Securities Industry Association
120 Broadway • New York, NY 10271-0080 • (212) 608-1500 • Fax (212) 968-0703
1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000 • Fax (202) 216-2119
info@sia.com; http://www.sia.com

April 10, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Proposed Amendments to Mutual Fund Redemption Fee Rule 22c-2 (Release No. IC-27255 File No. S7-06-06)

Dear Ms. Morris:

The Securities Industry Association ("SIA")[1] appreciates the opportunity to comment on proposed amendments to rule 22c-2 under the Investment Company Act of 1940,[2] which are currently scheduled to become effective on October 16, 2006. A principal objective of the rule is to help address the abuses associated with short-term trading of fund shares. Consistent with that objective, the rule requires funds to enter into information-sharing agreements with intermediaries to better provide funds with the ability to identify investors whose trading violates fund restrictions on short-term trading, so that redemption fees and restrictions can be properly imposed on such investors.

As is noted in the proposing release,[3] industry participants have been engaging in efforts to facilitate the information-sharing provisions of the rule through the development of standardized contractual terms and information exchange protocols. In

[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

[2] SEC Release IC-26782 (March 11, 2005).

[3] Proposing release at p.18.

conjunction with these efforts, a joint SIA/ICI working group developed model contractual clauses for rule 22c-2 compliance,[4] which were made available to SIA's and ICI's respective memberships in December, 2005. During the course of joint working group discussions it became apparent that one of the most difficult challenges in implementing the rule was determining in the first instance when a non-natural person account was acting in a nominee, rather than a proprietary capacity. Thus, funds would be confronted with the daunting, labor intensive, costly and perhaps futile task, of attempting to determine which among many thousands of non-natural person accounts are acting as nominees, and if a nominee relationship is determined to exist, obtaining information sharing agreements from indirect or chains of intermediaries with whom the funds essentially have no privity.[5]

We are pleased that the proposed amendments recognize the problematic nature of trying to identify and enter into agreements with indirect intermediaries. Such amendments, if adopted, will only require funds to enter into agreements with financial intermediaries that submit orders to purchase or redeem shares directly to the fund or designated agents of the fund[6], provided the fund treats others as individual investors for purposes of applying fund policies. SIA supports the objective and much of the content of the proposed amendments, but respectfully suggests that certain modifications and clarifications are needed to fully accomplish their objective. We discuss these below.

Indirect/Chain of Intermediaries Issues

Another thing that became readily apparent to SIA members through the efforts of the joint working group, is that the difficulties of identifying indirect intermediaries is not unique to funds. Broker-dealers and others have virtually the same identification problems with respect to fund orders other than those submitted directly to it by its own customers or those of fully disclosed correspondents. Thus, a broker-dealer's likelihood of being able to "drill down" to identify chains of intermediaries is just as problematic as it is for funds. Therefore, we believe the obligations of funds and broker-dealers with respect to identifying financial intermediaries (either for purposes of entering into agreements or for information sharing) should be parallel.

The best way to accomplish this is to delete proposed rule section 22c-2(c)(5)(iii) which requires shareholder agreements to contain a provision calling for financial intermediaries to use best efforts to identify indirect intermediaries, and instead apply an obligation to provide underlying shareholder information only with respect to those financial intermediaries who enter purchase or redemption orders directly with the broker-dealer, or through a fully disclosed correspondent. Any others would be treated as individual investors (subject to certain exceptions discussed below), which would parallel

[4] See http://www.sia.com/securities/pdf/ModelContractualclausesforrule22c-2,pdf

[5] See proposing release discussion p.22 and 23 and footnote 47, thereof.

[6] Presumably the term "directly with the fund" would include transactions processed through an authorized agent on behalf of a disclosed financial intermediary.

the way the amendments propose to treat a fund's obligation to enter into shareholder information agreements, i.e.-only required where a direct purchase and redemption arrangement exists. In fact, "a best efforts standard" is far less likely to lead to identification of potential indirect intermediaries than treating them as individual investors. Treating such entities as individual investors will be a strong inducement to them to disclose when they are acting in a nominee capacity.

Treatment As Individual Investor

As previously discussed, a principal objective of the proposed amendments is to recognize limitations on a fund's ability to identify scores of potential indirect intermediaries who do not directly place purchase or redemption orders with them. We do not believe, however, that the amendments are intended to subject indirect intermediaries to individual investor treatment, or alleviate funds from the requirement of entering into information-sharing agreements with them, when such entity has self-identified that it is acting in a nominee capacity, or that information is otherwise known to the fund. To clarify this we suggest the following italicized addition to proposed rule section 22c-2(c)(1)(iv):

> "Financial intermediary does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund; *provided, however, that a fund may not treat a person as an individual investor if the fund has a dealer agreement, selling agreement, services agreement or similar agreement with that person, or an authorized agent of that person, pursuant to which fund shares are made available to other investors through that person's account with the fund. Further, a fund may not treat any person as an individual investor if that person identifies itself as a financial intermediary and meets the definition of "financial intermediary"…*

Similar clarification should also be provided with respect to a broker-dealer's or other financial intermediary's obligation to provide shareholder information to a fund in circumstances where an indirect intermediary has self-identified itself, or is otherwise known to be acting in a nominee capacity.

Compliance Date

Regardless of whether the rule 22c-2 amendments are adopted as proposed or further revised as the result of modifications recommended by SIA, and/or, other commentators, it would appear that both the contents of information-sharing agreements and the scope of persons with whom such agreements must be effectuated, will be impacted. Also, the impact may not be uniform across all business models. Therefore, SIA respectfully requests that the compliance date of any amended rule be extended until at least the later of six months following the current October 16, 2006 compliance date or six months following final adoption of the amended rule.

SIA appreciates the Commission's efforts to address methodologies for making rule 22c-2 more administratively manageable and effective, and we hope you will find our recommendations helpful. If you have any questions relating to this letter or related matters, please contact Mike Udoff of SIA staff at (212) 618-0509.

Sincerely,

Martin G. Byrne
Chairman
Investment Company Committee

cc: The Honorable Christopher Cox, Chairman
The Honorable Cynthia Glassman, Commissioner
The Honorable Paul Atkins, Commissioner
The Honorable Roel Campos, Commissioner
The Honorable Annette Nazareth, Commissioner
Robert E. Plaze, Associate Director, Division of Investment Management
Susan Wyderko, Acting Director, Division of Investment Management
Thoreau Bartmann, Staff Attorney
C. Hunter Jones, Assistant Director, Office of Regulatory Policy