May 7, 2004

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Dear Mr. Katz:

Having been attentive to the mutual fund investigation to the extent that time permitted since its initiation, I welcome the chance to comment on the redemption fee issue. I have been in the investment business as a professional for 35 years and have exclusively used mutual funds for the past 19 years. I would also like to take this opportunity to applaud this mechanism of offering input into potential rule making.

My first comment is that I am very concerned that, perhaps influenced somewhat by the heavy lobbying effort of the ICI and in fact the mutual fund industry in general, that the solution to the problems being addressed will most benefit those same parties. As everyone knows, it is those same parties, i.e., the mutual fund companies, who through willful side agreements and/or the lack of establishing any policies or at least clear and unambiguous policies and then policing such policies that brought about the need for this investigation to begin with. Accommodating the desires of these parties, especially to the extent that potential remedies serve their own purposes should have low priority. They have had the mechanism to thwart the problems, i.e., price arbitrage and abusive short term trading all along. The fact that they chose not to invoke such available remedies is indicative of the fact that they were able to live with such incidents and also supports the studies that say the negative effects, although in some cases the result of illegal activity, were minimal.

In fact, all available studies that I have seen including the Greene study entitled "The Dilution Impact of Daily Fund Flows on Open Ended Mutual Funds", the Zitzewitz study entitled "Mutual Funds: Who's Looking Out for Investors", as well as the recent study done for the Janus Funds all show the cost of abusive short term trading to be rather insignificant to other shareholders. At worst, they would seem to cost something in the area of 0.2% per annum.

When the additional facts are considered that the incidents of such abusive trading are done by a relative handful of individuals and are done with the concurrence of the fund companies who have the means to prevent them from occurring, it is difficult to justify that a redemption fee of any size be assigned to the remaining innocuous short term trades. That is especially true as the redemption fees being considered would primarily be imposed upon innocent bystanders.

Furthermore, it must not be forgotten that the trades that have been identified as the most offensive of those that generated additional costs (albeit a small additional cost) to other shareholders are trades that took place in one day. Arbitrageurs are not interested in "playing the market". Their efforts are aimed at pricing inefficiencies that normally have a short, e.g., one day, lifespan. So also was the case with trades of those who had special deals to trade based on after hours news.

The bottom line as it appears to me is that the problem for which a remedy is being sought is one in which:

1. the damages per innocent shareholders is very small, perhaps 0.2% per year,

2. the period of time incurred in the abusive short term trading is normally 1 day,

3. the abusive trading incidents were done by a tiny fraction of all mutual fund investors, and took place in a relatively small number of funds, and

4. the mutual funds not only were a party to many of the infractions, but also had mechanisms in place to allow them to penalize such activity by imposing redemption fees in an amount *up to 2%* or to prohibit them altogether.

As a result, it is difficult to justify a *mandatory* penalty of any magnitude and for a period of more than 1 day in order to correct the majority of ills that have been identified. I will hasten to add that I am not against a redemption fee in order to prevent *what might be excessive short term trading* and be disruptive to the fund managers ability to do his job. However, great care must be taken to prevent mutual funds from exploiting this situation for their own purposes as well as not to disadvantage average investors. As the SEC has consistently said in the past, the redemption ability should be inherent in open ended funds. That often is counter to the mandate of mutual funds which is to gather and hold assets. Furthermore, mutual funds should not dictate investment philosophy to investors.

As a result of these thoughts, I urge the SEC, rather than considering a mandatory redemption fee, to:
1. leave the redemption fee *cap* at 2% as it has been and *additionally require that any such redemption fee be justified by actual costs incurred by the abusive short term trading* that they are trying to eliminate, and

2. require funds to rectify the problems that they might have by resorting to the existing remedies at their disposable, such as in #1 above as well as by utilizing fair value pricing and stating in their prospectuses what their policies are in clear and unambiguous terms.

3. make the period of time during which such a fee can be levied limited to some reasonable time frame that is also linked to the time period of historically disruptive trading, e.g.., a maximum of 5 days. (I hope you notice that that period is already being exploited by mutual funds that are imposing new redemption fees for periods as long as 30, 60 and 90 days and in at least one case 3 years. How can they justify not having been moved to penalize short term trading which primarily involved one day trading all these years and now expect us to believe that a penalty to eliminate trading within a 90 day period, for example, is justified?? Senator Fitzgerald correctly identified that propensity as "skimming".) Also, as I mention above, in addition to the self-serving nature of such fees, the funds have no business dictating an investment philosophy to their investors.

In closing, please consider carefully that there are rules and laws in place to correct almost all of the ills in question and that there is no proof or even indication that the remedies under consideration will cure the nominal problem that would remain if the mutual funds would enforce those rules and laws. Please resist overregulation that would only disadvantage the innocent bystanders. Such overregulation would perhaps appease those uninformed legislators and the uninformed press as a remedy to help the average investor. Paradoxically, it would do just the opposite.

Respectfully,

John S. Lyons, President