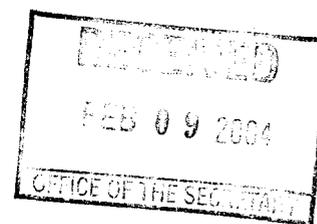


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February 6, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Comment on Proposed Amendments to Rules Governing Pricing of Mutual Fund Shares
(File No. S7-27-03)

Dear Mr. Katz:

This letter is respectfully submitted on behalf of Automatic Data Processing, Inc. ("ADP"), which wishes to comment on the Commission's proposed regulation published in the Federal Register on December 17, 2003, regarding the 4:00 p.m. Eastern Time ("ET") "hard close" on acceptance of mutual fund transaction requests. In so doing, ADP's intention is to address the impact that it believes a 4:00 p.m. ET hard close would have on retirement plan intermediaries and, as a result, plan sponsors and participants.

To date, much of the debate surrounding the impact of a 4:00 p.m. ET hard close for retirement plans has focused on the fact that, under a hard close regime, retirement plan intermediaries will have to impose an earlier deadline for trading and transaction requests to receive the current day's mutual fund prices. In addressing the perceived potential costs of a hard close for intermediaries, the Commission likewise seems to assume that the primary cost will be a one-time technological "upgrade" to enable computer systems to process orders more efficiently, ultimately enabling individuals to place their orders as close to the pricing time as possible while qualifying for that day's price. Insofar as retirement plan intermediaries are concerned, however, ADP respectfully suggests that focusing on this issue ignores a far more significant impact: the entirety of daily valuation recordkeeping is premised on the ability to have the current day's mutual fund net asset values (NAVs) before net trading instructions are forwarded to the mutual funds. Absent this ability -- which would be foreclosed by a 4:00 p.m. ET hard close -- every aspect of daily valuation recordkeeping as it exists today will have to be examined and likely overhauled. What replaces it will be far less desirable from the perspective of retirement plan sponsors, participants, and intermediaries. From the perspective of a retirement plan intermediary such as ADP, therefore, the costs of a 4:00 p.m. ET hard close will go far beyond a one-time technological "upgrade." While enabling retirement plan participants to submit trading requests as close to the pricing time as possible will be critical to intermediaries from a competitive perspective, ADP respectfully suggests that this is merely the tip of the iceberg.

In sharp contrast to the extremely negative impact that ADP believes the 4:00 p.m. ET hard close would impose upon the employer-based retirement system, a system permitting third-party intermediaries to continue to accept transaction requests until 4:00 p.m. ET subject to a combination of time stamping, certification, and audit would be a far more preferable alternative that would prevent the abuses a 4:00 p.m. ET hard close is intended to prevent and that would also maintain the benefits for plan sponsors and participants available under the retirement system as we know it today. As discussed below in greater detail, ADP suggests that a regulatory audit requirement imposed by the Commission could subject retirement plan recordkeepers to an audit by the Commission specifically designed to examine compliance with the 4:00 p.m. ET cutoff. The Commission could impose a user fee to cover its costs, thereby enabling the Commission to engage outside parties to perform the audit if the Commission so desired. This approach would allow recordkeepers to continue current practices only if audit requirements are met and certified by an organization approved by the Commission. If the Commission creates demand for this function by promulgating such a requirement, ADP believes that auditors will develop the specialized standards and knowledge to effectively audit compliance by retirement plan service providers with the forward pricing rules. If, however, the Commission is unwilling to adopt an alternative to the 4:00 p.m. ET hard close based upon verifiable time stamping, an alternative "technological" solution would be a more favorable outcome than a hard close, although the viability of any such solution has not been determined and will require significant additional study.

I. Introduction And Background.

To better enable the Commission to appreciate the basis for ADP's comments, we offer the following background regarding ADP's operations and the retirement plan recordkeeping industry in general.

A. *The Business of ADP Retirement Services.*

ADP is one of the largest independent computing services firms in the world. It is a leading provider of integrated business administrative solutions that help over 460,000 clients efficiently manage their internal processes. In the world of employer services, ADP's service offerings include payroll processing, payroll and business tax filing and reporting, human resource information systems, benefits administration, and retirement plan services. For approximately the last fourteen years, through its Retirement Services division, ADP, Inc. has provided a range of recordkeeping and data processing services to a variety of employee benefit plans, most of which are retirement plans that principally invest in mutual funds. As a third-party recordkeeper for retirement plans around the country, ADP currently provides services to over 30,000 plans covering more than one million participants. While ADP itself is a large enterprise, the overwhelming majority of the clients to whom ADP provides retirement plan recordkeeping services are small businesses. Of ADP's current retirement plan client base, a very significant number cover fewer than 100 employees, although its clients' plans range in size from one to close to 80,000 participants. Thus, ADP has a great deal of experience in the retirement plan industry, and believes that it is well positioned to speak to the effects that a 4:00 p.m. ET "hard close" would have on our country's retirement plan system, particularly on the small employers who form the backbone of our economy.¹

¹ Recordkeepers like ADP that provide services to individual account plans, especially 401(k) plans, are critical to the viability of the private retirement system. These plans hold over \$1.5 trillion in assets and cover over 38 million participants. (Source: *The SPARK Institute's Amicus Curiae Brief in Support of Defendant Northern Trust Company's Motion to Dismiss, Tittle v. Enron Corp.*) The overwhelming majority of these plans provide for daily valuation of accounts by recordkeepers, engage in mutual fund transactions on a daily basis and allow participants to direct their investments among various options (primarily mutual

As a recordkeeper, ADP provides services for a variety of retirement plans, including but not limited to tax-qualified retirement plans (e.g., 401(k) and profit sharing plans), SIMPLE IRA plans, Section 403(b) "tax sheltered annuity" plans, Section 457 deferred compensation plans, and executive deferred compensation plans. Because ADP's services are limited to recordkeeping and data processing, it enters into business alliances with firms that provide the other services necessary for retirement plan sponsors to establish, maintain and administer retirement plans. These business partners include, among others: (i) financial institutions that act as trustees for retirement plans; (ii) third-party administrators that provide various administrative services for retirement plans; (iii) mutual fund companies that provide retirement plans with the option to invest in mutual funds; and (iv) other financial services firms that provide retirement plans with the option to invest in different types of securities. With these business partners, ADP offers "bundled" services that include the full range of recordkeeping, administrative, financial, and investment services commonly required by retirement plans.

ADP provides a broad range of recordkeeping and data processing services, including, among others, maintaining current records of plan participants and the value of their individual interests in the retirement plan; distributing statements and other records to retirement plan sponsors, trustees, and participants; creating and administering websites, voice response systems (VRS), and telephone call centers used to provide information to participants and receive instructions regarding transactions and investments from them; processing the in-flows and out-flows of money incident to the administration of retirement plans; and processing and transmitting instructions concerning the investment of retirement plan assets in mutual funds and other types of investments.

All of the retirement plans served by ADP offer their participants a menu of investment options for their account balance and allow their participants, with some limitations, to choose among these options. The menu commonly includes a variety of mutual funds, and participants are usually permitted to allocate their interests among those funds in any manner they choose. Thus, for example, a participant might elect to invest 100% of his or her interest in a money market fund on the plan's menu. Alternatively, the participant might divide his or her interest in any proportion among funds that pursue divergent strategies and invest in different types of securities. If displeased with his or her initial choices, the participant might later transfer his or her interest to other funds -- usually accomplished by decreasing the percentage allocated to one or more funds and increasing the percentage allocated to other funds.

The assets of many types of retirement plans are held in a single trust account for the benefit of all participants, rather than separate accounts for each participant. In many cases, therefore, investment instructions relating to the assets of a retirement plan are issued on behalf of the plan's trustee (usually a financial institution). Because the elections of individual participants determine the manner in which those assets are invested, however, one of the functions of a plan's recordkeeper is to collect the investment instructions of individual participants and aggregate them into omnibus requests to purchase and sell securities and/or to transfer money. These instructions are generally gathered through VRS, websites, paper forms, and call centers. Under a standing direction from the trustee (which is typically acting at the direction of another plan fiduciary, such as the employer-sponsor), the recordkeeper

funds) selected by plan fiduciaries. Each day, hundreds of thousands of participants may initiate transactions requiring the redemption and/or purchase of invested assets. None of this would be possible without the involvement of third-party recordkeepers, who have invested millions of dollars in developing participant-interactive technologies, computer systems, internal processes, and external contractual arrangements with fund families, alliance partners and transaction processing systems, all based on the principle of legitimate "late-day trading."

transmits these orders to mutual fund companies and other parties who participate in the investment or settlement process.

B. Historical Background To Current Daily Valuation Recordkeeping Systems.

The harms that ADP believes will be caused by a 4:00 p.m. ET hard close are best understood when viewed in a historical context and with an understanding of how recordkeeping works. Since the early 1980s, more and more employers have established defined contribution plans, such as 401(k) plans, rather than more costly defined benefit plans, which must be funded entirely by the employer and are ordinarily managed by investment professionals selected by the employer or trustee. Under defined contribution plans, the plan maintains an account for each participant, which reflects contributions made by or for the participant, as adjusted for the performance of the investments in which such contributions are invested. In the overwhelming majority of defined contribution plans, participants are responsible for deciding how to invest their accounts among the investment alternatives selected by a plan fiduciary (most often the employer).

The manner in which defined contribution plan recordkeeping is performed has changed greatly in the last twenty years or so. Retirement plan recordkeeping for many years was performed under "balance forward," or accrual, accounting systems. Participants' accounts were valued as of the end of each month, or more often quarterly, semi-annually or even annually, and participants were sent statements at the same frequency as valuations were performed. Thus, for example, since transactions were never accounted for until the end of the accounting period, a participant statement would never show the value of the investment fund purchased with a contribution made during the period. Because such accrual accounting methods were employed, the value of participants' accounts invested in a particular mutual fund would never correlate to the current value of the underlying investment funds in which participants elected to invest their accounts. The value of an investment fund reflected on a participant's statement was stated in terms of a synthetically created "unit value" calculated by the recordkeeper. As a result, it was difficult for a participant to clearly understand the effects of their investment elections.

The advent of daily valuation of participant accounts radically changed the manner in which recordkeeping was performed. Under daily valuation systems, the value of participants' accounts in most cases can be correlated to the performance of the mutual funds in which their accounts are invested. As a result, virtually all major retirement plan recordkeepers provide participants the ability to invest their retirement plan accounts directly in mutual funds. Participants can see on their statements the number of shares their contributions purchased. Participants can track in the newspaper how their accounts are performing. Participants can read prospectuses and other available materials regarding mutual funds to understand the nature of the investments and the fees charged by the mutual funds. Retirement plan investing has become more explainable, and thus more understandable, to a retirement plan participant. This environment has, in turn, enabled participant education to flourish as a service offering made available by recordkeepers and other retirement plan service providers.

C. Daily Valuation-Based Recordkeeping And All Its Related Benefits For Participants Depends Upon The Ability To Pass Net Investment Instructions After 4:00 p.m. ET, When The Day's Net Asset Values Are Known.

The systems that enable daily valuation and the ability of participants to invest directly in mutual funds depend upon the ability of recordkeepers to collect participant investment and other transaction requests until 4:00 p.m. ET and pass the net investment instructions resulting from those requests to

mutual funds after 4:00 p.m. ET. This form of "late day trading" is permissible under current law. The reason that it is so integral to daily valuation recordkeeping is that in order for participant and employer instructions/requests regarding investment of mutual fund shares to be aggregated and forwarded to a mutual fund, the recordkeeping system must first gather up these instructions from different sources (for example, participant web sites and telephonic VRS), run various checks and edits on the information (including, for example, ensuring that contributions to be forwarded to the mutual fund are not greater than permitted under Internal Revenue Code limits and retirement plan document rules), and create a net instruction to the mutual fund for a purchase or redemption request. Recordkeeping systems must receive and process vast amounts of information obtained from many sources. This processing ordinarily takes the system several hours. ***Most importantly, recordkeeping systems are designed to process investment instructions using that day's final price for each mutual fund at the time it is doing the foregoing aggregating and processing in order in all instances to accurately calculate a net purchase or redemption request to the mutual fund.*** If a 4:00 p.m. ET hard close were imposed, the recordkeeping system first would have to run its processes much earlier in the day (for example, by 1:00 p.m. ET) in order to create a net instruction to forward to a mutual fund by 4:00 p.m. ET, requiring an even earlier cutoff for accepting transaction and trading instructions from participants and plan sponsors. This, in turn, would mean that at the time the recordkeeping system is processing the day's investment and other transaction requests, it would not have available the current day's final mutual fund prices. The system would have to create a net instruction to the mutual funds based on yesterday's prices (the only prices available prior to 4:00 p.m. ET), and therefore, many transactions that participants request would, when processed, yield a result (i.e., a dollar amount or number of shares) other than that which participants had requested or was required by the plan document.

II. The Proposed 4:00 p.m. ET Hard Close Will Have A Harmful Impact On Retirement Plan Participants, Sponsors, And Recordkeepers.

Based upon ADP's experience in the recordkeeping field, ADP is concerned that a hard close will decrease transparency in plan recordkeeping and investing; make precise recordkeeping significantly more difficult; reduce the ability of participants to manage their plan investments effectively; eliminate valuable features made available to participants that have been developed in the current recordkeeping environment; reduce competition in the recordkeeping industry, thus increasing the number of conversion-related blackouts and the cost of maintaining retirement plans; and, overall, reduce America's retirement readiness. Each of these is discussed in more detail below.

A. Transparency In Retirement Plan Recordkeeping Will Be Severely Eroded, To The Detriment Of Plan Sponsors And Participants.

The ability to perform recordkeeping and process investment transaction requests after the day's net asset values have been determined has created transparency in the recordkeeping industry that benefits plan sponsors and, more importantly, plan participants. Today, recordkeeping processes are transparent -- the number of shares on the recordkeeping system in all participants' accounts for a plan is identical to the number of shares owned by the plan's trustee. This transparency carries over to the reporting provided to plan sponsors and participants. It also has enabled the development of a common understanding among recordkeepers as to what is meant by daily valuation. Plan sponsors seeking to carry out their fiduciary obligation to prudently choose a recordkeeper can test a prospective recordkeeper's service offering against a reasonable, identifiable set of expectations. Based on its knowledge of the recordkeeping industry, ADP is deeply concerned that recordkeepers will be forced to scramble to develop a unique solution to accommodate a 4:00 p.m. ET hard close based on systems and operational constraints. With

this, ADP believes that the standardization that has developed in the recordkeeping industry will be greatly eroded.

Transparency in the recordkeeping industry also enables the United States Department of Labor's Employee Benefits Security Administration ("EBSA") to effectively perform its function as regulator and protector of the retirement system and its participants. When auditing a recordkeeper -- or when using a recordkeeper's records to audit an employer plan sponsor -- today, the EBSA has a reasonable baseline from which it can understand how the recordkeeper's systems should work. A 4:00 p.m. ET hard close is likely to obscure that baseline, making it significantly more difficult for the DOL to fulfill its regulatory responsibilities and protect the interests of plan participants.

Finally, daily valuation has allowed direct investment in mutual funds to become the dominant form of investment vehicle made available by virtually all major recordkeepers for participant-directed retirement plans. The move away from unitized funds and annuities to mutual funds has enabled participants to better understand their retirement plan account balances and investments. Participants who have their account balance invested in one or more mutual funds can look in the newspaper or read a fund's prospectus to gain an understanding of their plan investments. Participants can request a transaction, such as an exchange between investment funds, a reallocation of their investments, a loan, or an in-service withdrawal and know with precision that the transaction they request will be the transaction that results. As noted above, this transparency has also facilitated the availability of investment education for plan participants. As also noted above, if transactions must be processed without benefit of the day's net asset values in order to meet a 4:00 p.m. ET deadline, the transactions that result will generally yield proceeds other than what participants had requested or other than what the plan requires. From this perspective, the 4:00 p.m. ET hard close will cloud the clarity regarding plan transactions to which plan participants have become accustomed.

B. Retirement Plan Recordkeepers Will Be Unable To Effectuate Transactions That Meet Both Participant Expectations And Plan Terms.

Because their recordkeeping systems will have to process the day's investment transaction requests prior to 4:00 p.m. ET -- at a time when the day's final mutual fund prices are not yet available -- recordkeepers will not know at the time many transactions are processed how much of a participant's interest in a particular fund will need to be redeemed in order to effectuate certain participant transaction requests. The recordkeeper will be forced to estimate how much has to be redeemed to process each such transaction, which ultimately will result in the plan sending to the participant proceeds that are more or less than the participant requested. Moreover, in order to ensure that the amount raised does not exceed Internal Revenue Code limits, plans will have to impose artificially low limits on the amounts that participants may request. For example, participants in most 401(k) plans voluntarily participate with the understanding that they can request a loan from their plan account (which must be paid back to the plan) or an in-service withdrawal in the case of demonstrable financial hardship. The Internal Revenue Code imposes restrictions and limits on the amounts that may be received by a participant in the form of a plan loan or hardship withdrawal. If a 4:00 p.m. ET hard close is instituted, the recordkeeping system would process a loan or hardship withdrawal using yesterday's prices, which would result in a loan or hardship withdrawal in an amount more or less than the amount requested by the participant. In order to ensure that the Internal Revenue Code limits are not exceeded, the plan will have to set a lower limit on the amount of loans and hardship withdrawals than may be requested than would be permitted by law (for example, limiting the portion of a participant's account on which the transaction is calculated).

C. *Retirement Plan Participants Will Be Hindered In Their Ability To Effectively Manage Their Retirement Savings.*

Participants in many retirement plans would be at a significant disadvantage vis-à-vis other mutual fund investors because their mutual fund transaction requests in most cases today are sent first to retirement plan recordkeepers. As noted above, in order to meet a 4:00 p.m. ET hard close, retirement plan recordkeepers will have to impose a deadline on plan participants much earlier than 4:00 p.m. ET, putting participants at a significant, inappropriate and unfair disadvantage relative to retail investors.

Absent an exception to the 4:00 p.m. ET hard close for retirement plan intermediaries, it could take a participant in a plan that permits participant-directed investments several days to effectuate a transfer of assets from one mutual fund to another. The proceeds of the redemption from the first mutual fund will be out of the market until a subsequent transaction can be executed to transfer those proceeds to the second fund. Under current permissible “late day trading” arrangements between mutual fund families and recordkeepers, that exchange commonly occurs in one day because it occurs after the day’s net asset values have been determined, enabling the retirement savings involved to remain invested to the fullest extent possible.

Seeking to address this issue, the proposed regulations would define an “order” to include a direction to purchase securities of a fund using proceeds of a contemporaneous order to redeem a specific number of shares of another fund. While ADP appreciates the Commission’s efforts in this regard, it sees limited benefit to the definition, which focuses on retail-type trading without regard to the impact on retirement plan recordkeeping transaction processing. For example, if a retirement plan participant wishes to redeem 50% of his balance in Fund A and purchase an interest in Fund B with the proceeds, the redemption order would be a “share certain” sell (i.e., 50% of the participant’s shares), but the plan’s recordkeeper would not know the amount of the purchase order at the time the redemption is requested, because the proceeds of the redemption would not be known at that time. Neither the recordkeeper nor Fund B would have a price for the redemption of Fund A shares. From a recordkeeper’s perspective, the proposed definition may be useful if a participant requests an exchange from one single fund to one single other fund; participants, however, commonly transfer assets from multiple funds to multiple funds when they perform a transfer. Finally, ADP notes that the proposed definition assumes that a retirement plan participant will choose to transfer assets between two mutual funds. If one of the participant’s investment alternatives involved in the transfer is something other than a mutual fund (e.g., a common collective trust or employer stock fund), the utility of the proposed definition is unclear.

D. *Recordkeepers May Not Be Able To Provide Plan Participants With Features Available Today That Help Participants Manage And Invest Their Accounts.*

One of the great challenges to employers, recordkeepers and mutual funds alike has been to encourage more employees to save for retirement by making investing the funds in their retirement accounts easier to do and a more understandable task. In recent years, attention has been particularly directed to the vast majority of retirement plan participants who are commonly presumed not necessarily to be sophisticated investors.² The imposition of a 4:00 p.m. ET hard close may well have the very effect

² Unlike retail investors, who deliberately seek out an investment vehicle, retirement plan participants are not necessarily choosing in the first instance to be investors but, rather, to save for retirement. It is the design of the defined contribution plan, which requires that plan participants direct the investment of their account balances, that forces participants to become investors in order to save for retirement.

of undoing advances that have been made in making investment for retirement easier and more understandable to participants.

For example, under current rules, recordkeepers have been able to make available to retirement plan participants such investment tools as an "automatic account rebalancing" feature. If a participant elects automatic account rebalancing, he or she makes a long-term investment allocation election among a plan's various investment alternatives and authorizes the recordkeeper to periodically purchase and redeem mutual fund shares at pre-set intervals (e.g., quarterly, semi-annually or annually) in order to bring the actual investment allocation of his or her account back into line with his or her intended investment strategy. This alleviates the need for participants to monitor their accounts and adjust their accounts to stay on their chosen investment course. ADP's experience is that many participants do not perform such monitoring, and if one investment type (e.g., equities) out-performs another, the participant simply will end up with an actual asset allocation out of line with his or her intended level of risk tolerance. Absent the availability of the current day's prices at the time a recordkeeping system begins to process transactions, running the automatic account rebalancing process may in fact leave a participant farther from his or her desired investment mix than he or she was before the process was run. The magnitude of the imbalance would depend upon the disparity between the prior day's and current day's prices. Given the potential for disparity, however, this is an example of one feature that recordkeepers effectively will no longer be able to make available to plan participants if a hard close is imposed.

E. A 4:00 p.m. ET Hard Close Without A Reasonable Exception Will Cause Consolidation In The Retirement Plan Services Industry, Resulting In Increased Likelihood Of Blackouts And Increased Costs To Sponsors And Participants.

As discussed, a 4:00 p.m. ET hard close would profoundly affect how recordkeepers process transactions. Third-party recordkeepers will be forced to expend resources, both human resources and dollars, to rebuild their recordkeeping systems, investment instruction processing systems, arrangements with fund families, participant-interactive systems (such as voice response and Web-based systems), communications materials and, perhaps, even client service agreements to adapt to a 4:00 p.m. ET hard close. Based upon ADP's own cost estimates as discussed below in Section III, ADP anticipates industry costs would be significant.

The retirement plan recordkeeping industry is a low profit margin, resource-intensive business that has already seen many recordkeepers unable to make a profit leave the business. A 4:00 p.m. ET hard close without an appropriate exception will be likely to hasten the current exodus of recordkeepers from the industry. From its knowledge of the recordkeeping industry, ADP expects that many smaller firms without sufficient resources and larger firms currently operating on narrow margins will have to close, leaving the clients to transition their recordkeeping to a new service provider. For daily valued plans (the vast majority), this situation would be extremely disruptive to ongoing plan administration. It is ADP's expectation that the efforts of those recordkeepers able to devote resources to absorb the impact of a 4:00 p.m. ET hard close will be focused on revamping systems and operations to adapt to the new regime. ADP is concerned that these remaining recordkeepers will be hard-pressed to readily absorb the business of displaced sponsors whose service providers have left the business.

Retirement plan sponsors seeking to enable participants to submit plan transaction requests until 4:00 p.m. ET may feel compelled to engage mutual fund families with recordkeeping arms that offer only proprietary funds as plan investments. Such recordkeepers may be able to accept participant investment transaction requests through their transfer agent up to a time close to 4:00 p.m. ET, while third-party

recordkeepers that offer their clients a selection of the best-performing funds across fund families would have to impose a much earlier deadline. Under this scenario, mutual fund families with recordkeeping arms could have a distinct advantage, eliminating the level playing field that has evolved over time. This would exacerbate the consolidation that ADP anticipates a 4:00 p.m. ET hard close would trigger in the retirement plan services industry.

Whenever plan sponsors change retirement plan recordkeepers, the plan must undergo a potentially lengthy "blackout period" while the transition is being completed, and the plan sponsor typically incurs transaction costs in the course of the conversion. During blackout periods, participants generally cannot access their plan accounts for any purpose, including for the purpose of making changes to their investment allocation. To the extent that recordkeepers leave the business as a result of the 4:00 p.m. ET hard close, plan sponsors will be forced to transition their plans to new recordkeepers, and many more blackout periods will occur. As the Enron situation demonstrated, blackouts can cause great harm to retirement plan participants while their account balances are frozen, especially during a severe downturn in the market.

ADP firmly believes that those recordkeepers who remain in the industry in the wake of a 4:00 p.m. ET hard close will be fewer in number and will operate in a less competitive marketplace. ADP further believes, based upon its review of its own business, as discussed below, that those recordkeepers who remain also will have spent significant resources to adapt to the 4:00 p.m. ET hard close. This will drive up the cost of recordkeeping charged to employer plan sponsors. As permitted under ERISA, many plan sponsors may well seek to be reimbursed for these administrative expenses from the assets of their retirement plans. These reimbursements will most likely come directly out of participants' retirement plan accounts, further reducing their retirement savings.

F. A 4:00 p.m. ET Hard Close Without An Appropriate Exception for Recordkeepers Will Hamper Retirement Plan Coverage And Participation, Placing Added Strains on Americans' Opportunities To Prepare For Retirement.

ADP is concerned that under a 4:00 p.m. ET hard close absent an appropriate exception for retirement plan intermediaries, employer-based retirement plans may well come to be viewed as second-class savings and investment vehicles despite their tax-favored status. This would erode the incentive for employers to maintain these plans and/or to implement them in the first instance. This would also erode the incentive for employees to participate in existing plans. Any governmental action that erodes employer and employee support for the private retirement system would impose even greater strains on the Social Security system.

III. The Proposed 4:00 p.m. ET Hard Close Will Have A Significant Impact And Impose Significant Costs On The Retirement Plan Recordkeeping Industry.

Based upon a review of its own business, it is ADP's belief that a 4:00 p.m. ET hard close will impose significant burdens and costs on retirement plan recordkeepers. Absent the ability to know the current day's net asset value of mutual funds before ADP forwards participant instructions to mutual funds, virtually every aspect of ADP's recordkeeping business -- systems, product offerings, ability to offer services compliant with the laws governing retirement plans, relationships with its business partners (including institutional trustees), mutual fund complexes, plan sponsor clients, and participants -- will have to be re-examined and likely changed.

A. *Estimated Financial Impact.*

In an effort to provide the Commission with some sense of the financial impact that the proposed 4:00 p.m. ET hard close would have on its operations, ADP has canvassed its systems, operations, client services, marketing and legal functions to obtain what it believes is a very conservative estimate. Obviously, the actual effort involved will depend upon the contours of the final regulation promulgated by the Commission and the nature of an industry solution, if any, to a 4:00 p.m. ET hard close. Notwithstanding that significant level of uncertainty, ADP estimates that the cost of implementing the changes to its own systems, operations, and documentation that would be necessitated by a 4:00 p.m. ET hard close would be approximately \$8.8 million.³ ADP expects that the actual costs of implementation could be significantly higher. These costs, moreover, do not take into account the opportunity costs of devoting resources that would otherwise be devoted to responding to changes in law and other regulatory developments applicable to retirement plans, developing new products and service enhancements for plan sponsors and participants, and otherwise expanding the scope of its business. Set forth immediately below are the areas of ADP's retirement plan recordkeeping business that would be most significantly impacted and a description of the changes that ADP has preliminarily identified that would have to be made to its systems, operations, and documentation.

B. *Anticipated Systems And Operational Changes Necessitated By The Proposed 4:00 p.m. ET Hard Close.*

ADP anticipates that the impact of the proposed 4:00 p.m. ET hard close on its ability to implement the transactions described above would necessitate a wide array of systems and operational changes. These anticipated changes are summarized below.

1. *Recordkeeping Systems.*

The participant transaction requests that ADP's recordkeeping system processes may generally be divided into three broad categories:

"Pure" Buys. "Pure" buys are purchase transactions with a readily identifiable dollar amount (e.g. a \$100 contribution or loan repayment that must be invested). In these cases, since the purchase dollar amount is available, the price of the shares is not germane to providing the transaction instructions. In the case of a \$100 contribution or loan repayment, the instructions would be to simply "buy" \$100 worth of a fund, regardless of the price. The same could apply when purchasing a readily identifiable share amount, but this rarely occurs in retirement plans as a one-sided transaction.

³ In ADP's opinion, the effort that would be needed to adapt its systems and operations to the proposed 4:00 p.m. ET hard close would require a significant reallocation of existing resources from the projects and purposes to which they otherwise would be allocated. For example, ADP's systems development staff, which might otherwise devote its time and budget to implementing product enhancements and quality assurance on those enhancements, may be forced to devote its time and budget almost exclusively to systems changes needed to implement the proposed 4:00 p.m. ET hard close. Accordingly, in estimating what it believes to be the cost of adapting to the proposed 4:00 p.m. ET hard close, ADP has focused not only on what it has identified as added costs, but also on the extent to which its existing budget for items such as systems development would have to be devoted to this purpose. This estimate was compiled based upon a combination of estimated person-hours to accomplish the various tasks identified, employee compensation (including conversion of salaried employee compensation into hourly rates where appropriate), and departmental budgets.

“Pure” Sells. “Pure” sells are sell transactions with a readily identifiable share amount (e.g., a total distribution where all shares are sold). In these cases, since the number of shares to be sold is available, the price of the shares is not germane to providing the transaction instructions. The instructions in a total distribution, for example, would be to simply “sell” all shares of a fund, regardless of the price. The same could apply when selling a readily identifiable dollar amount, as in the case of a specific amount withdrawal from a single fund, however, a request of this type is not common.

“Complex” Transactions. “Complex” transactions are purchase or sale transactions that require an assessment of the value of account investments before being able to determine what investment instructions need to be transmitted, e.g., (1) a loan or partial withdrawal for a specific dollar amount that must come from multiple investments and contribution types within a participant’s account, or (2) an account reallocation to split the existing balances among multiple investment based on percentages defined by a participant. Without the current day’s prices (which can only be obtained after 4:00 p.m. ET), it is impossible to accurately assess the account and the percentage of the account associated with each fund and contribution type, and therefore the investment instruction associated with the request.

Complex transactions are further complicated by the need to stay within the requirements of the Internal Revenue Code, the Employee Retirement Income Security Act of 1974 (ERISA), applicable Internal Revenue Service (IRS) and Department of Labor (DOL) regulations, and the plan document, all or any one of which may dictate which contributions types need to be reduced and in what order. Without knowing the current day’s fund prices at the time a complex transaction request is processed, satisfying a participant’s specific amount request, while following the rules as defined by these sources, without knowing the fund prices, is not possible in today’s environment.

Finally, complex transactions that move funds between investments (i.e. transfers or exchanges) would result in a two-day, pending transaction process versus today’s environment where both side of the transaction occur simultaneously. This pending process would extend the time out of the market for participants as subsequent activity would likely be restricted pending the completion of the transaction on the second day.

In the current environment, all transactions captured by 4:00 p.m. ET are calculated using the current day’s prices, and then netted together as appropriate to define the necessary transactions. Since ADP knows both the shares and dollar amounts associated with each transaction, it can consolidate different transactions and forward instructions consistently (i.e., either dollar amounts or shares) regardless of the type of transaction. With the proposed 4:00 p.m. ET hard close, the recordkeeping system would need to be re-designed to segregate the transaction types defined above and process each using different logic. First and foremost, ADP would need to impose an earlier (i.e., pre-4:00 p.m. ET) cut-off for participant and plan sponsor transaction requests. Pure buys would need to be identified and segregated from other activity and instructions would need to be transmitted on a “dollar specific” basis. Pure sells would also need to be segregated, and translated to share-specific and dollar-specific instructions, depending on the transaction type. Complex transactions would need to be completely reassessed and might have to be transmitted based on estimates using the prior day’s prices. As stated above, ADP will need to determine the order of priority between the participant’s desire to obtain a specified amount from his account, and the need to strictly conform to applicable IRS and DOL regulations and the plan document.

2. *Call Center Tools, Voice Response System And Participant Website.*

The changes to recordkeeping systems will have practical implications for how current plan participants are used to seeing their transaction requests processed and will add complexities that will have to be explained to participants on an ongoing basis. In order to effectively convey this information to plan participants, each point of participant contact that ADP currently has established -- call centers, VRS, and participant websites -- will need to be made much more robust. Since each type of transaction will be processed, and corresponding instructions transmitted, differently depending upon the circumstances, these existing points of contact will need to be able to explain the distinctions so that participants can obtain their desired results. Explaining to participants how transaction processing works today is at times difficult. Explaining the new processes necessitated by a 4:00 p.m. ET hard close will be much more so. Recordkeepers like ADP might even choose in some cases to go back to paper transactions to avoid the exposure associated with participants acting on misunderstood on-line or call center instructions.

3. *Transaction Transmittal And Reconciliation Systems.*

In today's environment, ADP transmits investment instructions to each mutual fund family in either dollar amounts or shares, not both, and transacts and completes all transaction requests received by 4:00 p.m. ET in a single day. In the proposed environment, ADP would need to (1) enhance its systems and processes to forward investment instructions in a combination of dollar amounts and shares, depending on the type of transaction; (2) build pending transaction functionality for transactions that would take two days; and (3) greatly enhance its reconciliation process to support pending cash, "estimated" transactions, and increased transaction volume dictated by the recordkeeping enhancements.

4. *Retirement Plan Documentation And Client Agreements.*

Depending upon the nature of the changes necessitated by a 4:00 p.m. ET hard close, it may be necessary for ADP to amend aspects of its retirement plan documentation and client agreements. At a minimum, if a 4:00 p.m. ET hard close is imposed, ADP will need to review all such documentation to confirm the scope of any needed changes.

- *Prototype Plan Documents.* Under Section 401(a) of the Internal Revenue Code, qualified retirement plans are required to be administered in accordance with their terms. As a recordkeeper, ADP sponsors a number of prototype plan documents (21 in all) that are designed to work in conjunction with its recordkeeping systems and operations. To the extent that any of ADP's prototype plan documents describe processes that will have to be changed as a result of a 4:00 p.m. ET hard close, it may be necessary -- depending upon the nature of the change and how the plan document is drafted -- to amend the plan documents. The amended plan documents will have to be submitted to the Internal Revenue Service for review and approval. Under current IRS procedures governing such approvals, moreover, the IRS will require ADP to have each of its qualified plan clients reexecute the amended plan documents. Like all recordkeepers, ADP recently completed the process of having its entire client base execute revised plan documents to reflect certain changes in law. Based on this experience, ADP estimates that another reexecution project of this magnitude could take over a year to complete.

- *Summary Plan Descriptions.* To the extent that ADP's plan documents must be amended, it also may be necessary -- depending on the nature of the change -- to revise its summary plan descriptions that are provided to participants and redistribute them to each of its clients and/or participants who are affected. Summary plan descriptions also may be an appropriate mechanism for communicating to participants any changes in how transaction requests would be processed under a 4:00 p.m. ET hard close.
- *Client Service Agreements and Plan Administration Manuals.* As a nondiscretionary recordkeeper, ADP provides services to its clients in accordance with a client service agreement that sets forth general terms and conditions of its services and a plan administration manual that sets forth in great detail the manner in which plan administrators interact with ADP and in which ADP processes plan transactions. Whether a 4:00 p.m. ET hard close would necessitate amending its service agreements will depend on the nature of the regulations and industry responses thereto. At a minimum, however, ADP anticipates that a 4:00 p.m. ET hard close could require revisions to all versions of its plan administration manual.

5. *Mutual Fund Arrangements.*

Given the changes ADP anticipates in how investment instructions would have to be conveyed to mutual fund families under the proposed 4:00 hard close, it also would need to review and, quite possibly, renegotiate all of its service agreements with the approximately 75 fund families that it currently makes available as retirement plan investment alternatives on its platforms. While the nature of any changes would be affected by the development of an industry solution to the challenges posed by a 4:00 p.m. ET hard close, ADP still anticipates that such a solution would still necessitate review and renegotiation of its existing arrangements with mutual fund families in some fashion.

6. *Relationships With Business Alliance Partners.*

Since ADP works with a number of strategic business alliance partners, and employs a number of transaction transmittal protocols to support the various alliance requirements, it would need to devise a transaction gathering and transmittal solution that works for each alliance relationship. The benefit of today's consistent transaction forwarding practices is that, although ADP supports a number of options, all basically track back to a similar process (i.e. forwarding instructions after 4:00 p.m. ET). In the proposed environment, there is no clear direction for standardization of approach, so ADP would not expect each partner to come to agreement on or be comfortable with a single solution going forward. This translates to additional development and the need for greater controls for ADP.

IV. *An Exception For Intermediaries Based On Time Stamping, Certification, and Audit Is A Preferable And Measured Response To The Harms The Commission Seeks To Remedy.*

It is ADP's firm belief that an exception to the 4:00 p.m. ET hard close for third-party recordkeepers based on date and time stamping, certification, and audit would be equally as effective as imposing a 4:00 p.m. ET hard close for recordkeepers, while retaining the benefits for plan sponsors and participants available under the retirement system as we know it today. By way of example, ADP believes that the manner in which it offers services offers little or no opportunity for the violations of the forward pricing rule that the 4:00 p.m. ET hard close is intended to prevent. ADP recently reviewed its systems and operational procedures regarding the forwarding of investment instructions to mutual funds, and has concluded that it has strong safeguards against the risk of violations of the forward pricing rule,

such as automatic computer sweeps of participant transaction requests by the recordkeeping system at 4:00 p.m. ET and date and time stamping. With minimal effort, ADP believes that the recordkeeping industry could develop a low-risk solution reflecting enhancements that the Commission might dictate.

The Commission has inquired whether this approach would be effective at stopping violations of the forward pricing rule and how the Commission would police compliance by intermediaries over which it has no regulatory authority. ADP believes that required time stamping of transactions in conjunction with audit requirements are sufficient to afford the protections necessary to prevent the abuses of the forward pricing rule that the Commission's proposed 4:00 p.m. ET hard close is intended to address. ADP understands that there has been some concern expressed that even a Type 2 SAS 70 audit might not provide the scope of audit that would be necessary to monitor compliance with the 4:00 p.m. ET cutoff for receipt of investment instructions and transaction requests. ADP suggests that a regulatory audit requirement imposed by the Commission could subject retirement plan recordkeepers to an audit by the Commission specifically designed to examine compliance with the 4:00 p.m. ET cutoff. The Commission could impose a user fee upon the recordkeeper that would cover the Commission's audit cost incurred in connection with the audit. This would enable the Commission to engage outside parties to perform the audit, such as accounting firms, in order to obtain the resources needed for the audits to be performed, if the Commission so desired.

This approach would allow the recordkeeper to continue current investment instruction transmittal practices only if these audit requirements are met and certified by an organization approved by the Commission. If the Commission, through promulgation of such an exception, creates the demand for this function, ADP believes that auditors will develop the specialized standards and knowledge to effectively audit compliance by retirement services providers with the forward pricing rules.

The Commission also has inquired about the costs that this approach would impose on intermediaries. The costs to ADP and many other recordkeepers would be negligible -- particularly when contrasted with what it would cost to implement a 4:00 p.m. ET hard close -- as the vast majority of processing is already time stamped and auditable based on internal controls recordkeepers have developed for their businesses. Certification and audit were deemed an appropriate response by Congress to many of the corporate governance failings uncovered in the wake of Enron. Ultimately, ADP believes that a combination of time stamping, certification, and audits focused on the retirement services industry is a reasoned and measured approach which would satisfy the equally important policy goals of preventing violations of the forward pricing rule and sustaining a strong employer-based retirement system.

V. A Workable Technological Solution Of Sufficiently Broad Application Has Not Been Fully Developed.

To date, it is ADP's understanding that neither the mutual fund nor the recordkeeping industry has been able to define a technological solution that would alleviate the disruption and difficulties described above that would be caused by a hard 4:00 p.m. ET close. To ADP's knowledge, the only approach currently under serious consideration that has been identified and explored thus far involves a "clearinghouse" approach that would require interim forwarding of investment instructions by recordkeepers to the National Securities Clearing Corporation ("NSCC") by 4:00 p.m. ET, with limited adjustment capabilities after 4:00 p.m. ET. ADP is carefully examining this proposal and has actively participated in meetings intended to explore its viability. As yet, however, this proposal still is not clearly defined.

At this early stage, serious questions remain as to how helpful and what the implications of such a solution would be. While a large portion of ADP's business activities and transaction requests are processed via the NSCC, there are still a significant number of investment alternatives made available on its platforms that are not. ADP forwards investment instructions with some fund families on an omnibus level utilizing a "fax and wire" methodology.⁴ It forwards some investment instructions this way for ease of processing, others because they are not set up to process transactions through the NSCC. In still another scenario; ADP sends some transaction requests directly to its alliance partners. These processes would all need to be re-thought, as they do not work with the clearinghouse solution in its current initial development. The new process will undoubtedly result in significant costs to ADP and its mutual fund partners.

While still relatively undefined, it appears that the NSCC proposal as currently framed might require transaction requests to be forwarded at the plan level, rather than on the program level, which would require the registration of thousands of positions with each mutual fund where there currently may be only one such position per recordkeeper program. In the current environment ADP has the ability to forward transactions at an omnibus level, meaning that the transactions for thousands of plans can be consolidated into a handful of actual daily transaction requests. In the proposed solution, should ADP need to switch to plan level transaction processing, among other things ADP would need to de-segregate the omnibus positions across the thousands of plans, requiring each fund family to open corresponding plan level accounts on their books and records. ADP would also need to renegotiate its service agreements with each fund family, another time consuming and resource-heavy task.

Transaction requests aggregated at the plan level and transmitted through the NSCC could significantly increase processing costs to levels that some recordkeepers might be unable to afford. Transmitting transactions through the NSCC costs ADP approximately \$.17 per transaction transmitted. Again, processing an omnibus level only requires the transmission of a handful of transaction instructions each day. In the plan-level scenario, that number increases to tens of thousands of transaction requests each day, which could be prohibitive from a profitability perspective and potentially force some service providers out of the business. There also has been some consideration of transaction requests to fund families being forwarded at the participant level. That model is extremely costly and would be a burden many service providers simply could not bear.

Adapting to a proposal such as the NSCC proposal would likewise require significant changes to ADP's existing systems capabilities and operational framework. In addition to the development required for an earlier cut-off, this proposed solution would require ADP to develop intra-day edit capabilities to generate the intent and confirmation files, as well as an enhanced process to ensure the intent, confirmation and investment instruction files are properly reconciled. Operationally, in order to ensure the day's investment and transaction requests are forwarded to the NSCC by 4:00 p.m. ET, ADP would also need to set an earlier deadline for plan sponsor-directed transactions (e.g. contributions and loan repayments), resulting in some of those transactions being effectuated a day later than under the current structure.

In any case, it is not yet clear that the NSCC will be able to develop the capacity to handle the increased volume of transactions such an approach would entail. Moreover, many recordkeepers and

⁴ Under such a methodology, net transaction requests are sent to the fund by a computer-generated fax, and settlement is made, generally by the trustee, through a wire directly to the fund.

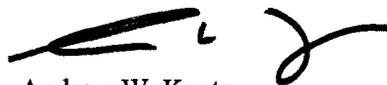
mutual fund families currently do not have the capability to connect to the NSCC's systems and will not be able to develop it.

VI. If The Commission Decides To Impose A 4:00 p.m. ET Hard Close Without an Exception for Retirement Plan Intermediaries, A One-Year Transition Period Will Not Be Sufficient.

The Commission has inquired whether a one-year period would be sufficient to adapt systems and operations to the new requirement. While the ultimate length of an appropriate transition period would obviously depend upon the scope and nature of the final regulations, ADP believes that it could make the necessary internal changes to its own systems and operations to adapt to a 4:00 p.m. ET hard close within six to twelve months. Completion of this work within this timeframe would require an extraordinarily focused effort and occupy systems and development staff full-time. The disruption associated with this effort, moreover, would have a significant negative impact on ADP's business by decreasing its ability to respond to client requests, in addition to distracting resources that would otherwise be devoted to implementing product enhancements. However, ADP is confident in its ability to implement the necessary changes to its internal systems and processes within one year.

When viewed from an industry-wide perspective, however, ADP does not believe that a one-year transition period would be sufficient. ADP's concern is primarily with the ability of the entire industry to individually implement the changes, and then coordinate the testing and overall implementation between the various intermediaries, fund families, regulatory agencies, and other affected parties (e.g., NSCC and funds' transfer agents); it would, moreover, threaten to bring existing business development to a halt. Adapting technologies, processes, and commercial relationships to a 4:00 p.m. ET hard close would require an industry-wide coordinated effort. Many of the steps that would have to be taken could only be taken sequentially, not concurrently, and would require significant quality assurance testing both within recordkeeping organizations and between industry members. Viewed from this perspective, a one-year transition period would be inadequate. Depending upon the nature of the final regulation that the SEC contemplates, it is critical that appropriate inquiries be made to identify conservatively what would constitute an adequate transition period. Imposing a 4:00 p.m. ET hard close before recordkeepers are able to properly implement it would result in investment requests being rejected by mutual funds and related recordkeeping errors that could bring daily 401(k) plan processing to a dead halt. The implications for the markets and the private retirement plan system, moreover, could be staggering. For this reason, ADP would respectfully request that the Commission give serious consideration to a longer transition period if a 4:00 p.m. ET hard close is finalized without an appropriate exception for retirement plan recordkeepers.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew W. Kentz". The signature is stylized with a long horizontal stroke and a large, looping flourish at the end.

Andrew W. Kentz