



February 06, 2004

Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549

**Re: File No. S7-27-03**

Dear Mr. Katz:

The Association for Financial Professionals (AFP) and the Committee on Investment of Employee Benefit Assets (CIEBA) welcome the opportunity to comment jointly on the Security and Exchange Commission's (SEC) proposed rule, *Amendments to Rules Governing Pricing of Mutual Fund Shares*.

AFP's membership is made up of approximately 14,000 financial executives employed by over 5,000 corporations and other organizations. Members represent a broad spectrum of financial disciplines and their organizations are drawn generally from the Fortune 500 and middle-market companies in a wide variety of industries. Many of AFP's members have responsibility for the selection and management of their organizations' retirement plans. Often times this includes the determination of which fund families are to be included in those plans.

CIEBA is the voice of the Association for Financial Professionals on employee benefit plan asset management and investment issues. CIEBA members represent 110 of the nation's largest corporate pension funds, managing almost one trillion dollars on behalf of sixteen million plan participants and beneficiaries.

Representing the fiduciaries of large and medium sized plans, CIEBA and AFP commend the Commission for acting quickly to address the widely reported market timing and late trading abuses in the mutual fund industry. Investor confidence is a critical component of the nation's capital markets. Integrity and transparency are the cornerstones upon which that confidence is built. Like the SEC, AFP and CIEBA are committed to restoring and preserving the trust and integrity of our markets. We agree that the SEC should take action to prevent late trading and market timing abuses.



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As noted in the Commission's proposal, "about one third of all mutual fund investments are held through retirement accounts." Therefore, any new rules that the Commission develops must take into account the impact on and potential costs to individuals who invest through their employer-sponsored retirement plans. Importantly, it is our view that any final rule must preserve the ability of these investors to participate fully in the capital markets, including the ability to have access to same day pricing.

The rule must also ensure an efficient and competitive marketplace, should not expose plan participants to increased costs or risk, and should treat all investors equally. Unfortunately, we believe that the proposal to require a "hard 4 p.m. close" would relegate retirement plan participants to "second class investor status," will likely give certain fund families a competitive advantage, and increase risk for retirement plan participants.

### **RELEGATING PLAN PARTICIPANTS TO 'SECOND CLASS' INVESTOR STATUS AND INCREASING THEIR RISK**

While CIEBA and AFP advocate for a long-term investment strategy, retirement plan participants should not be disadvantaged simply because their investment is made through their retirement plan. Requiring that all trades be received by the fund, the fund's designated transfer agent, or a registered clearing agent by 4 p.m. would place plan participants at a disadvantage, and likely eliminate same day pricing for many of them. A "hard 4 p.m. close" would require that plan participants submit their trades several hours prior to 4 p.m. Eastern Standard Time. Plan sponsors, intermediaries, and other third party administrators need several hours to process requests from participants before those trades can be submitted to the fund. With a "4 p.m. hard close," plan participants would not be able to make their retirement planning decisions based on the most current economic and market data. They would be at a distinct disadvantage to other investors who can take advantage of the most current information, thereby relegating them to second class investor status.

More importantly, participants in retirement plans that use a third party administrator may have to wait one day (or more) for trades to be executed. Markets may move (up or down) by a significant amount in one day. Forcing participants to be "out of the market" for a day or more puts them at increased and unnecessary risk. For participants, the potential cost of being out of the market for even one day could dwarf losses due to late trading and market timing.

Some have suggested that participants are as likely to gain as they are to lose by being out of the market. However, this does not respond to the fact that individual participants are being asked to assume additional risk. Further, any particular participant may never gain from being out of the market or gains may not make up for any compounded losses.

We agree that retirement plan participants should be "long-term investors" but that does not mean that they would not be affected by the "4 p.m. hard close." Being a "long-term investor" does not mean that plan participants never trade. In fact, responsible participants will periodically rebalance their accounts to reflect changing market conditions and/or personal situations. The proposed rule introduces unnecessary additional risk for these participants.

### **UNFAIR COMPETITIVE ADVANTAGE**

The "4 p.m. hard close" gives an unfair competitive advantage to some mutual funds over other types of retirement plan third party providers. Should the proposed rule be adopted, plan sponsors may avoid certain mutual funds families or forgo service agreements based on their inability to offer same day pricing.

For example, under the proposal, a fund management company, service provider or intermediary that does not or cannot bundle investment management and transfer services would be at a significant competitive disadvantage due to factors not based on the fund performance or overall quality of service. Retirement plan fiduciaries have to consider all factors, including service to participants, in choosing plan service providers. The inability of unbundled providers to offer same day trading would be a large competitive disadvantage.

Secondly, the proposal would likely create an incentive for individual plan participants to choose the proprietary funds of an intermediary over other funds that the plan may offer. The ability to execute same day trades may outweigh higher fees or lower performance for some participants. Plan participants should not have to choose between same day pricing and fund performance, especially since other non-retirement plan investors would not have to make the same choice.

Over the longer term, the competitive advantage enjoyed by mutual fund companies offering bundled services could force other plan service providers out of the business, leaving plan sponsors with fewer choices. Less competition could lead to poorer service and higher costs to participants in retirement plans.

### **RECOMMENDATIONS**

We believe that the proposal, as currently drafted, would place an unnecessary burden on plan participants and expose them to additional risk. Rather, AFP and CIEBA support and recommend the solution outlined in H.R. 2420, which would allow retirement plans to submit trades after the closing time *IF* certain auditable and verifiable procedures to prevent trading abuses are in place. The procedures include a tamper proof time stamp, certification policies, and independent audits. We believe that such a policy would prevent late trading abuses while maintaining a level playing field for all investors.

We further urge the Commission to recognize that retirement plan participants will ultimately bear the costs of implementing any new rules. Therefore, the Commission should conduct a thorough cost benefit analysis before issuing any final rule.

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AFP and CIEBA appreciate the opportunity to submit our general views on proposed changes to rule 22c-1 of the Investment Company Act of 1940. If you need further information or have questions, please contact Tom Santos, AFP's Manager of Government Relations at 301.961.8853 or Judy Schub, CIEBA's Managing Director at 301.961.8682.

Sincerely yours,



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