them back to the funds.[16] It does not appear likely that fund companies will bear the majority of the additional costs that should ultimately be fund expenses. Consequently, the fund companies will have little incentive to develop market timing and information sharing policies that are efficient and practical as well as effective. As stated above in Section II.A.(1), the SEC proposal uncouples the market timing decision-making authority from the burden of bearing the costs associated with those decisions – a result that seems both inequitable and unlikely to result in the lowest overall costs to protect investors.

[15] We note that it is not our position that intermediaries should be required to provide monitoring services. To the contrary, intermediary monitoring services should be accepted as an alternative for those that choose to make it available.

[16] As noted above under footnote 6, many retirement plan intermediaries do not have the leverage or ability to demand that fund companies reimburse them for the costs of compliance with the funds' abusive trading rules. Additionally, the realities of the retirement plan industry are that plan service providers do not have the same ability or means to force plan sponsors or participants to absorb these costs as a fund would through higher embedded fund fees. Retirement plan sponsors would react extremely negatively to additional service provider charges to accommodate burdensome information sharing requirements.

The costs for intermediaries to satisfy the information sharing requirements will not be lower under the amended Rule; in fact, they may be higher. There are numerous issues that factor into the cost calculations for each intermediary, including the amount and types of information requested by fund companies,[17] the frequency with which fund companies will request shareholder information, the turnaround requirements for delivering such data, the time periods covered by each request, and the retention requirements for the data.[18, 19] Depending upon the size of the intermediary, the number of fund company partners with which the intermediary must share information,[20] and the internal resources already available to the intermediary, the applicable costs to the intermediaries include, but are not limited to:

- the development of reporting capabilities;
- the creation and maintenance of data storage facilities for the information;
- the creation and maintenance of data transmission capabilities that are compatible with indirect intermediaries, if applicable;[21] and
- the manpower hours dedicated to operating and maintaining these systems.

According to estimates provided to us by our members, the direct costs to intermediaries alone will be a minimum of approximately $30 million and could exceed $50 million, annually. Although, as we discuss below, it is premature to pinpoint specific costs at this point, our members are very concerned about the impact that these costs will have on their businesses as well as the uncertainty of collateral costs.[22] We believe that the collateral or indirect costs for intermediaries could exceed the direct costs. Permitting fund companies to delegate the

[17] Fund companies may focus their specific requests for information to particular shareholders; however, the intermediaries will be required to collect and warehouse information regarding *all* shareholders in order to comply with the funds' requests.

[18] The early estimates from our members predict that start-up costs will range from $125,000 to $2,300,000, depending on the size of the intermediary, and that ongoing annual costs will range from $150,000 to approximately $1,000,000 (exclusive of the manpower costs to operate and maintain systems), depending on the final Rule and the evolution of the aforementioned variables.

[19] Our members are concerned about an issue that, to our knowledge, has not been adequately considered by anyone. Specifically, what data retention and transfer requirements will a fund impose when a plan changes service providers but maintains its position in a fund that requires information sharing? The industry does not have a readily available mechanism for sharing such historical transactional data among record-keepers.

[20] Most of our members have multiple fund company partners (many have in excess of 100), each with unique systems and transmission capabilities. The Rule as proposed would require the members to develop multiple channels and platforms to accommodate each of them.

[21] We note that most intermediaries already have data transmission capabilities that are compatible with the fund companies in whose shares they trade, but to the extent that they do not, this would be an additional cost.

[22] As an example of collateral costs, several of our members indicated that the number of their fund partners and the lack of standardized protocols will require them to subscribe to and pay for a service that will provide the particular market timing rules for specified funds in an automated manner.

monitoring function to those intermediaries that have systems to do so instead of requiring information sharing could substantially reduce compliance costs.

(ii) Allowing intermediary trade monitoring would reduce many privacy and competitive concerns.

Although the SEC in the Amending Release partially addressed the legal application of privacy requirements to financial intermediaries in the context of Rule 22c-2, our members are still concerned that the SEC has not articulated how financial intermediaries should address the concerns of their investor customers on a practical level.[23, 24] In particular, the Rule requires funds to enter into agreements with their financial intermediaries whereby the financial intermediaries agree to provide "the shareholder identity (*i.e.* taxpayer identification number) and transaction information" to the fund companies. Thus, for individual investors, the release contemplates the transmission of social security numbers along with the individual's transaction information. Our members believe that this movement of information creates the opportunity for privacy breaches as well as misuse of shareholder information. In some cases, a financial intermediary may transmit such information to entities with competitor affiliates, opening the door to intentional or unintentional misuse by the competitor affiliates depending upon the method that the fund company uses to store and protect the data.[25]

Under the Amending Release, the SEC does not specify whether "shareholder identity" can be communicated in an alternate form, for example, as a truncated social security number or other formula agreed upon by the fund company and financial intermediary, and still meet the requirements of the Rule. Alternatives that would allow the funds and intermediaries to trace back to the identification and social security number of the shareholder upon reasonable request when trading abuses are suspected can be implemented relatively easily. The SEC should restrict sharing of such private information to a "need to know" basis instead of a "just in case"

[23] Our members are also concerned about the cost implications under privacy rules. Notwithstanding, the SEC's assumption that existing privacy policies and disclosures are likely adequate to accommodate the Rule 22c-2 requirements, many of our members have indicated that customer expectations and maintaining positive customer relationships will likely require significant and expensive communication efforts regarding changes imposed by the Rule. Most plan sponsors and participants do not realize that the Rule will result in their identity and transaction data being provided to funds with which they have no direct relationship.

[24] The Amending Release does not adequately address whether an intermediary who discloses private shareholder information to a fund under nothing more than a contractual obligation (as compared to the direct legal obligation imposed on the fund by the SEC under its jurisdiction) with the fund would be exempt from the privacy rules applicable to the intermediary. The SEC should state its views regarding whether such a contractual obligation of an intermediary should allow the required disclosures without violating the privacy rules.

[25] The rule requires first tier intermediaries to identify other intermediaries (e.g., retirement plans and other service providers) who are its customers to the funds upon request. Our members are concerned that many of the funds to which they would be required to provide information are direct competitors and, to that end, contractual provisions would not provide adequate protection that the information will not misused, either intentionally or inadvertently. Misuse could occur inadvertently due to customer information being stored on systems that funds may use for a variety of purposes. Moreover, it will be virtually impossible for first tier intermediaries to discover and prove the misuse of such information.

basis. Although use of such an alternate form of identification would help reduce the chances for privacy breaches, it will be difficult for our members to convince fund companies that such solutions are acceptable to the SEC without express SEC clarification. Furthermore, under the proposed information sharing requirements, the SEC does not address the privacy protections that the fund companies must adopt or that the financial intermediaries may negotiate with fund companies with respect to the safeguarding of shareholder identity and transaction information. To the extent that intermediaries could implement monitoring procedures in coordination with fund companies as an alternative to information sharing, this would avoid the ambiguities surrounding privacy issues and our members' concerns about providing customer information to competitors.

B. Redemption Fees

The imposition of redemption fees is just one of several methods that the industry has used to penalize the shareholders who engage in improper trading[26]. Accordingly, we believe it is inappropriate for the SEC to single out and effectively endorse the implementation of redemption fees by virtue of it being the only method addressed in Rule 22c-2. Prior to the relatively recent regulatory focus on improper trading among mutual fund shareholders, and prior to the SEC's adoption of Rule 22c-2, mutual fund industry participants had developed and implemented several means of preventing improper trading. Such alternatives include the imposition of trade blocks, holding periods, round-trip limits and various combinations of each. These alternatives emerged as industry participants freely negotiated among themselves to allocate responsibility in the most efficient means possible, taking into account the specific capabilities and business models of the applicable parties.

Rule 22c-2 and the proposed amendments amount to a tacit endorsement by the SEC of redemption fees as the preferred method for controlling improper market timing and excessive trading. We believe that the Rule should not be narrowly focused on redemption fees as the preferred approach for controlling or preventing abusive trading, but should also specifically permit fund boards to consider and authorize other approaches that can more effectively control and prevent such abusive trading (e.g., trade blocking and round trip limits). Trade-blocks, holding periods, and round-trip limits each prevent the actual improper trading activity. Redemption fees, on the other hand, merely impose a financial penalty on such activity. In addition, methods such as trade blocks can be targeted so that they affect only those shareholders engaging in improper trading activity. Redemption fees, however, apply across the board and affect all shareholders who might buy and sell fund shares within the redemption fee timeframe regardless of whether such trading actually constitutes improper market timing. The standardization of trade-block policies could provide better clarity for investors and, comparatively, would reduce the costs to investors who do not, and do not plan to, engage in market-timing activities.

[26] The SPARK Institute understands from its members that over one-third of the fund companies are using methods other than redemption fees to combat trading abuses.

Although Rule 22c-2 does not prevent fund boards from considering alternative methods for deterring improper trading, the Rule does require fund boards to consider, at a minimum, redemption fees. Accordingly, in order to allow the market to dictate the most efficient means of implementing market timing compliance, we believe that the SEC should recognize the existence and validity of alternative means of controlling market timing activity and acknowledge that the use of redemption fees is just one of several methods that a fund board should consider when addressing improper trading activity. We also believe it would be appropriate for the SEC to encourage fund companies and intermediaries to develop solutions that minimize costs to themselves and the underlying fund shareholders.

C. Compliance Date

We believe that a compliance date of October 16, 2006 is premature for several reasons and we respectfully request that the SEC extend the compliance date of Rule 22c-2 by 18 months.

(1) The costs and benefits of the Rule have not been adequately addressed.

We believe it is premature for the SEC to adopt and implement Rule 22c-2 before sufficient information is available to accurately consider the true costs and benefits to shareholders and industry participants. Although the Rule promotes the laudable goal of attempting to protect shareholders from the dilution of a fund's net asset value ("NAV") through the nefarious acts of a small group of abusive traders, we believe that it is essential to develop a thorough understanding of the costs involved with any new compliance regime prior to adopting such a rule. If the SEC insists on keeping to its current schedule regarding the Rule's compliance date, we believe it will not have analyzed adequately how the eventual allocation of expenses among industry participants will ultimately affect the NAV of a fund. This is because the data required to perform this analysis does not yet exist or is still evolving. Absent this analysis, it is unclear how the SEC can conclude either that: (1) implementation of the Rule will protect investors, and ultimately benefit investors, more than alternative compliance schemes already in place, or (2) the combined costs that the intermediaries and the funds will incur to comply with the Rule as written will not exceed the costs of the abuse the Rule is attempting to prevent.

SPARK believes that the SEC's adoption and enforcement of Rule 22c-2 prior to assessing adequately the industry's costs could unintentionally shift the competitive balance of the retirement plan marketplace. The funds will be able to determine the scope and frequency of the information sharing requests with little incentive to control the costs to the intermediaries. As noted above, most retirement plan intermediaries do not have the leverage or ability to pass these mutual fund compliance costs to their plan customers or to force the funds to reimburse them for such expenses. Many of these intermediaries compete as retirement plan service providers with affiliates of the funds.[27] It is possible that the compliance costs will be prohibitively high, forcing financial intermediaries to develop infrastructure and procedures internally, also at a

[27] Our members are concerned that a fund could elect to only reimburse its retirement plan affiliate for the expenses such affiliate incurs in order to comply with the Rule, thereby putting the unaffiliated service provider at a competitive disadvantage and making it more expensive and less attractive for a plan sponsor to retain an unaffiliated service provider.

substantial cost. It is also likely that retirement plan intermediaries will have to accommodate multiple information transmission channels (e.g., NSCC, direct fund feeds, or an industry data warehouse) and absorb the associated costs because of the different preferences among the funds themselves. In some cases, the costs associated with implementing Rule 22c-2 may be so burdensome that it will drive relatively smaller, but otherwise financially viable, intermediaries out of business.[28] High costs also will create the potential for unintended industry consolidation and reduce competition.

In light of the difficulty that the industry is having assessing the costs associated with compliance with the Rule, we recognize that it is difficult for the SEC to adequately assess such costs and its effect on the industry at the same time it is still allocating responsibilities and considering amendments to the Rule. In addition, industry vendors are still developing, testing, and marketing their data transmission technology; accordingly, industry participants have not yet been able to compare adequately the options, or predict accurately the costs, for sharing the required information. As the vendors finalize their technology, industry participants simultaneously must investigate the feasibility and costs of developing proprietary platforms to support the data transmission. We believe it is inappropriate to estimate the costs associated with these tasks until it is clear what total range of services industry vendors will be able to provide, how intermediaries can internalize certain costs, and how fund companies intend to request shareholder information. Until the industry comes closer to answering those questions and the SEC has had an opportunity to fairly analyze the impact of the costs on the industry, we believe it is inappropriate for the SEC to set a compliance date for Rule 22c-2.

(2) The industry participants have not had enough time to collaborate.

The unexpected shift in responsibilities to retirement plan service providers under the proposed amendments has forced our members to grapple with certain compliance burdens in less time than what was originally provided to the funds when such burdens were assigned to them prior to their objections. The retirement plan and mutual fund industries continue to work toward developing the systems, infrastructure, policies and procedures in order to address the requirements of the Rule, but until these standards are developed, negotiating and implementing the agreements required by the Rule will be both more time consuming and expensive than they would be if the industry had time to further collaborate and agree upon standards. Additionally, SPARK developed sample contract language for retirement plan service providers to use when amending their agreements with the funds because of concerns expressed to us by our members about the model agreement that had been proposed by the ICI. The existence of these two forms and their different approaches evidences the likelihood for lengthy and expensive contract negotiations among the parties. Furthermore, our members have become aware of many indirect intermediaries who have only recently learned of Rule 22c-2 and their role with respect to the Rule.[29] Without the full understanding and cooperation of these indirect intermediaries, it will be

[28] Letter from Brian H. Graff, Esq., APM, Executive Director and CEO, American Society of Pension Professionals and Actuaries, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission (Apr. 10, 2006).

[29] Furthermore, one of our members noted that indirect record-keeper intermediaries are not necessarily members of NSCC, which functions only as the data transmission vehicle for shareholder information (not the warehouse for

impossible for first-tier intermediaries like our members to fulfill their own obligations while attempting to maintain stable business operations.

D. ERISA Implications

Our members concur with the concerns raised in several other comments that absent additional guidance from the SEC and the U.S. Department of Labor ("DOL"), the Rule raises concerns regarding potential plan sponsor liability and retirement plan intermediary co-fiduciary liability under ERISA Section 404(c). These regulations under Section 404(c) provide, in part, that a participant directed plan must allow participants to direct transactions in their plan accounts with a certain frequency and receive adequate disclosures. Retirement plan sponsors and retirement plan intermediaries may be subject to fiduciary liability when a plan that falls out of compliance with Section 404(c) because an (i) intermediary is prohibited from trading in a fund for its customers, or (ii) individual participant is prohibited from trading in fund for an extended period of time.

III. Conclusion

We respectfully request your attention to the aforementioned issues. Should you have additional questions or need additional information, please do not hesitate to contact us at (860) 658-5058.

Respectfully,

/s/

Robert G. Wuelfing
President

/s/

Larry H. Goldbrum
General Counsel

encl: SPARK Rule 22c-2 Member Questionnaire

cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel S. Campos, Commissioner
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Annette L. Nazareth, Commissioner

the storage of such information). Because the record-keepers have only been providing plan summary data, not participant data, they need time to develop this capability through independent means.

Susan Ferris Wyderko, Acting Director
Robert E. Plaze, Associate Director
C. Hunter Jones, Assistant Director
Division of Investment Management

Alston & Bird LLP

ATTACHMENT A

Rule 22c-2 Member Questionnaire

Instructions – Please check the appropriate boxes for each question and provide a brief explanation of your position regarding all "yes" answers, except as noted otherwise. Additionally, please identify the top five issues or concerns that you want to be addressed in a comment letter by listing the Section numbers here.

Top five issues/concerns:

A. SPARK Institute Contract Language and Frequent Trading Policy

(1) Do you plan on using the sample contract language or the concepts in the sample developed by The SPARK Institute as the primary basis for amending your trading agreements with your mutual fund trading partners? (Please provide a brief explanation) □ YES □ NO □ N/A

(2) If you answered "yes" to Question 1, what is the maximum frequency you are currently planning on allowing funds to request information, without "Good Cause" (as defined in the sample agreement)?
□ Weekly □ Monthly □ Quarterly □ Other: __________

(3) Do you plan on following the service provider monitoring approach in the Frequent Trading Policy developed by The SPARK Institute? □ YES □ NO □ N/A

If you answered "yes" to Question 3, please answer Questions 4-8, otherwise skip to Section B.

(4) Are you planning on using a static or rolling monitoring period?
□ Static □ Rolling □ Don't know □ Other: _____________

(5) How long will your monitoring look back period be?
□ 30 days □ 60 days □ 90 days □ Other: _____ □ Don't know

(6) What period will you use in your definition of a "round trip" (an exchange redemption effected within "x" days of an exchange purchase)?
□ 30 days □ 60 days □ 90 days □ Other: _____ □ Don't know

(7) How long will your participant purchase restriction period be when a breach occurs?
□ 30 days □ 60 days □ 90 days □ Other: _____ □ Don't know

(8) What de minimis amount are you planning on using for trade monitoring exception?
□ $1,000 □$5,000 □ Other: _____ □ Don't know

B. Privacy Issues

(1) Do the general comments in the SEC release regarding privacy issues resolve any concerns you have? (Please explain "No" answers"). □ YES □ NO □ N/A

(2) Do the comments in the release about privacy notices resolve any concerns you have? (Please explain "No" answers"). □ YES □ NO □ N/A

(3) Should The SPARK Institute file a comment regarding these issues? □ YES □ NO □ N/A

C. Compliance with Information Requests

The SEC believes that "first-tier intermediaries are in a better position than funds to fulfill these obligations. Unlike funds, first-tier intermediaries have a direct relationship with second-tier intermediaries (and may be in a better position than funds to collect information from other indirect intermediaries), and will thus be able to identify, communicate with, and collect information from these indirect intermediaries at a lower cost than if funds were to conduct such activities. First-tier intermediaries are also in a better position than funds to identify and gather shareholder information from more distant indirect intermediaries because of their relationships with second-tier intermediaries. . . . We anticipate that intermediaries will generally use the same systems that they use to provide the required underlying shareholder identity and transaction information directly to funds to process the information that first-tier intermediaries will forward (or have forwarded) to funds from indirect intermediaries, thus resulting in significant cost efficiencies."

(1) Are the above statements by the SEC accurate with respect to your company? (Please explain "No" answers") □ YES □ NO □ N/A

The SEC also appears to be under the impression that information-sharing systems that will be used by the large majority of the industry are, or will be, readily available. "At least one of these organizations is revising the infrastructure that it already has in place, in order to facilitate the communication of fund trades and other "back office" information between funds and financial intermediaries, including the information required under the rule. Based on information from industry representatives, we understand that, with the exception of some smaller to mid-sized funds and intermediaries, the large majority of funds and intermediaries currently use the organization's existing infrastructure to process fund trades. In addition, some funds and intermediaries may develop their own competing or complementary information-sharing systems."

(2) Do you agree with the SEC's views regarding the availability and expected use of the information sharing systems? (Explain "No" answers") □ YES □ NO □ N/A

(3) How do you currently intend on transmitting data to your trading partners? (Provide a brief explanation)

(4) Please provide an estimate of your anticipated costs to accommodate the information sharing requirements (startup and ongoing costs).

(5) Should The SPARK Institute file a comment regarding any these issues?
□ YES □ NO □ N/A

(6) Should the SPARK Institute request an extension of the October 16, 2006 compliance deadline?
□ YES □ NO □ N/A

D. Intermediary Agreements

(1) Do you anticipate entering into new agreements or amending existing agreements with indirect intermediaries you service (e.g., retirement plans) in order to accommodate Rule 22c-2, even

though the rule does not require such agreements? □ YES □ NO □ N/A

(2) If you answered yes to Question 1, please provide an estimate of your anticipated costs associated with such new agreements and amendments? □ N/A

E. Costs

The SEC appears to have responded to concerns raised by fund companies regarding the costs associated with complying with Rule 22c-2. However, it appears that with respect to the retirement plan industry much of the cost savings may come from shifting the responsibility for the requirements the funds didn't like from the funds to plan service providers.

(1) Do you anticipate that your costs to comply with the revised rule will be significantly greater that the prior version? □ YES □ NO □ N/A

(2) Should The SPARK Institute file a comment regarding this issue?
□ YES □ NO □ N/A

F. SEC Requests for Comments

Please indicate whether or not you think that The SPARK Institute should respond to the SEC's request for additional information regarding the following issues. A "yes" answer means that you want The SPARK Institute to respond to the specific request. Please attach a brief explanation of your position regarding all "yes" answers.

Small Intermediaries

(1) Should additional entities be excluded or included as financial intermediaries?
□ YES □ NO □ N/A or Indifferent

(2) Should funds be required to enter into agreements with any other types of entities?
□ YES □ NO □ N/A or Indifferent

(3) Should the definition of financial intermediary be revised in any other way to further the purposes of the rule or to reduce the cost of its implementation in a manner consistent with these purposes?
□ YES □ NO □ N/A or Indifferent

(4) Should the rule contain additional (or different) exclusions? □ YES □ NO □ N/A or Indifferent

(5) What are the costs to funds and financial intermediaries of the requirement to enter into agreements?
□ YES □ NO □ N/A or Indifferent

(6) How many new agreements will funds need to enter into with their intermediaries after the proposed revisions? □ YES □ NO □ N/A or Indifferent

(7) How much will it cost to enter into a new agreement or modify an existing agreement to accommodate the requirement of rule 22c-2? □ YES □ NO □ N/A or Indifferent

(8) Are there any other costs related to the agreement requirement? □ YES □ NO □ N/A or Indifferent

Intermediary Chains

Would the proposed amendments result in funds receiving enough information from intermediaries to effectively address inappropriate short-term trading? □ YES □ NO □ N/A or Indifferent

Should the rule require that the agreement between the fund and each first-tier intermediary include a provision requiring first-tier intermediaries to enter into explicit agreements with all of their indirect intermediaries, or will the arrangements envisioned by the proposed rule be sufficient?
□ YES □ NO □ N/A or Indifferent

Should the rule require funds to collect information from indirect intermediaries instead of having the shareholder information agreement require first-tier intermediaries to assume this role?
□ YES □ NO □ N/A or Indifferent

Do the proposed amendments strike the proper balance of duties and costs between funds and intermediaries? □ YES □ NO □ N/A or Indifferent

Is there another approach that we should take in addressing the chains of intermediaries issue? For example, should the rule require that first-tier intermediaries collect information only from second-tier intermediaries, without addressing the need for further information from more distant intermediaries? Would this approach allow investors to mask short-term trading activity by acting though multiple layers of intermediaries?
□ YES □ NO □ N/A or Indifferent

What steps are funds and intermediaries already taking to share information? Are there systems in place (or in development) that could be used to reduce the costs of collecting and sharing this information?
□ YES □ NO □ N/A or Indifferent

What are the costs of collecting shareholder information from intermediaries?
□ YES □ NO □ N/A or Indifferent

How often do funds anticipate requesting shareholder information from intermediaries?
□ YES □ NO □ N/A or Indifferent

How much would it cost to establish and maintain systems to collect and transmit the shareholder information between funds and intermediaries? □ YES □ NO □ N/A or Indifferent

What would it cost for first-tier intermediaries to ensure that funds receive the shareholder information from indirect intermediaries and restrict indirect intermediaries' trading upon the fund's request?
□ YES □ NO □ N/A or Indifferent

Effect of Lacking an Agreement

Instead of restricting any further purchases by a financial intermediary that does not have an agreement with a fund, would precluding an intermediary without an agreement from redeeming purchased shares within seven days serve the purposes of the rulemaking? Would this alternative preclusion on redemption within seven days effectively encourage intermediaries to enter into agreements with funds? Would this alternative

of precluding redemption within seven days by intermediaries without agreements impose hardships on shareholders in financial emergencies, or implicate other shareholder redemption issues?
□ YES □ NO □ N/A or Indifferent

Is there another approach available to us that would further the goals of this rulemaking?
□ YES □ NO □ N/A or Indifferent

Company Name: ______________________________

Contact Name: ______________________________

Contact Phone Number: ______________________________