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U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

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OFFICE OF THE SECRETARY

Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
Washington, DC 20549

Dear Chairman Donaldson:

I commend the Commission for the prompt action it has taken to address the issues raised by investigations of activities involving late trading and market timing. I have reservations, however, concerning the Commission's proposal to require that orders for shares of a mutual fund be received by the fund by 4:00 p.m. to be processed the same day. While I understand that this is intended to eliminate "late trading" of mutual fund shares, I am concerned that the proposal may be both an over- and under-reaction to the problem. The proposed "hard close" alone will not eliminate late trading, given that some of these arrangements took place at the mutual funds themselves. At the same time, a requirement that all orders be received by the fund by 4:00 p.m. may have serious unintended consequences for investors who hold fund shares through pension plans or other financial intermediaries.

I would encourage you to examine carefully whether there are other mechanisms available to prevent late trading that would be enforceable and would allow intermediaries to continue to accept orders on behalf of funds until 4 p.m. I understand that some intermediaries that are not currently inspected by the Commission have proposed submission to Commission jurisdiction or enhanced audit requirements, while other intermediaries have suggested systems for logging fund orders that can be more easily monitored. In addition to preventing the unintended consequences created by a hard close requirement for pension plan participants and other investors, alternatives such as these would avoid giving an inappropriate competitive advantage to the advisors of mutual funds, which compete with independent pension administrators and other financial intermediaries for business.

With respect to the Commission's proposals aimed at market timing, I agree that funds should be required to publicly state what types of short term trading activity are permitted or prohibited by the fund. I also believe the Commission struck an appropriate balance in the exemptions it included in its proposed mandatory redemption fee. An exemption for trades in funds that affirmatively permit short term trading allows funds designed to accommodate short-term traders to continue to serve such traders, while allowing other funds to recoup the costs of short-term trading for longer-term investors.

At the same time, however, I would encourage the Commission to be vigilant in ensuring that all funds appropriately reflect market movements in the closing prices posted for mutual fund shares. Enforcing fair market valuation requirements will remove the incentive for market timers seeking to exploit stale prices to the detriment of other fund investors.

Barney Frank
BARNEY FRANK