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April 15, 2009

Office of Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
Attn: Brian Murphy

Re: **ICA Section 24(f)(2), Rule 24f-2, and Form 24F-2**

Ladies and Gentlemen:

We represent several clients that are registered with the Securities and Exchange Commission (the "Commission") as open-end, management investment companies under the Investment Company Act of 1940, as amended ("ICA"). These mutual fund clients charge redemption fees in connection with redemptions of fund shares within a specified number of days of their purchase. We request confirmation that the staff of the Division of Investment Management will not recommend that the Commission take enforcement action against a mutual fund client, under Section 24(f)(2) of the ICA<sup>1</sup> and Rule 24f-2 thereunder,<sup>2</sup> if the mutual fund does not deduct redemption fees when calculating the "price of securities redeemed or repurchased" in item 5(ii) of Form 24F-2.

We believe that a mutual fund that charges a redemption fee should not be required to calculate the "aggregate price of securities redeemed or repurchased" (the "Item 5(ii) Amount") by deducting the aggregate amount of redemption fees it collected during its fiscal year (the "Redemption Fee Amount") from the aggregate net asset value at the time of repurchases or redemptions (the "Net Asset Value Amount"). We believe that this treatment of the Redemption Fee Amount is consistent with: the use of the term price under the ICA; the underlying purpose of Section 24(f)(2) of the ICA, Rule 24f-2 thereunder, and Form 24F-2; and certain policy and equitable considerations.

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<sup>1</sup> 15 U.S.C. §80a-24(f)(2).

<sup>2</sup> 17 C.F.R. §270.24f-2.

## Discussion

Section 24(f) of the ICA recognizes the unique character of investment companies that issue redeemable securities. Section 24(f)(1)<sup>3</sup> provides that a mutual fund is deemed to have registered an indefinite amount of shares upon the effective date of its registration statement under the Securities Act of 1933, as amended (“Securities Act”). Section 24(f)(2) requires a mutual fund to pay a registration fee to the Commission based upon the aggregate sales price of shares sold during its fiscal year, reduced by the aggregate price of shares redeemed or repurchased during its fiscal year.<sup>4</sup>

### *A. Use of the Term Price and Treatment of Sales Loads under Form 24F-2*

To calculate the registration fee owed to the Commission, a mutual fund must determine the aggregate sales price of shares sold and the aggregate price of shares redeemed or repurchased. The term “price” is not defined in Section 24(f), Rule 24f-2 or Form 24F-2, but is used in Rule 22c-1. Under that Rule, the term price equates to current net asset value, which is consistent with the way mutual fund professionals use the term.<sup>5</sup> Sales loads, redemption fees, and other similar charges do not affect the price, or current net asset value, at which an order for fund shares is effected. Sales loads, redemption fees, and other similar charges apply after the price is determined and affect the amount a shareholder must pay in connection with purchases or redemptions of fund shares. Under the requested relief, we propose that the treatment of the term price for purposes of the Item 5(ii) Amount be consistent with the treatment of that term under Rule 22c-1.

Because the term price generally refers to current net asset value, Form 24F-2 explicitly addresses the rare instances where the term has a different meaning. For example, Instruction C to Form 24F-2 provides that “[i]f the issuer charges a front-end sales load on its securities, the aggregate sale price must include the sales load.” Although the Commission did not explain why the aggregate sale price must include the front-end sales load, we believe that the Commission only included front-end sales loads in the mutual fund registration fee calculation to be consistent with the treatment of compensation for underwriting services in the operating company registration fee calculation. Operating companies pay a registration fee pursuant to Section 6(b) of the Securities Act based on their maximum aggregate offering price, which includes compensation for underwriting services. There is no operating company equivalent of a mutual fund redemption fee.

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<sup>3</sup> 15 U.S.C. §80a-24(f)(1).

<sup>4</sup> Rule 24f-2 prescribes the form, Form 24F-2, to be used by mutual funds to calculate their registration fee and the time period within which funds must file the form with, and pay the registration fee to, the Commission. 17 C.F.R. §270.24f-2.

<sup>5</sup> 17 C.F.R. §270.22c-1(a).

*B. Underlying Purpose of Section 24(f)(2), Rule 24f-2, and Form 24F-2*

The purpose of the netting provision contained in Section 24(f)(2), Rule 24f-2, and Form 24F-2 is to require a mutual fund to pay a registration fee based on its annual growth.<sup>6</sup> Consequently, the Redemption Fee Amount should not be subtracted from the Net Asset Value Amount when determining the Item 5(ii) Amount because a mutual fund does not “grow” through the imposition of a redemption fee. Rather, a redemption fee only allows a mutual fund to recoup the costs or mitigate any dilution it may have incurred due to short-term trading or market timing.<sup>7</sup>

*C. Encourage Funds to Adopt Redemption Fees When Appropriate*

Rule 22c-2 requires the board of directors of a mutual fund to approve a redemption fee for the fund or to determine that imposition of a redemption fee is not necessary or appropriate.<sup>8</sup> Mutual funds charge redemption fees to discourage short-term trading in their shares and to deter market timing of their shares. These fees help mutual funds recoup the costs or mitigate dilution associated with short-term trading and market timing.<sup>9</sup> Requiring mutual funds to calculate the Item 5(ii) Amount by deducting the Redemption Fee Amount from the Net Asset Value Amount would cause mutual funds to pay registration fees on redemption fees. This would limit the effectiveness of Rule 22c-2 and hinder the ability of mutual funds to recoup the costs arising from short-term trading and market timing. Consequently, the requested relief is consistent with the policy goals of Rule 22c-2 and would encourage funds to adopt redemption fees when appropriate.

*D. Equitable Considerations*

The primary purpose of Section 24(f)(2), Rule 24f-2, and Form 24F-2 is to provide the procedure for collecting registration fees from mutual funds. This procedure should apply equitably to all mutual funds, regardless of whether or not they charge a redemption fee. If mutual funds must determine the Item 5(ii) Amount by deducting the Redemption Fee Amount from the Net Asset Value Amount, mutual funds that impose redemption fees would generally pay higher registration fees than mutual funds that do not impose redemption fees.

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<sup>6</sup> Registration of an Indefinite Number of Securities by Unit Investment Trusts for Purposes of Secondary Market Sales, Investment Company Act Rel. No. 15611 (Mar. 9, 1987) (proposing Rule 24f-3 under the ICA) (the netting provision in Section 24(f)(2) “effectively result[s] in payment of fees on the amount of shares by which a fund ‘grows’ each year”).

<sup>7</sup> See 17 C.F.R. §270.22c-2 and Mutual Fund Redemption Fees, Investment Company Act Rel. No. 26782 (Mar. 11, 2005); see also IRS Private Letter Ruling 9710019 (Dec. 5, 1996) (ruling that the redemption fees of a particular mutual fund will not constitute income, gain, or loss).

<sup>8</sup> 17 C.F.R. §270.22c-2(a)(1).

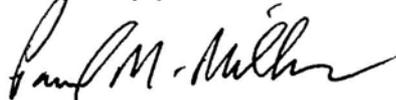
<sup>9</sup> See Investment Company Act Rel. No. 26782, *supra* note 7.

Conclusion

In light of the use of the term price under the ICA, the underlying purpose of Section 24(f)(2), Rule 24f-2, and Form 24F-2, and certain policy and equitable considerations, we request confirmation that the staff of the Division of Investment Management will not recommend that the Commission take enforcement action against a mutual fund client, under Section 24(f)(2) of the ICA and Rule 24f-2 thereunder, if the mutual fund does not deduct redemption fees when calculating the "price of securities redeemed or repurchased" in item 5(ii) of Form 24F-2.

We appreciate your consideration of this matter. Please do not hesitate to contact me if you have further questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul M. Miller".

Paul M. Miller