INVESTMENT COMPANY INSTITUTE

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April 10, 2006

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

Re: Mutual Fund Redemption Fees
File No. S7-06-06

Dear Ms. Morris:

The Investment Company Institute[1] strongly supports the proposed amendments to the redemption fee rule, Rule 22c-2 under the Investment Company Act of 1940.[2] We commend the Commission and its staff for their efforts over the past year to work with the industry to address the issues that came to light after the Commission adopted the rule. We are pleased that the proposed changes address many of the concerns raised by the Institute and, in particular, are designed to reduce the costs associated with the rule as originally adopted.[3] We are also pleased with the Commission's interest in learning on an ongoing basis about funds' experiences, including their costs and burdens, in complying with the rule. We will continue to monitor the rule's implementation and provide the Commission with feedback as appropriate.

The Institute supports the manner in which the Commission has proposed to address small nominee accounts and chains of intermediaries under the rule. The proposed approach will avoid funds having to execute shareholder information agreements with those nominee accounts they treat as individual accounts and with indirect intermediaries. It should reduce the costs and burdens associated

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[1] The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is attached to this letter.

[2] *Mutual Fund Redemption Fees,* SEC Release No. IC-27255 (Feb. 28, 2006) (the "Release").

[3] *See* Letter from Elizabeth Krentzman, General Counsel, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, SEC (May 9, 2005).

with the rule's implementation while still providing funds access to underlying shareholder information.

As discussed in more detail below, the Institute has two recommendations on the Commission's proposal. First, we strongly recommend that the compliance date be extended at least six months. Second, we recommend a technical revision to the rule's definition of "financial intermediary" to ensure that it includes persons that submit orders directly to the fund on behalf of a financial intermediary. We also seek clarification of certain issues raised by the proposed amendments.

Compliance Date

The Release seeks comment on whether additional time is needed beyond the October 16, 2006 compliance date to comply with the proposed amendments. From the date of the rule's adoption, the Institute has been active in assisting our members with its implementation. Our efforts have included, among others: (1) developing jointly with the Securities Industry Association "Model Contractual Clauses for Rule 22c-2" to provide our members and their intermediaries a form to use to meet the rule's contract requirements; (2) developing standardized data protocols that can be used by a fund to request and receive shareholder trading data under the rule; and (3) providing our members a "Sample Mutual Fund Agreement Package" to help funds communicate key information about the requirements of the rule to their intermediaries.

While much work has been done by funds and their intermediaries to meet the current compliance date, significantly more work remains to be done – particularly in the area of executing the required shareholder information agreements. Delays in obtaining executed agreements have resulted, in large part, from uncertainty regarding which financial intermediaries were required to execute agreements with the funds and the terms of those agreements. Shortly after the rule was adopted, Commission staff acknowledged that there were a variety of issues raised by commenters that needed to be resolved for the rule to operate as intended. Accordingly, we strongly encourage the Commission to extend the compliance date six months from the later of October 16, 2006 or the date the proposed amendments to the rule are adopted.

Shareholder Information Agreements

Under the Commission's proposal, a fund must execute a shareholder information agreement with any person that meets two conditions. The first is that the person is a financial intermediary – *i.e.,* the person holds an account in nominee name on the fund's books and records. The second is that the person submits trades "directly" to the fund. The Institute is concerned that these criteria create an unintended gap. Many financial intermediaries (*e.g.,* banks) do not transact business with the fund directly. Instead, they utilize the services of other entities that aggregate customer orders and submit them to the fund for processing. The accounts of these entities' customers are maintained on the fund's books and records in the name of the financial institution (*e.g.,* the bank as nominee – not in the name

of the entity forwarding the trade to the fund for processing). In these cases, neither the entity forwarding the trade "directly" to the fund, nor that entity's customer (the bank), meets *both* criteria triggering the requirements for a shareholder information agreement with the fund.

To address this inadvertent gap in the rule, the Institute recommends that the Commission revise the definition of "financial intermediary" to include any person that, on behalf of a financial intermediary, submits purchase or sale orders directly to the fund.[4] This revision will assure that funds have access, through a shareholder information agreement, to a financial intermediary's trading data without regard to whether the intermediary submits orders to the fund directly or through another entity that transacts business directly with the fund on the intermediary's behalf.

Intermediary Agreements

The Institute supports the proposed provision that a fund must prohibit any financial intermediary that does not execute a shareholder information agreement with the fund from purchasing, on behalf of itself or others, securities issued by the fund. We recommend the Commission make it clear that, for these purposes, "purchase" does not include the automatic reinvestment of dividends. Market-timing transactions are properly thought to be shareholder-driven, and not the result of automatic reinvestments of dividends. Our requested clarification is consistent with the rule's goal of helping funds to monitor short-term trading and enforce their market-timing policies, while avoiding disruption to transactions that are automatic and thus not vulnerable to market-timing or other abusive practices. The clarification is also consistent with the Commission's long-standing view that the term "sale" in Section 2(3) of the Securities Act of 1933 does not include reinvested dividends.[5]

Foreign Shareholders

Under the rule, the shareholder information agreement must require intermediaries to provide funds, on request, a shareholder's taxpayer identification number (TIN). In some instances, foreign shareholders may not have TINs. For such foreign shareholders, we recommend that the Commission permit the use of another unique, government–issued identifier in lieu of a TIN (*e.g.,* an individual taxpayer identification number (ITIN), which is issued by the IRS to foreign nationals).

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[4] We recommend that a new paragraph (c)(1)(iv) be added in the definition of "financial intermediary" as follows: "Any person that submits orders to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or to a registered clearing agency on behalf of any of the foregoing persons."

[5] *See, e.g.,* SEC Release No. 33-929 (July 29, 1936) and *The Mony Fund, Incorporated,* pub. avail. April 14, 1975.

Privacy Issues

The Institute agrees with the Commission that privacy regulations under the Gramm-Leach-Bliley Act do not preclude intermediaries from providing to funds the shareholder identification and transaction information Rule 22c-2 requires. The Commission's determination is consistent with the advice of our outside counsel that disclosure of Social Security numbers and other information about individual shareholders mandated by Rule 22c-2 is consistent with federal and state privacy laws. A copy of outside counsel's memorandum is attached.

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We appreciate the efforts of the Commission and its staff to address concerns previously raised by the Institute and others with the rule as originally adopted. We look forward to providing the staff information on the rule's implementation. In the meantime, if you have any questions concerning our comments or would like additional information about them, please contact me at 202-326-5815 or Tamara Salmon at 202-326-5825.

Sincerely,

/s/ Elizabeth Krentzman

Elizabeth Krentzman
General Counsel

cc: The Honorable Christopher Cox
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Cynthia A. Glassman
The Honorable Annette L. Nazareth

Susan Ferris Wyderko, Acting Director
Robert Plaze, Associate Director for Regulation
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Division of Investment Management

Enclosures