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

RE: File Number S7-11-04

Mr. Katz,

I would like to bring the following points to your attention regarding the above-referenced file number:

1. **Not Sure the Fee is Necessary** - Although the Proposal cites evidence that abusive trading in mutual funds costs certain types of funds' shareholders, the evidence does not conclusively establish the extent of such costs. First, other commentators have noted that in order to assess the true financial impact of such trading on a fund, one must consider the type of fund involved. Many are of the opinion that only certain types of funds, especially international funds, experience any true loss as a result of such trading. Second, the analysis must take into account whether a given fund actually has more redemption cash going out than new investment coming in on a particular day, in addition to whether the fund's cash position is insufficient to cover a net outflow. Just because a fund has a net outflow on one day does not mean that its cash position is insufficient; and even if it were, the Proposal does not address the funds' true costs of short term credit and brokerage fees (which are under constant downward pressure) involved with maintaining adequate cash and processing trades.

Rather than conclusively establish what the funds' true costs are from abusive short-term trading, the Proposal states that "Because funds are limited to the lesser of the actual costs of redemptions or two percent, and most funds that impose redemption fees charge a two percent fee, such funds must have redemption costs of at least two percent."[1] This syllogistic argument not only fails to account for the Commission staff's previous acknowledgment that the only way

[1] See Note 10 of the Proposal.

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a redemption fee can precisely match the actual cost to a fund is "by chance,"[2] but it also accepts the funds' imposition of redemption fees as proof they legitimately represent their true costs of redemptions. Such reasoning also fails to explain how funds which do not have redemption fees remain competitive and continue to grow. If the funds really did lose 2% each time short-term trades occurred, and the problem was as wide-spread as the Proposal indicates, would the fund industry be doing as well as it is?[3]

Regardless of the fact that there is genuine disagreement as to whether the average mutual fund shareholder is truly harmed by short-term redemptions, and, if so, whether such harm amounts to 2% of fund assets, we are not convinced the mandatory Fee is necessary because funds already have mechanisms in place to address abusive short-term traders. Indeed, the Proposal notes that funds already restrict trading privileges and delay payments. More importantly, certain funds already impose redemption fees up to 2%. What is troubling is that, especially at a time when many in the investment community are calling for increased mutual fund board oversight and accountability, the Proposal is removing the imposition of the Fee from the funds' boards' purview. Under current SEC policy as expressed in no-action letters and other releases, a fund may impose a redemption fee, but only after the board has determined that the amount of the fee is commensurate with the "legitimate" costs of redemption. The Proposed Rule absolves the funds' boards of the obligation to demonstrate the relationship between the actual costs incurred by a fund resulting from redemptions and the Fee.

2. **The Fee Harms Those it is Intended to Protect** - Even if the Fee were legitimately needed to defray actual losses from redemptions, we question whether the Fee will on balance protect the very investors it is intended to help. Mutual fund shareholders (with accounts exceeding $2,500 which do not include ETF shares) who: (1) need to reallocate after planned withdrawals from retirement accounts, (2) mistakenly purchase the wrong fund, or (3) wish to avoid an imminent market downturn, will all pay the Fee if they want to timely achieve a positive result for their portfolio. Other commentators have cited a study of the S&P which demonstrated that there have been an average of more than 3.36 occurrences a month over the past ten years in which investors could have avoided a loss exceeding 2% by making redemptions which under the Proposed Rule would now cost them 2%. While the "first in, first out" provision of the Proposed Rule may alleviate the imposition of the Fee in some of the foregoing circumstances, such protection is far from absolute.

The Commission and the Commission staff have often stated that a mutual fund shareholder's right of redemption is "fundamental to the concept of an open-ended investment company."[4] Under the Proposed Rule, the exercise of that right would be contingent upon paying the Fee. This is appropriate for shareholders who choose to be in a fund which has redemption fees, but it appears inappropriate on a mandatory basis for all funds where the shareholder has no choice. .

Further, we question why mutual fund shareholders generally should be subject to a fee as a result of large investors who take advantage of mutual funds, sometimes with the involvement of fund personnel. These problems should be addressed at the mutual fund level to require enforcement of their stated policies on short-term trading and not at the shareholder level generally. At most, a fee might be charged on large redemptions to address issues relating to those shareholders holding

[2] See Neuberger & Berman Genesis Fund, Inc., SEC Staff No-Action Letter (September 27, 1988).
[3] According to the Investment Company Institute's website, mutual fund assets grew by $1 trillion in 2003 to $7,413,000,000.
[4] See SEC Release No. IC-16504 (July 29, 1988).

large positions.

a. **Efficacy of the Proposed Rule in Doubt** - Notwithstanding the harm to investors we believe the Fee will cause, we doubt the efficacy of the Fee in combating the supposedly rampant short-term trading. The Proposal states that the Fee is designed to reduce or eliminate the opportunity of short-term traders to exploit their fellow mutual fund shareholders. While as a general proposition the imposition of a Fee can be an effective method of curbing an undesirable activity, this new Fee on mutual fund shareholders will only accomplish such design up to the point that the short-term trader's gain is 2% or lower (i.e., the Fee will not deter a short-term trader from redeeming where his gain would exceed 2%). Thus, arguably to really stop the abusive short-term trading in mutual funds, the penalty should be much higher. However, we do not believe imposing mandatory Fees at any level is an effective or appropriate approach and believes that fair value pricing and eliminating after hours trading are more effective, less disruptive and less costly solutions to abusive market timing by fund shareholders.

b. **Costs of Implementation Too High** – We are concerned with the costs of complying with the Proposed Rule. According to the Investment Company Institute, 85-90% of the purchases of mutual fund shares are accomplished through an intermediary. A large portion of such intermediaries are broker-dealers. Where a fund and an intermediary arrange for the fund to assess the Fee, the Commission's staff estimates that the intermediary will have to expend from $10,000 to $100,000 initially (depending on what arrangement is made between the intermediary and the fund), in addition to the same amounts annually, in order to provide the fund with the information required by paragraph (b) of the Proposed Rule. Further, regardless of the arrangement between an intermediary and a fund, each intermediary is estimated to expend $150,000 initially and $100,000 annually thereafter to provide the fund with the periodic account information required under paragraph (c) of the Proposed Rule. This burden will be especially demanding on the broker-dealers having less than $500,000 in total capital (such broker-dealers comprise approximately 12.9% of all broker-dealers, according to the Commission staff). These amounts, of course, do not include the substantial amounts of the Fees themselves, which will be borne by the mutual fund shareholders.

Thanking you in advance for your time and consideration,

Diana Plucienkowski, CFP®
Meg Green & Associates, Inc.