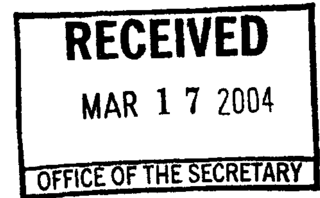
M FINANCIAL SERVICES, INC.

March 12, 2004



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RE: File No. S7-11-04

Dear Mr. Katz,

In a phone conversation with a subcommittee staffer in Senator Fitzgerald's office on February 26, she suggested that I convey in writing to you two concerns that I have about proposed legislation affecting the mutual fund industry that I believe will harm small investors. I am in my 27th year of providing personal financial advice and offering variable annuities and mutual funds to many long-time clients.

Let me begin by saying that I wholeheartedly support any legislation that prevents abusive practices of, or by, mutual funds. However, recently proposed legislation includes two proposals that will harm, not help, millions of investors. Those proposals are punitive redemption fees and a 4:00 p.m. "hard close." Both of those provisions would have exactly the opposite of the intended effect, hurting instead of helping investors. I am particularly concerned about the investor who decides, completely on his own accord, to purchase mutual fund shares shortly before a traumatic event, such as a terrorist attack, causes the markets to tumble. If that investor, out of fear of losing a large portion of his investment, wants to then quickly move to the safety of a money market fund within the mutual fund family, he certainly should not be penalized for his prudence or his fear by having to pay a redemption fee. If the "target" for redemption fees is abusive short term "market timers" who try to capitalize on stale pricing of mutual fund holdings, the much better solution is fair value pricing. Nearly all academic studies on this subject support fair value pricing to eliminate stale pricing within mutual funds over mandatory redemption fees. Importantly, fair value pricing is fair to all mutual fund investors without hurting the liquidity or cost of mutual fund shares.

As for the 4:00 p.m. "hard close," this again hurts small investors, especially the 85% who own their shares through intermediaries such as a broker/dealer or retirement plan. The "hard close" would require

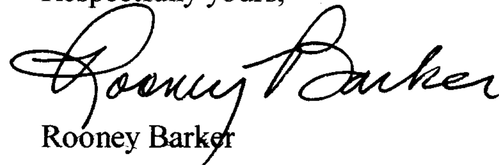
individuals to place their mutual fund trades with intermediaries 4-6 hours before the market actually closes. The investor friendly alternative to this proposal is the "modified hard close" which calls for auditable procedures to time stamp mutual fund orders received by intermediaries to ensure that they were received prior to the market close.

Allowing the "hard close" and mandatory redemption fees to become law would relegate mutual fund investors to second class investors when compared to those who do not use mutual funds for investing, such as those who choose to purchase individual stocks and bonds..

Let me repeat that I support legislation reforming the mutual fund industry, except for two key provisions that must be stricken from such legislation before it becomes law, in order to prevent terrible harm to the very people the legislation is intended to protect – the individual investor.

Thank you for taking the time to hear my concerns. I would be more than happy to have a phone conversation with you about this, should you wish to discuss the subject further.

Respectfully yours,



Rooney Barker

Encl.

What's Been Written About
Reforming the Mutual Fund Industry

Redemption Fee Penalizes Everyday Investors

No one knows how much short term trades really cost a fund, and by saddling new fees on investors who want the flexibility to reclaim their own money, funds are penalizing people for practicing risk management with their life savings.

"A redemption fee 'is a very coarse weapon – it affects everyone, not just the ones who are the target. The longer the holding period and the higher the fee, the more we deter short-term trading, but the more we affect the long-term investors, too.'"
--Professor K. Geert Rouwenhorst, Yale School of Management in The New York Times, 11/21/03

"Many scholars who have studied the problem say that high redemption fees could wind up hurting the very people Congress is trying to protect – the long term, middle-income investors in mutual funds – by making it riskier for them to invest money they might need for emergencies."
-- The New York Times, 11/21/03 (Diana B. Henriques)

"It comes down to the difference between treating a symptom and curing the disease. 'If mutual fund shares were priced correctly, there would be no opportunities for market timers and thus redemption fees would be unnecessary.'"
--Professor John M. R. Chalmers, Lundquist College of Business, University of Oregon in the New York Times, 11/21/03

"The beautiful thing about mutual funds was that they gave you infinite liquidity. You can imagine a situation where, hell, you just invested and you suddenly need the money. After all, stuff happens."
--Professor Robert F. Whitelaw, Stern School of Business, New York University, in The New York Times, 11/21/03

"Information and disclosure requirements should be designed to provide investors with real value rather than serve mainly to increase costs and decrease returns."
--Federal Reserve Board Chairman Alan Greenspan and Treasury Secretary John W. Snow in a letter to the Honorable Richard Shelby, Chairman of the Senate Committee on Banking, Housing, and Urban Affairs and the Honorable Michael Oxley, Chairman of the House Committee on Financial Services, 11/18/03

"Members of Congress were chagrined to hear testimony that seemingly small amounts skimmed from profits added up to substantial losses over time. For example, Spitzer testified that if the management fees that funds charge their shareholders were cut by as little as a quarter of 1%, the annual savings to shareholders would be $10 billion."
-- The Los Angeles Times, 11/10/03 (Jonathan Peterson)

"There are some glaring ironies involved in the fund timing scandal, but perhaps none bigger than this one: The attack on the general idea of using mutual funds to make

market-timing moves comes as many Wall Street pros — and many individual investors — have concluded that 'buy and hold' may not be the best strategy in this decade.

"If the effect of the unfolding scandal is to make it more difficult for all investors to make changes in their portfolios, or to justify changes, it isn't at all clear that the average fund owner's interests would be helped. It might be just the opposite."
--The Los Angeles Times, 11/09/03, (Tom Petruno)

"...some of the early 'reforms' now being talked about in Congress and the SEC would punish the innocent along with the guilty. Charging fees for quick fund trades, for example, could hurt honest folk who have a sudden need for their cash ... let's hope the political class takes more time and care in thinking about all of this than it did after the accounting scandals of 2002."
--The Wall Street Journal, Editorial, 11/05/03

Hard Close Penalizes Everyday Investors

The proposed 4:00p.m. Eastern Time hard close deadline would require the individual investor to place their orders several hours in advance of the 4p.m. close to be accepted that day, thereby forcing him to the sidelines during the final hours of trading.

"Ironically, in the name of preventing abuses by the larger customers, the SEC would end up harming the smaller ones. Roughly 80 percent of mutual fund customers – including most small customers – trade through intermediaries. In order to have their orders received by the mutual fund before 4 p.m., those intermediaries would have to establish deadlines well in advance of that hour. Small customers placing orders after that deadline but before 4 p.m. would receive the next day's pricing."
--"Regulation in Brief," David C. John, Research Fellow, The Heritage Foundation, 1/20/04

"Among the most troubling rules is one proposed by the SEC in December that would impose a uniform 4 p.m.(eastern time) cutoff on all fund transactions to prevent late trading. Problem is, 401(k) plans that offer funds from multiple fund families--some 80% of all plans--may not be able to meet that deadline. Typically, 401(k) plans allow participants to make fund transactions until 4 p.m., but the paperwork may take several more hours, as various middlemen determine the closing prices of the funds, move the money and update accounts. To meet the new deadline, many 401(k) plans would be forced to require participants to make trades by noon or earlier to get same-day execution. Or plan administrators may just decide to offer fewer choices and less trading flexibility in order to keep things simple. "Personally, I think it stinks," says Dallas Salisbury, head of the Employee Benefit Research Institute in Washington, D.C. 'Instead of protecting me, the four o'clock rule denies me rights as a plan participant that I would have as a retail investor.'"
--Money Magazine, January 2004 (Penelope Wang)

"As a result, meeting the SEC's proposed 4 p.m. cut off could force many plans to cut off trading as early as noon so the orders can be forwarded to the fund company by 4 p.m.

The burden of the early close is likely to fall hardest on West Coast investors, who could be forced to place their orders by 9 a.m. their time to get that day's price. But many other investors could also be forced to change their habits... The proposed "hard" 4 p.m. close isn't a problem if the fund company is also the plan administrator, because it will have the order as of 4 p.m. But if the plan is administered by a third party, the order can't get in by that deadline."

"If you happen to be living on the West Coast, you can have your last trade while you are eating your cornflakes," says Albert Brust, executive vice president of the National Defined Contribution Council, a trade group.
--The Wall Street Journal, 12/17/03 (Ruth Simon)

"To stop illegal after-hours trading, the SEC is requiring funds to have all order in hand before setting prices at 4 p.m. But West Coast employees with 401 (k)s must then place their orders very early in the morning. Encrypted digital time stamps, backed by an outside audit, are a better solution."
--Business Week, Editorial, 12/22/03

"A proposed remedy for stamping out illegal 'late trading' in the mutual fund industry is drawing fire from critics who say it would unintentionally punish the nation's 48 million 401(k) retirement plan investors, especially those on the West Coast."
--The Los Angeles Times, 12/03/03 (Josh Friedman)

"Officials at Fidelity Investments, the No. 1 fund firm in assets, also have come out against the idea of a firm 4 p.m. order deadline. Chief operating officer Robert Reynolds said in a recent interview that 'a quick solution that has unintended consequences is not in the interests of anyone.' And he said the hardened deadline would be one such simplistic solution that "ends up hurting the shareholders, not helping."
--The Wall Street Journal, 10/31/03 (Karen Damato and Tom Lauricella)

Reform Should Focus On Fair-Value Pricing

The best way of systematically eliminating price arbitrage trading and the financial benefit of late trading is to mandate the use of fair value pricing, whereby a mutual fund's value is adjusted to reflect market trends at the 4:00 p.m. close.

"The after hours abuses are more a problem of compliance than they are proof of the need for stricter rules. In the long run, once-a-day pricing should be scrapped in favor of pricing mutual funds in much the same as the way that stocks and bonds are priced."
--"Regulation in Brief," David C. John, Research Fellow, The Heritage Foundation, 1/20/04

"The SEC should rethink three proposals. To curtail market timing, it wants fund to impose mandatory redemption fees on investments held less than five days... But small investors who need money for emergencies will get hurt and so will 401(k) participants

who sell within five days of automatic payroll contributions. Better to require funds to do daily fair-value pricing."
--Business Week, Editorial, 12/22/03

"It is critical that regulators understand that fair-value pricing should be the primary focus of the solution to the problem."
--Professor Gregory B. Kadlec, Virginia Tech, in The New York Times, 11/21/03

"Two [reforms] are currently popular: Restricting the number of trades and/or charging redemption fees over a certain period. Both have problems. Limiting the number of trades won't stop market timing because excess returns can be earned on as few as three round-trip trades a year. Similarly, redemption fees won't help in the case of a big market move, because the profits from stale-price trading will dwarf any fee. Trading limits and fees may make stale-price trading less profitable, but they won't stop it."

"The SEC now also has a chance to get tough and present the industry with a set of strict fair-value pricing procedures. Absent continuous, 24-hour trading, fair-value pricing represents the most effective and systematic way to contain market timing. It lets markets set prices, rather than relying on brute regulatory force or the indirect hope of new 'corporate governance.'"
--The Wall Street Journal, Editorial, 11/19/03