complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA forms is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule
This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided. Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion
The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97
Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

James J. Ballough,
Director, Flight Standards Service.

Adoption of the Amendment
I find that notice and public procedure are not necessary under DOT Regulatory Policies and Procedures (44 Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA published an Amendment to 14 CFR part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0001 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

Effective 26 October 2006
Fort Myers, FL, Southwest Florida Intl, RADAR–2, Orig
Fort Myers, FL, Southwest Florida Intl, Takeoff Minimums and Textual DP, Orig
State College, PA, University Park, RNAV (GPS) RWY 6, Orig–A

Effective 23 November 2006
Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 5, Orig
Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 23, Orig
Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 5, Orig
Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 23, Orig
Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 23, Orig
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Mekoryuk, AK, Mekoryuk, RNAV (GPS) RWY 23, Orig

The FAA published an Amendment in Docket No. 30513, Amdt No. 3184 to Part 97 if the Federal Aviation Regulations (Vol 71, FR No. 179, Page 54405; dated Friday, September 15, 2006) under section 97.33 effective 23 November 2006, which is hereby rescinded:

St. George, UT, St George Muni, RNAV (GPS) RWY 34, Amdt 1A

[FR Doc. E6–16093 Filed 10–2–06; 8:45 am]

BILLING CODE 4910–13–P

SEcurities AND exCHange COMMISSION

17 CFR Part 270
[Release No. IC–27504; File No. S7–06–06; File No. 4–512]

RIN 3235–AJ51

Mutual Fund Redemption Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission” or “SEC”) is adopting amendments to a rule under the Investment Company Act. The rule, among other things, requires most open-end investment companies (“funds”) to enter into agreements with intermediaries, such as broker-dealers,
that hold shares on behalf of other investors in so called “omnibus accounts.” These agreements must provide funds access to information about transactions in these accounts to enable the funds to enforce restrictions on market timing and similar abusive transactions. The Commission is amending the rule to clarify the operation of the rule and reduce the number of intermediaries with which funds must negotiate shareholder information agreements. The amendments are designed to reduce the costs to funds (and fund shareholders) while still achieving the goals of the rulemaking.

DATES: Effective Date: December 4, 2006. Compliance Dates: Section III of this Release contains more information on applicable compliance dates.

FOR FURTHER INFORMATION CONTACT: Thoreau Bartmann, Staff Attorney, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 22c–2 1 under the Investment Company Act of 1940 2 (the “Investment Company Act” or the “Act”).

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I. Background
On March 11, 2005, the Commission adopted rule 22c–2 under the Investment Company Act to help address abuses associated with short-term trading of fund shares.4 Rule 22c–2 provides that if a fund redeems its shares within seven days,5 its board must consider whether to impose a fee of up to two percent of the value of shares redeemed shortly after their purchase (“redemption fee”).6 The rule also requires such a fund to enter into agreements with its intermediaries that provide fund management the ability to identify investors whose trading violates fund restrictions on short-term trading (“shareholder information agreements”).7

After hearing concerns about the operation of the information sharing provisions of the rule from fund management companies, in March of this year we proposed amendments that would reduce the costs of compliance and clarify the rule’s application in certain circumstances.8 The amendments are described in more detail below. We received 32 comment letters on the proposed amendments.9 Most commenters supported the proposal. Today we are adopting those amendments substantially as proposed, with some changes that reflect the comments we received.

II. Discussion
A. Shareholder Information Agreements
The amendments to rule 22c–2 we are adopting today (i) limit the types of intermediaries with which funds must enter into shareholder information agreements, (ii) address the rule’s application when there are chains of intermediaries, and (iii) clarify the effect of a fund’s failure to obtain an agreement with any of its intermediaries.

1. Small Intermediaries
Rule 22c–2 prohibits a fund from redeeming shares within seven days unless, among other things, the fund enters into written agreements with its financial intermediaries (such as broker-dealers or retirement plan administrators) that hold shares on behalf of other investors.10 Under those agreements, the intermediaries must agree to provide, at the fund’s request, shareholder identity (i.e., taxpayer identification number or “TIN”) and transaction information,12 and carry out

4 Rule 22c–2(a)(1). Under the rule, the board of directors must either (i) approve a fee of up to 2% of the value of shares redeemed, or (ii) determine that the imposition of a fee is not necessary or appropriate. Id. A board, on behalf of the fund, may determine that the imposition of a redemption fee is unnecessary or inappropriate because, for example, the fund is not vulnerable to frequent trading or the nature of the fund makes it unlikely that the fund would be harmed by frequent trading. Indeed, a redemption fee is not the only method available to a fund to address frequent trading in its shares. As we have stated in previous releases, funds have adopted different methods to address frequent trading, including: (i) restricting exchange privileges; (ii) limiting the number of trades within a specified period; (iii) delaying the payment of proceeds from redemptions for up to seven days (the maximum delay permitted under section 22(e) of the Act); (iv) satisfying redemption requests in-kind; and (v) identifying market timers and restricting their trading or barring them from the fund. See Adopting Release, supra note 4, at n.9; Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26257 (Dec. 11, 2003) [68 FR 70942 (Dec. 17, 2003)] at text preceding and following n.14.

5 Under the rule, the fund (or its principal underwriter) must enter into a written agreement with each of its financial intermediaries under which the intermediary agrees to (i) provide, at the fund’s request, identity and transaction information about shareholders who hold their shares through an account with the intermediary, and (ii) execute instructions from the fund to restrict or prohibit future purchases or exchanges. The fund must keep a copy of each written agreement for six years. Rule 22c–2(a)(1)(ii).


7 Comment letters on the 2005 proposing Release are available in File No. S7–06–06, which is accessible at http://www.sec.gov/rules/proposed/ s70606.shtml. Comment letters on the 2005 adoption are available in File No. S7–11–04, which is accessible at http://www.sec.gov/rules/proposed/ s71104.shtml. References to comment letters are to those files.

8 Rule 22c–2(a)(2). The rule excepts a fund from the requirement to enter into written agreements if, among other things, the fund “affirmatively permits short-term trading of its securities.” See rule 22c–2(b)(3). “Financial intermediary” is defined in rule 22c–2(c)(1).

9 Some commenters noted that in the case of foreign shareholders, TINs may not always be available, and suggested that the rule permit alternate identifiers in those circumstances. See Comment Letter of the Investment Company Institute (“ICI”) (Apr. 10, 2006). In order to accommodate the use of alternative identifiers in those circumstances, we have revised the rule to allow for the use of Individual Taxpayer Identification Numbers (“ITINs”) or other government issued identifiers to identify foreign shareholders if a TIN is unavailable. See rule 22c–2(c)(5)(i).

10 One comment letter submitted after the adoption of rule 22c–2 expressed concern that the rule’s contract provision, requiring that agreements with intermediaries mandate the disclosure of shareholder information at the fund’s request, conflicts with Commission rules governing proxy solicitations. See Comment Letter of the American Bankers Association (June 6, 2005). The Commission’s proxy solicitation rules are set forth in Regulation 14A under the Securities Exchange Act of 1934, 17 CFR 240.14a–1 to 14b–2. The proxy rules govern the disclosure of information in the context of proxy solicitations, and do not prohibit banks, broker-dealers and other intermediaries from...
instructions from the fund to restrict or prohibit further purchases or exchanges by a shareholder (as identified by the fund) who has engaged in trading that violates the fund’s frequent trading (e.g., market timing) policies. We designed this provision to enable funds to obtain the information that they need to monitor short-term trading in omnibus accounts and enforce their market timing policies.

After we adopted the rule in 2005, many fund managers expressed concern that the rule would require them to review a large number of their shareholder accounts in order to determine which shareholders are “financial intermediaries” as defined under the rule. They noted that, because the definition encompassed any entity that holds securities in nominee name for other investors, it would include, for example, a small business retirement plan that holds mutual fund shares on behalf of only a few employees and that may not identify itself as a financial intermediary to the fund. Commenters emphasized that the task of identifying these intermediaries, as well as negotiating agreements with them, would be costly and burdensome.

To address these concerns, earlier this year we proposed to narrow the scope of the rule by excluding from the definition of “financial intermediary” those intermediaries that the fund treats as individual investors for purpose of the fund’s frequent trading policies. Our proposal was premised on the understanding that when a fund places restrictions on transactions at the intermediary level (i.e., when the fund treats the intermediary itself as an individual investor), the fund is unlikely to need data about frequent trading by individual shareholders who hold shares through that intermediary, because abusive short-term trading by the individual shareholders holding through the omnibus account would ordinarily trigger application of those policies to the intermediary’s trades.

Therefore, transparency regarding underlying shareholder transactions executed through those accounts seemed unnecessary to achieve the goals of the rule. We believed that this new approach would substantially eliminate the need for funds to devote resources to identifying intermediaries, because the funds will have already identified the relevant intermediaries in the course of administering their policies on short-term trading. Commenters agreed with our analysis and urged that we adopt the amendments.

Today we are amending the definition of “financial intermediary” in rule 22c–2 to exclude from that definition any entity that the fund treats as an “individual investor” for purposes of the fund’s policies intended to eliminate or reduce dilution of the value of fund shares, i.e., frequent trading and redemption fee policies. As a result, if a fund, for example, applies a redemption fee or exchange limits to transactions by a retirement plan (an intermediary) rather than to the purchases or redemptions of the employees in the plan, then the plan would not be considered a “financial intermediary” under the rule, and the fund would not be required to enter into an agreement with that plan.

The Commission is making one change from our proposal in response to commenters who pointed out that, in some cases, purchase and redemption orders are aggregated and submitted by agents of intermediaries on behalf of the intermediaries. These commenters stated that under the rule as proposed, it was unclear whether an order submitted by an agent of an intermediary would be covered by the rule. In order to clarify the rule in response to those comments, we have revised it to provide that funds must enter into agreements with “each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the fund * * *” (changes in italics).

This revision clarifies that funds must enter into agreements with financial intermediaries or their agents even if the intermediaries submit orders through entities that do not qualify as financial intermediaries.

2. Intermediary Chains

In some cases, an intermediary such as a broker-dealer may hold shares of a mutual fund not only on behalf of individual investors, but also on behalf of other financial intermediaries, such as pension plans or other broker-dealers (“indirect intermediaries”) through one or more layers of intermediaries or “chains.” After we adopted rule 22c–2 in 2005, fund managers expressed uncertainty as to how the rule applied to these arrangements, and expressed concern how, as a practical matter, a fund could obtain shareholder information through multiple layers of intermediaries. In response to these concerns, we proposed and are now adopting amendments to clarify the operation of the rule as it applies to “chains of intermediaries.”

The revised rule requires that a fund (or, on the fund’s behalf, its principal underwriter or transfer agent) enter
into a shareholder information agreement only with those financial intermediaries that submit purchase or redemption orders directly to the fund, its principal underwriter or transfer agent, or a registered clearing agency ("first-tier intermediaries"). The rule does not require first-tier intermediaries to enter into shareholder information agreements with any indirect intermediaries.

Under the proposed rule amendments, a shareholder information agreement would obligate a first-tier intermediary to, upon request of the fund, use its best efforts to identify any account holders who are themselves intermediaries, and obtain and forward (or have forwarded) the underlying shareholder identity and transaction information from those indirect intermediaries farther down the chain. Some commenters expressed concern that shareholder information agreements might require first-tier intermediaries (and indirect intermediaries) to canvass all of their shareholder accounts to determine if the shareholders deny themselves intermediaries if a fund made a blanket request to identify all indirect intermediaries.

In light of these concerns, we have revised the rule text to clarify that a fund, after receiving initial transaction information from a first-tier intermediary, must make a specific further request to the first-tier intermediary for information on certain shareholders. As adopted, the amended rule defines "shareholder information agreement" as an agreement under which a financial intermediary agrees to "[use] best efforts to determine, promptly upon request of the fund, whether any specific person about whom it has received the identification and transaction information [required by the rule], is itself a financial intermediary * * * (changes in italics). Under the revised rule, a shareholder information agreement need not obligate a first-tier intermediary to perform a complete review of its books and records to identify all indirect intermediaries. Instead, pursuant to a shareholder information agreement, a first-tier intermediary must use its best efforts to identify whether or not certain specific accounts identified by the fund are indirect intermediaries. If an indirect intermediary that holds an account with a first-tier intermediary does not provide underlying shareholder information, the agreement must obligate the first-tier intermediary to prohibit, upon the fund's request, that indirect intermediary from purchasing additional shares of the fund through the first-tier intermediary.

3. Effect of Lacking an Agreement

After we adopted the rule, some commenters expressed concern that the rule, which made it unlawful for a fund to redeem a security within seven days without entering into a shareholder information agreement, could be interpreted to prevent a fund from redeeming any of its shares if it failed to enter into an agreement with any intermediary. Therefore we proposed, and are today adopting, an amendment to the rule that clarifies and further limits the consequences of failing to enter into an information agreement.

Under rule 22c–2, as amended, if a fund does not have an agreement with a particular intermediary, the fund thereafter must prohibit that intermediary from purchasing securities issued by the fund. The prohibition applies only to the intermediary with which the fund does not have an agreement; purchases from other intermediaries will not be affected.

One commenter argued that the rule...
should not prohibit purchases that are fully disclosed to the fund. We agree that the fund does not need further information under an agreement to scrutinize those purchases. Therefore, we have revised the final rule to provide that, if there is no shareholder information agreement with a particular intermediary, the fund must prohibit the intermediary from purchasing the fund’s securities only “in nominee name on behalf of other persons.” We have also, for the same reason, revised this provision so that it does not apply to the intermediary’s purchases of fund securities on behalf of the intermediary itself.

Some commenters suggested alternative approaches that we have decided not to adopt. One recommended that the rule preclude intermediaries that lack an agreement with funds from redeeming shares within seven days of purchase, rather than prohibiting further purchases of fund shares. This approach is not acceptable to us because it would deny investors access to their funds for seven days after purchasing shares through such an intermediary, thereby penalizing investors for the inability or unwillingness of a fund and intermediary to enter into a shareholder information agreement. Another commenter argued that the rule should instead preclude a fund from making further payments under selling or dealer agreements to intermediaries that lack shareholder information agreements.

However, all funds do not necessarily have selling or dealer agreements with all of their “financial intermediaries” as defined in the rule, and restricting the rule’s scope to those intermediaries that have such agreements would likely seriously restrict a fund’s ability to gather information and enforce its policies. After careful consideration of the suggested alternatives, we believe that barring future purchases by intermediaries best serves the purposes of the rule.

B. Operation of the Rule

When we adopted rule 22c–2, we explained that the shareholder information agreement requirement is designed to give fund managers (and their chief compliance officers) a compliance tool to monitor trading activity in order to detect frequent trading and to assure consistent enforcement of fund policies. But we also explained that the rule gives managers flexibility to request information periodically such as when circumstances suggested that abusive trading activity is occurring. We recognize that in some cases, frequent use of this tool might be costly for funds and intermediaries.

Commenters expressed concerns about these costs, and several commenters urged us to impose limits on the frequency of information requests made by funds pursuant to the information agreements. We are not imposing limits because, as we noted in the Adopting Release, we expect funds that are susceptible to market timing to use the tool regularly. Not all funds, however, are susceptible to market timing. A fund, in determining the frequency with which it should seek transaction information from its intermediaries, could consider: (i) Unusual trading patterns, such as abnormally large inflows or outflows, that may indicate the existence of frequent trading abuses; (ii) the risks that frequent trading poses to the fund and its shareholders in light of the nature of the fund and its portfolio; (iii) the risks to the fund and its shareholders of frequent trading; (iv) the light of the amount of assets held by, or the volume of sales and redemptions through, the financial intermediary; and (v) the confidence the fund (and its chief compliance officer) has in the implementation by an intermediary of trading restrictions designed to enforce fund frequent trading policies or similar restrictions designed to protect the fund from abusive trading practices. In some cases, fund managers may seek transaction information only occasionally to determine whether the intermediary is, in fact, enforcing trading restrictions or imposing redemption fees on behalf of the fund.
Some intermediaries have responded to market timing concerns by enforcing their own frequent trading policies, which may be different from policies established by fund boards. We believe that a fund in appropriate circumstances could reasonably conclude that an intermediary’s frequent trading policies sufficiently protect fund shareholders, and could therefore defer to the intermediary’s policies, rather than seek to apply the fund’s policies on frequent trading to shareholders who invest through that intermediary. In those circumstances, the fund should describe in its prospectus that certain intermediaries through which a shareholder may own fund shares may impose frequent trading restrictions that differ from those of the fund, generally describe the types of intermediaries (e.g., broker-dealers, insurance company separate accounts, and retirement plan administrators), and direct shareholders to any disclosures provided by the intermediaries with which they have an account to determine what restrictions apply to the shareholder. We note that a fund is required to disclose whether each restriction imposed by the fund to prevent or minimize frequent trading applies to trades that occur through omnibus accounts at intermediaries, and to describe with specificity the circumstances, if any, under which each such restriction will not be imposed.45

C. Redemption Fees

Rule 22c–2 requires fund directors to consider whether to adopt a redemption fee, but the rule neither requires funds to adopt such a fee nor specifies the terms under which such a fee should be adopted.46 A number of commentators raised concerns about redemption fees, and encouraged us to become involved in establishing the terms and conditions under which funds charge them.47 A number of commentators, for example, urged us to require that fund redemption fee policies waive fees that might be imposed as a result of transactions not initiated by investors.48

We appreciate the commentators’ suggestions that standardizing the terms and conditions of redemption fee policies might reduce the costs that intermediaries and others (including funds themselves) will bear in implementing fund redemption fees. However, we have decided not to propose to standardize the terms or conditions to preserve the flexibility of each fund to fashion policies that are best suited to protect the investors in each fund. We have done this after receiving extensive comment on the matter and after observing a lack of consensus among industry participants on the appropriate terms of a uniform redemption fee.49 Although we may reconsider our decision at a later time, until then, the terms of redemption fee policies are a matter for fund boards to determine.50

III. Compliance Dates

When the Commission adopted rule 22c–2 in March 2005, we established a compliance date of October 16, 2006. In the 2006 Proposing Release, we requested comment on whether we should extend that compliance date. Nearly every commenter requested an extension, pointing out the need for significant time to revise agreements with intermediaries and change systems to accommodate the transmission and receipt of trading information. Commenters requested a variety of compliance date extensions, ranging from 6 months to 18 months.

46 See, e.g., Comment Letter of the American Society of Pension Professionals & Actuaries (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006). Non-investor initiated transactions may include automatic asset rebalancing, automatic distributions, and reassigned periodic contributions.

47 See 2006 Proposing Release, supra note 8, at text following n.12.

48 Several commentators noted that a number of state insurance and contract law issues might arise in connection with a redemption fee charged to investors who invest in funds through insurance company separate accounts. See, e.g., Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006); Comment Letter of the American Council of Life Insurers (Apr. 10, 2006); Comment Letter of the Committee of Annuity Insurers (submitted by Sutherland Asbill & Brennan) (Apr. 10, 2006).

49 See, e.g., Comment Letter of the American Society of Pension Professionals & Actuaries (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006). Non-investor initiated transactions may include automatic asset rebalancing, automatic distributions, and reassigned periodic contributions.

50 We appreciate the commenters’ concerns about redemption fees, and addressed the issue in the Proposing Release. See, e.g., 2006 Proposing Release, supra note 8, at text following n.12.

51 See rule 22c–2(a)(2).

52 See Adopting Release, supra note 4, at Section IV.A.
The amendments to rule 22c–2 that we are adopting today will likely result in additional benefits to funds, financial intermediaries, and investors. As discussed in the previous sections of this Release, some commenters on the Adopting Release argued that the rule’s definition of “financial intermediary” was too broad because it would have required funds to identify and enter into agreements with a number of intermediaries that may not pose a significant short-term trading risk to funds, and may have imposed unnecessary costs on the funds and their participants.\(^53\) For example, one large fund complex indicated that, under the rule as adopted, identifying their “financial intermediaries” could cost that fund complex $8.5 million or more.\(^54\) These amendments will modify the definition of financial intermediary to exclude entities that a fund treats as an individual investor for purposes of the fund’s policies on market timing or frequent trading. We believe that these amendments will reduce the burden on funds of identifying those entities that might have qualified as financial intermediaries under the rule as adopted, because a fund should already know which entities it treats as intermediaries for purposes of its policies on market timing or frequent trading.\(^55\) As further discussed in the Paperwork Reduction Act Section below, for purposes of the Paperwork Reduction Act we have estimated that identifying the intermediaries with which a fund complex must enter into agreements may take the average fund complex a total of 250 hours of a service representative’s time, at a cost of $40 per hour.\(^56\) For a total burden to all funds of $225,000 hours, at a total cost of $9 million. These amendments will likely provide a significant benefit because they should reduce the costs associated with the intermediary identification process.

By enabling funds to forego the cost of entering into agreements with omnibus accountholders that they treat as individual investors, we anticipate that the large majority of small omnibus accountholders will now fall outside the shareholder information agreement provisions of the rule. This will likely result in significant cost and time savings to funds and financial intermediaries through reduction of the expenses associated with these agreements. The reduction of these costs also may benefit fund investors and fund advisers, to the extent that these costs may have been passed on to them. We estimate that this will significantly reduce the burden on many entities that would otherwise have qualified as intermediaries under the rule as adopted, because the excluded entities would no longer need to enter into shareholder information agreements, or develop and maintain systems to provide the relevant information to funds. Commenters on the 2006 Proposing Release generally agreed that the rule amendments are likely to reduce costs to market participants.\(^57\) Commenters on the 2005 adoption were also concerned that the rule as adopted might have required funds to enter into agreements with intermediaries that hold fund shares in the name of other intermediaries (a “chain of intermediaries”), potentially resulting in a fund having to enter into agreements with intermediaries with which it may not have a direct relationship (i.e., indirect intermediaries).\(^58\) These amendments further clarify and define the operation of the rule with respect to intermediaries that invest through other intermediaries. These amendments to rule 22c–2 define the term “shareholder information agreement,” and provide that funds need only enter into shareholder information agreements with intermediaries that directly submit orders to the fund, its principal underwriter, transfer agent, or to a registered clearing agency. Accordingly, funds will not need to enter into agreements with indirect intermediaries and may incur lower systems development costs related to the collection of underlying shareholder information, thereby reducing the costs of compliance.

Under the amendments adopted today, a first-tier intermediary, in its agreement with the fund, must agree to:

(i) Provide the fund with the underlying shareholder identification and transaction information of any other intermediary that trades through the first-tier intermediary (i.e., indirect intermediary); or

(ii) prohibit the indirect intermediary from purchasing, on behalf of others, securities issued by the fund. This approach is designed to preserve the investor protection goals of the rule by ensuring that funds have the ability to identify short-term traders that may attempt to evade the reach of the rule by trading through chains of financial intermediaries.

By defining minimum standards for what must be included in these shareholder information agreements, we intended to balance the need for funds to acquire shareholder information from indirect intermediaries who trade in fund shares, with practical concerns regarding the difficulty that funds might face in identifying these intermediaries and entering into agreements with them. Because an intermediary that trades directly with a fund already has a relationship with its second-tier intermediaries (and is likely to have a closer relationship than the fund to any intermediary that is farther down the “chain”), a first-tier intermediary appears to be in the best position to arrange for the provision of information to a fund regarding the transactions of shareholders trading through its indirect intermediaries. By providing a definition of the term “shareholder information agreement,” the amended rule clarifies the balance of duties and obligations between funds and financial intermediaries. Because first-tier intermediaries may already have access to the shareholder transaction and identification information of their indirect intermediaries, they will likely be able to provide this information to funds at a minimal cost, especially compared to the significant costs that funds would incur if they were required to collect the same information from indirect intermediaries themselves. Although first-tier intermediaries may
incurred some costs in collecting and gathering this information from indirect intermediaries, there is a benefit in having the entity that has the easiest access to the relevant information have the responsibility for arranging for its delivery to funds.

In general, commenters on the 2006 Proposing Release agreed that first tier intermediaries are in a better position than funds to collect data from indirect intermediaries, although one commenter disagreed and stated that intermediaries are not in a better position than funds to collect information from indirect intermediaries. We continue to believe that the amended rule’s approach of having the agreements require first-tier intermediaries to identify and collect information from indirect intermediaries appears to be the most cost effective method of handling the chain of intermediaries issue while still effectuating the purposes of the rule. Funds and intermediaries are also likely to engage in negotiations that will distribute the costs of information sharing between the entities, resulting in incentives for funds to narrowly target their information requests.

As discussed in the previous sections, these amendments clarify the result if a fund lacks an agreement with a particular intermediary. In such a situation, the fund may continue to redeem securities within seven calendar days, but it must prohibit that financial intermediary from purchasing fund shares in nominee name, on behalf of any other person. Some commenters had stated that the rule, as adopted in 2005, could be interpreted to require a different approach to these situations. The amendments will provide the benefit of certainty regarding the duties of funds and financial intermediaries under the rule without imposing additional costs.

B. Costs

Many commenters expressed concerns about the costs of rule 22c–2 as adopted in 2005. As discussed above, we anticipate that the amendments adopted today will allow funds financial intermediaries, and investors to incur significantly reduced costs. Although these amendments will reduce many of the costs of the rule, they should nonetheless maintain the investor protections afforded by the rule.

One of the primary results of these amendments will be to reduce the number of financial intermediaries with which funds must enter into shareholder information agreements. This should reduce costs to all participants by allowing funds to enter into shareholder information agreements only with those intermediaries that hold omnibus accounts that are most likely to trade fund shares frequently. The rule’s investor protections will be maintained because funds will continue to monitor the short-term trading activity of the rest of the fund’s omnibus accounts as if they were individual investors in the fund, according to the fund’s policies on short-term trading. The amendments will reduce the number of entities that will be considered financial intermediaries under the rule. Commenters in 2005 raised concerns about the costs of identifying which account holders are financial intermediaries. The costs related to this review will be greatly reduced under the rule as we have revised it, because we expect that a fund will generally already have identified those account holders that it does not treat as an individual investor for purposes of its restrictions on short-term trading. As discussed above in the benefits section, for purposes of the Paperwork Reduction Act, we have estimated that completion of this identification process will cost all funds a total of approximately $9 million.

We also received a few comments on the 2005 adoption regarding the number of accounts maintained by funds that qualify as financial intermediaries. Commenters indicated that revising the rule to address concerns about the definition of financial intermediaries would significantly reduce the costs of entering into or modifying these agreements, as well as the costs of developing, maintaining and monitoring the systems that will collect the shareholder information related to these agreements for funds. Omnibus account holders that previously would have qualified as financial intermediaries are also likely to realize substantial savings under the amended rule. When an omnibus account holder is treated as an individual investor (or does not trade directly with the fund), such an omnibus account will no longer be treated as a financial intermediary and will not incur the costs of entering into or modifying agreements with that fund. There will also no longer be the start-up and ongoing costs of developing and maintaining shareholder information-sharing systems for these account holders.

In 2005, we received a few comments regarding the costs of modifying or entering into shareholder information agreements. One of the few commenters that gave specific numbers indicated that it would take approximately four hours to modify and/or enter into, follow up on, and maintain an agreement on its systems for each account identified as a financial intermediary. The same commenter indicated that it may have as many as 137,000 accounts that might qualify as financial intermediaries under the rule as initially adopted. We anticipate that the large majority of the omnibus account holders that would have qualified as financial intermediaries under the rule as initially adopted, will now be treated as individual investors by funds, and therefore no new agreements will be required. As discussed in the 2006 Proposing Release, we anticipate that in most cases, complying with the amended rule will require a very limited number of new agreements between funds and intermediaries (in many cases, virtually no new agreements would be required). We understand that the number of existing agreements that funds have with their intermediaries can vary greatly, from less than 10 agreements for a small direct-sold fund, to 3,000 or more agreements for a very large fund complex sold through various channels. Although funds will still need to modify the existing agreements

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60 See Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).


62 As discussed above, the ICI noted that, between just three large fund complexes, 6.5 million accounts may need to be reviewed, and estimated that the total number of accounts which would be evaluated by all funds could be in the “tens of millions.” Comment Letter of the Investment Company Institute at 3 (May 9, 2005).

63 OppenheimerFunds noted that, although it has more than 7.5 million shareholder accounts in its records, 137,000 or fewer of those accounts may qualify as financial intermediaries under the rule as adopted last spring. See Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005). Neither commenter estimated the costs of performing this review.

64 OppenheimerFunds estimated that it has 137,000 omnibus accounts that might qualify as financial intermediaries. USAA Investment Management Company stated that it has “thousands” of these accounts, and T. Rowe Price estimated 1.3 million accounts that are not registered as natural persons. See Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005); Comment Letter of USAA Investment Management Company at 2 (May 9, 2005); Comment Letter of T. Rowe Price Associates, Inc. at 2 (May 24, 2005).

65 See Comment Letter of OppenheimerFunds, Inc. at 8 (May 9, 2005).

66 See 2006 Proposing Release, supra note 8, at text following n.55.

67 See id.
that they have with their intermediaries (i.e., distribution agreements), we believe that these amendments will greatly reduce or eliminate the need for most funds to identify and negotiate new agreements. Funds are also likely to incur lower costs when modifying existing agreements than when entering into new agreements, and the actual hours required to modify an existing agreement thus may be less than the four hour figure suggested by the commenter. Accordingly, based on the cost data provided by this commenter, we estimate that the cost reduction that may result from the amendments for a fund complex in a similar position as the commenter could be approximately $53,550,000.

For purposes of the Paperwork Reduction Act as discussed below, we have estimated that it will cost all funds and financial intermediaries a total of approximately $53,550,000 to enter into and/or modify the agreements required under the amended rule. This represents a significant cost reduction from the estimates provided to us in response to the rule’s adoption.

There will also be some costs related to the amendments we are adopting to the rule regarding chains of intermediaries. By clearly defining the duties that a fund’s agreement must impose on intermediaries in the “chain of intermediaries” context, the proposed rule amendments may result in first-tier intermediaries incurring some costs that might otherwise have been borne by funds. These may include costs related to negotiating agreements (if necessary) with indirect intermediaries, processing requests from funds to investigate accounts related to collecting and providing the underlying shareholder information to funds from the indirect intermediaries and restricting further trading by indirect intermediaries if the fund requests it. We believe that first-tier intermediaries are in a better position than funds to fulfill these obligations. Unlike funds, first-tier intermediaries have a direct relationship with second-tier intermediaries (and may be in a better position than funds to collect information from other indirect intermediaries), and will thus be able to identify, communicate with, and collect information from these indirect intermediaries at a lower cost than if funds were to conduct such activities. First-tier intermediaries are also in a better position than funds to identify and gather shareholder information from more distant indirect intermediaries because of their relationships with second-tier intermediaries.

As further discussed in connection with the Paperwork Reduction Act, we have estimated that the costs of entering into arrangements between first-tier and more indirect intermediaries will be approximately $63 million. We anticipate that intermediaries will generally use the same systems that they use to provide the required underlying shareholder identity and transaction information directly to funds to process the information that first-tier intermediaries will forward (or have forwarded) to funds from indirect intermediaries, thus resulting in significant cost efficiencies.

Funds and intermediaries may also incur some costs related to drafting or revising terms for the agreements required by rule 22c–2. We have been informed that industry representatives are working together to develop a uniform set of model terms, and anticipate that such model terms may significantly reduce the costs related to developing individualized agreement terms for each fund and intermediary. As further discussed in the Paperwork Reduction Act section of this release, for purposes of the Paperwork Reduction Act, we estimate that a typical fund complex will incur a total of 5 hours of legal time at $300 per hour in drafting these agreement terms, for a total of 4,500 hours for all 900 fund complexes at a total cost of $1,350,000.

We understand that several service providers are developing systems to accommodate the transmission and receipt of transaction information between funds and intermediaries pursuant to contracts negotiated to comply with rule 22c–2. At least one of these organizations is revising the infrastructure that it already has in place, in order to facilitate the communication of fund trades and other “back office” information between funds and financial intermediaries, including the information required under the rule. We understand that, with the exception of some smaller to mid-sized funds and intermediaries, the large majority of funds and intermediaries currently use the organization’s existing infrastructure to process fund trades. In addition, some funds, intermediaries, or third party vendors may develop their own competing or complementary information-sharing systems.

Commenters on the 2006 Proposing Release suggested that in complying with the amended rule, funds and intermediaries may choose to incur certain additional costs in analyzing data received under shareholder information agreements, including costs for additional staffing, third-party vendors, and data repositories. Generally, any such potential costs would be a consequence of the initial rule adoption, and are not a result of these rule amendments. These potential costs are also likely to vary significantly among entities depending on their size, the services they use, and the frequency with which they request and analyze information, among other factors.

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69 See Comment Letter of Oppenheimer Funds, Inc. (May 9, 2005). Section VI below contains a discussion, in the context of the Paperwork Reduction Act, of some of the estimated costs of the shareholder information agreement and information-sharing system development and operations aspects of the rule.

70 See Comment Letter of Oppenheimer Funds, Inc. (May 9, 2005). This estimate is based on the following calculations: 137,000 potential accounts times 4 hours per account equals 548,000 potential hours. However, the amendments might eliminate the burden of reviewing and modifying those 137,000 potential accounts, and could limit the burden to a far reduced number, perhaps 3,000 agreements for a very large fund. (3,000 agreements to be modified times 4 hours equals 12,000 hours.) Instead of potentially incurring 548,000 hours complying with the agreement portion of the rule, a similar fund might incur 12,000 hours in modifying its existing agreements, for a savings of 536,000 hours (548,000 potential hours minus 12,000 hours equals 536,000 hours saved).

71 However, this revised estimate is a significant increase over the amount we estimated in the Adopting Release ($3,353,279) for funds and intermediaries to enter into shareholder information agreements. See Adopting Release, supra note 4, at n.108. In response to our request for comment on any aspect of the rule’s implementation, we received new evidence and updated estimates that noted that the cost of entering into agreements for funds and intermediaries would be significantly higher than the estimate included in the Adopting Release. After reviewing the comments we received in response to the Adopting Release, as well as other information received from fund representatives prior to the 2006 Proposing Release, we estimated the Proposing Release that our average, a fund complex might incur $250,000 or more in expenses related to entering into or modifying the agreements required under the rule as adopted. See 2006 Proposing Release, supra note 8, at n.59. With approximately 900 fund complexes currently operating, we therefore estimate that the agreement portion of the rule as adopted could potentially cost all funds a total of approximately $225,000,000. Despite the increase in estimated costs for entering into agreements that we have included here over the cost estimates included in the Adopting Release, we anticipate that the amendments will reduce the costs of the agreement portion of the rule as adopted by approximately $171,450,000 ($225,000,000 (updated cost estimate) minus $53,550,000 (cost estimate after proposed amendments)) equals $171,450,000 (total potential cost reduction).

72 See infra note 131 and accompanying text.
One commenter on the 2006 Proposing Release noted that, as a large fund complex, it had received estimates of up to $730,000 a year for a third party to provide information transmittal systems, certain data analysis, and data repository services for the information requested under shareholder information agreements. Such third-party vendor systems costs will vary significantly depending on the size of the fund complex, the frequency that information is requested, the length of time the information is stored, any analysis performed, a fund’s preexisting internal resources, and many other factors. In the Paperwork Reduction Act section below, we have estimated the costs we believe an average fund will incur in building these systems internally, or in using a third party vendor to provide these services. The same commenter also suggested that intermediaries might incur third party vendor costs to store and process data, and make it available to funds, with such costs possibly ranging up to $170,000 in start up costs, and $360,000 a year in annual costs. We have incorporated the estimates provided by commenters on the 2006 Proposing Release into the cost calculations we made for purposes of the Paperwork Reduction Act, and as a result have increased the cost estimates made in this release over the estimates provided in the 2006 Proposing Release.

One commenter also suggested that funds and intermediaries might choose to hire additional staff to process information received under the rule, although it noted that if the current volume of transactions continues, a fund in its position probably would not need to hire additional staff. Other commenters did not estimate the potential costs related to hiring additional staff, the number of additional staff that might be hired, or the likelihood that more staff would be needed. In some circumstances, funds or intermediaries might choose to hire additional staff to process information received under the rule, but funds and intermediaries are likely to have sufficient staff in place to monitor frequent trading abuses that violate fund policies, and therefore are unlikely to need more staff under the amended rule. The rule, by requiring funds to set up formalized information-sharing networks with their intermediaries, might also result in more efficient monitoring of frequent trading by funds and possible opportunities to reduce staff.

In response to comments received on the 2006 Proposing Release, we have revised certain of our cost estimates upwards over those discussed in the 2006 Proposing Release. As further described in Section VI below, for purposes of the Paperwork Reduction Act, we have estimated that all funds will incur a total of approximately $47,500,000 in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and receive the required identity and transaction information from intermediaries, and a total of $22,655,000 each year thereafter in operation costs related to the transmission and receipt of the information. We have also estimated that financial intermediaries may incur $280,000,000 in one-time capital costs to develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of $192,500,000 each year thereafter in operation costs related to the transmission and receipt of the information. These estimates were made for purposes of the Paperwork Reduction Act, and do not include certain costs, discussed above, that funds and intermediaries may incur which are not related to collections of information required by the rule. For example, the Paperwork Reduction Act estimates do not include all potential staffing costs, outside vendor analysis of information to discern trading patterns, or data repository costs that funds and intermediaries may incur in analyzing the information that they may collect under the agreements required by the rule. Although these are costs that funds and intermediaries may choose to incur, they are not required by the rule, and may vary significantly between every fund and intermediary depending on the frequency of data requests, their policies on frequent trading, their ability to analyze information, and many other factors.

For the reasons discussed above, we anticipate that these amendments will not create additional costs beyond the rule as adopted. In fact, we anticipate that the amendments will significantly reduce costs to most market participants.

V. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. As discussed in the Cost-Benefit Analysis above, these amendments to rule 22c–2 are designed to reduce the burdens of the rule as adopted in 2005, while maintaining its investor protections. Funds will no longer be required to incur the expense of modifying or entering into agreements with omnibus accounts that they already effectively monitor by treating as individual investors, and would not need to enter into agreements with intermediaries that do not trade directly with the fund. These amendments will promote efficiency in the capital markets by enabling funds to focus their short-term trading deterrence efforts on those omnibus accounts that could be used to disguise this type of trading. These amendments will also promote efficiency by reducing the number of omnibus account holders that would otherwise incur the expenses of entering into agreements, and of establishing and maintaining systems for collecting and sharing shareholder information.

We do not anticipate that these amendments will harm competition.
They apply to all market participants and, as discussed in the Cost-Benefit Analysis above, serve to reduce cost burdens for large funds as well as small funds.\textsuperscript{87} Some commenters expressed concern that the rule as adopted may disproportionately burden small intermediaries, and thus hinder competition.\textsuperscript{88} We anticipate that under these amendments, most omnibus accounts that are treated by the fund as individual investors will be small intermediaries. By excluding these small intermediaries from the rule’s requirements, the amendments should serve to alleviate potential anti-competitive effects on small intermediaries.

These amendments are designed to reduce the costs of imposing redemption fees for both funds and intermediaries. Even after these amendments, the competitive pressure of marketing funds, especially smaller funds, coupled with the costs of imposing redemption fees in omnibus accounts, may deter some funds from imposing redemption fees. Intermediaries may use their market power to prevent funds from applying the fees, or provide incentives for fund groups to waive fees. However, by reducing the costs of imposing redemption fees, we believe that these amendments will likely reduce such anti-competitive effects.

We anticipate that these amendments may indirectly foster capital formation by reducing the costs of the rule for funds and intermediaries. If these cost savings are passed on to investors, they may increase investment in funds, thereby promoting capital formation. These amendments also may foster capital formation by improving the beneficial effect of the rule on investor confidence, because the rule is designed to permit funds to deter, and recoup the costs of, abusive short-term trading. To the extent that the amended rule enhances investor confidence in funds, investors are more likely to make assets available through intermediaries for investment in the capital markets.

\section*{VI. Paperwork Reduction Act}

As discussed in the Adopting Release,\textsuperscript{89} the rule includes “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.\textsuperscript{90} The Commission submitted the collections of information to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11, and OMB approved these collections of information under control number 3235–0620 (expiring 06/30/2009). The title for the collection of information requirements associated with the rule is “Rule 22c–2 under the Investment Company Act of 1940, Redemption fees for redeemable securities.” An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

In response to the 2006 Proposing Release, we received a number of comments on the estimates made in the Paperwork Reduction Act section, and which provided additional cost estimates and other information.\textsuperscript{91} In light of those comments, we have revised upwards several of the per-fund estimates made in this section. However, because these amendments reduce the number of shareholder information agreements required, we estimate that the amendments should, in general, reduce the aggregate burden associated with the collections of information required by the rule, and will not create new collections of information. We have revised our previous burden estimates under the Paperwork Reduction Act to reflect (i) new cost and time burden information that we have received from market participants, and (ii) the revised number of entities that will be affected by the amended rule.

This revised Paperwork Reduction Act section contains a number of new cost and hour estimates that are significantly altered from the estimates made in the Adopting Release. Some of these estimates are based on different methods, and different sources, from those in the Adopting Release. Therefore there is not a strict comparability between the estimates made here and those made in the Adopting Release. These cost estimates, hourly rate estimates, and the methodology used to make these proposed estimates are based on comments we received in response to the Adopting Release and the 2006 Proposing Release, as well as information received from funds, intermediaries, and other market participants.\textsuperscript{92}

\begin{itemize}
\item Rule 22c–2 includes two distinct “collections of information” for purposes of the Paperwork Reduction Act. The first is related to shareholder information agreements, including the costs and time related to identifying the relevant intermediaries, drafting the agreements, negotiating new agreements or modifying existing ones, and maintaining the agreements in an easily accessible place. The second is related to the costs and time related to developing, maintaining, and operating the systems to collect, transmit, and receive the information required under the shareholder information agreements.\textsuperscript{93}
\item Both collections of information are mandatory for funds that choose to redeem shares within seven days of purchase. These funds will use the information collected to ensure that shareholders comply with the fund’s policies on abusive short-term trading of fund shares. There is a six year recordkeeping retention requirement for the shareholder information agreements required under the rule. Any responses that are provided in the context of the Commission’s examination and oversight program are generally kept confidential.\textsuperscript{94}
\end{itemize}

\subsection*{A. Shareholder Information Agreements}

The Commission staff anticipates that most shareholder information agreements will be entered into at the fund complex level, and estimates that there are approximately 900 fund complexes. The Commission staff understands that the number of intermediaries that hold fund shares can vary for each fund complex, from less than 10 for some fund complexes to more than 3000 for others. Based on conversations with fund and financial intermediary representatives that took place prior to the 2006 Proposing Release, our staff estimates that, on average, under the revised definition of financial intermediary, each fund complex has 300 financial intermediaries. We understand that most funds already know and previously identified the majority of their intermediaries that they do not treat as individual investors. Therefore, funds should expend a limited amount provided during conversations with industry representatives that took place prior to the 2006 Proposing Release, combined with the additional information submitted by commenters on that release.

\textsuperscript{92} This second collection of information does not include potential costs or time that funds or intermediaries might incur in analyzing or using the provided information.

\textsuperscript{94} For a discussion of restrictions on the disclosure of information under applicable privacy laws, see supra note 44.
of time and costs related to the identification of such intermediaries. Our staff estimates that identifying the intermediaries with which a fund complex must enter into agreements may take the average fund complex 250 hours of a service representative’s time at a cost of $40 per hour, for a total of 225,000 hours at a cost of $9,000,000. Our staff estimates that for a fund complex to prepare the model agreement, or provisions modifying a preexisting agreement, between the fund and the intermediaries, it will require a total of 5 hours of legal time at $300 per hour, for a total of 4,500 hours at a total cost of $1,350,000.

The Commission staff estimates that for a fund complex to enter into or modify a shareholder information agreement with each existing intermediary, it will require a total one-time expenditure of approximately 2.5 hours of fund time and 1.5 hours of intermediary time for each agreement, for a total of 4 hours expended per agreement. Therefore, for an average fund complex to enter into shareholder agreements, the fund complex and its intermediaries may expend approximately 1,200 hours at a cost of $48,000, and all fund complexes and intermediaries may incur a total one-time burden of 1,080,000 hours at a cost of $43,200,000. The Commission staff understands that there are efforts under way (including an industry task force) to produce standardized shareholder information-sharing model agreements and terms.

These efforts may reduce the costs associated with the agreement provision of the rule for both funds and intermediaries. Finally, the Commission staff does not anticipate that funds or intermediaries will incur any new costs in maintaining these agreements in an easily accessible place, because such maintenance is already done as a matter of course.

The staff therefore estimates that, for purposes of the Paperwork Reduction Act, the shareholder information agreement provision of the rule as revised will require a total of 1,309,500 hours at a total cost of $53,550,000.

B. Information-Sharing

Some funds and intermediaries will incur the system development costs discussed in this section, but many will not because they already process all of their trades on a fully disclosed basis, use a third party administrator to handle their back office work, or already have systems in place to allow intermediaries to transmit the shareholder identity and transaction information to funds. Other funds and intermediaries may have special circumstances that may increase the costs they face in developing and operating systems to comply with the rule. The estimates below represent the Commission staff’s understanding of the average costs that might be encountered by a typical fund complex or intermediary in complying with the information-sharing aspect of the rule as amended.

1. Funds

The Commission staff understands that various organizations have developed, or are in the process of developing, enhancements to their systems that will allow funds and intermediaries to share the information required by the rule without developing or maintaining systems of their own. Our staff anticipates that most funds and intermediaries will use these systems, and will generally make minor changes to their back office systems to comply with the rule requirements and to match their systems to those of the service providers. Our staff estimates that most funds could adapt their in-house systems to utilize these service providers’ systems at a one-time cost of approximately $10,000 or less.

Although the costs that systems providers will charge may vary, one large provider has indicated that it plans to charge a monthly fee of $200 and fees of 25 cents for every 100 account transactions requested through the service.

As an example of the cost of using these services, if a fund complex requests information for 100,000 transactions each week, then it would incur costs of $250 each week, or $13,000 a year, plus the monthly fee of $200, equaling $2,400 a year, for a total cost of $15,400 a year. Our staff estimates that approximately 475 fund complexes would use these systems (including substantially all of the largest, and most of the medium-sized, fund complexes). If all of these complexes use these service providers’ systems at the rate described above, they would incur a one-time system development cost of $4,750,000 and an annual system use cost of approximately $7,315,000. Those 475 fund complexes may also incur system development costs related to the processing of information under the rule on trades that they receive through other channels than these service providers’ systems, which we estimate to cost an average approximately $50,000 per fund.
complex, and $20,000 annually.\footnote{112} for a total of $23,750,000 in system development costs and $9,500,000 annually.\footnote{114} Our staff estimates that the total system development cost for these 475 fund complexes that are likely to use these existing systems is $28,500,000 with annual operation costs of $16,815,000.\footnote{115}

There are approximately 900 fund complexes currently operating, of which approximately 475 may use these existing systems, leaving approximately 425 fund complexes possibly needing to develop their own systems to meet their own particular needs. Our staff understands that approximately 75 percent of those fund complexes (or 319 complexes) are small to medium-sized direct-sold funds that have a very limited number of intermediaries. Our staff anticipates that those 319 fund complexes would incur minimal system development costs to comply with the information-sharing provisions of the rule, due to the limited number of intermediaries with which they interact. Our staff estimates that system development costs for handling information under the rule for those 319 fund complexes will be approximately $25,000 each, with annual operation costs of approximately $10,000, for a total system development cost of $7,975,000\footnote{116} and an annual operations cost of $3,190,000.\footnote{117}

The remaining approximately 106 fund complexes may face additional complexities or special circumstances in developing their systems. Our staff estimates that the start-up costs for those fund complexes will be approximately $100,000 per fund complex and the annual costs for handling the information will be approximately $25,000, for a total start-up cost of $10,600,000 and an annual cost of $2,650,000 for these fund complexes.\footnote{118}

For purposes of the Paperwork Reduction Act, our staff therefore estimates that the information-sharing provisions of the rule as amended will cost all fund complexes a total of approximately $100,625,000 in one-time capital costs to enter into agreements and develop or upgrade their software and other technological systems that allows them to collect, store, and transmit the required shareholder and transaction information from intermediaries, and a total of $22,655,000 each year thereafter in operation costs related to the transmission and receipt of the information.\footnote{119}

2. Intermediaries

The Commission staff estimates that there are approximately 7,000 intermediaries that may provide information pursuant to the information-sharing provisions of rule 22c–2.\footnote{120} Of those 7,000 intermediaries, our staff anticipates that approximately 350 of these intermediaries are likely to primarily use the existing systems that are in place or under development. The staff understands that these approximately 350 intermediaries include several major “clearing brokers” and third-party administrators that aggregate trades and handle the back-end work for thousands of other smaller broker-dealers and intermediaries, thereby providing access to these service providers’ information-sharing systems to a significant majority of all intermediaries in the marketplace. Our staff estimates that these approximately 350 intermediaries will provide access to systems that will allow for the transmission of information required by the rule and other processing for the transactions of approximately 80 percent of the 7,000 intermediaries (5,600 intermediaries) affected by the rule, leaving 1,400 intermediaries that do not in some way utilize these systems, that may need to develop their own systems.\footnote{121}

Our staff understands that in general, the providers who have developed or are developing these information sharing systems charge the fund, and not the intermediary, for providing these systems to transmit shareholder identity and transaction information, or else include access to such systems as a complementary part of their other processing systems, and do not charge additional fees to intermediaries for its utilization. These intermediaries may be required to develop systems to ensure that they are able to transmit the records to these service providers in a standardized format.\footnote{122} Our staff estimates that it will cost each of these 350 intermediaries approximately $200,000 to update its systems to record their business through a registered broker-dealer on the same premises), and approximately 2,000 retirement plans, third-party administrators, and other intermediaries (this number may be either over or under inclusive, because under the rule as we are amending it, the actual number of intermediaries that funds have is dependent on the precise application of varying fund policies on short-term trading).\footnote{123} This number is based on the following calculation: 7,000 total intermediaries times 20% (the percentage of intermediaries that do not use these service providers systems or use the services of those 350 intermediaries that use those service provider systems) equals 1,400 intermediaries that do not use service providers’ systems.\footnote{124}

Our staff anticipates that in most cases, first-tier intermediaries will use the same or slightly modified systems that have been developed to identify and transmit shareholder identity and transaction information to funds when collecting and transmitting this information from indirect intermediaries. Therefore, we have also included the costs of developing and operating systems to collect information from indirect intermediaries and providing the information to funds in these estimates.
and transmit shareholder identity and transaction records to these service providers, and an additional $100,000 each year to operate their own systems for communicating with the service providers, for a total start-up cost of $70,000,000, and an annual cost of $35,000,000.\textsuperscript{123} We understand that these approximately 350 intermediaries may also have to upgrade their systems to handle rule 22c-2 information on trades that do not go through the service providers’ systems. Our staff estimates that this will cost each of those 350 intermediaries approximately $400,000\textsuperscript{125} to update their systems, and $250,000\textsuperscript{126} annually to process this information through non-service provider networks, for a total cost of $116,550,000 in operation costs related to the transmission and receipt of the information.\textsuperscript{131}

Our staff estimates that the information-sharing provisions of the rule will cost all intermediaries a total of approximately $343,000,000 in one-time capital costs to enter into agreements and develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of $192,500,000 each year thereafter in operation costs.

C. Total Costs and Hours Incurred

For purposes of the Paperwork Reduction Act, our staff estimates that the amended rule will have a total collection of information cost in the first year to both funds and intermediaries of $443,625,000 in one-time start-up costs, and annual operation costs of $215,155,000.\textsuperscript{133} Our staff estimates that the weighted average annual cost of the rule to funds and intermediaries for each of the first three years would be $363,030,000.\textsuperscript{134} The total hours expended by both funds and intermediaries in complying with the amended rule will be a one-time expenditure of 2,429,500 hours at a total internal cost of $116,550,000.\textsuperscript{135}

\textsuperscript{123}This estimate is based on the following calculations: 350 broker-dealer times $200,000 (start-up costs) equals $70,000,000; and 350 broker-dealer times $100,000 (start-up costs and annual costs) equals $35,000,000.

\textsuperscript{124}This estimate includes higher costs for these 350 intermediaries in developing systems to handle non-service provider information than for remaining intermediaries to handle the same data due to our staff’s understanding that, in general, these 350 intermediaries that utilize the service provider’s networks represent the largest intermediaries in the marketplace, and will face the highest costs in complying with the rule.

\textsuperscript{125}Many of the costs that intermediaries incur in designing and operating information sharing systems under the amended rule. One commenter estimated that some intermediary system start-up costs may range from approximately $125,000 to $2,300,000, and that ongoing annual costs may range from $150,000 to approximately $1,000,000. See Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006). Another commenter estimated that for some insurance company intermediaries, the cost to comply with all aspects of the rule could exceed $2,000,000 per company. See Comment Letter of the National Association for Variable Annuities (Apr. 7, 2006). We have incorporated this additional information into our calculations for our revised estimates.

\textsuperscript{126}This estimate is based on the following calculations: 350 broker-dealers times $400,000 (start-up costs) equals $140,000,000; and 350 broker-dealers times $250,000 (annual costs) equals $87,500,000.

\textsuperscript{127}This estimate is based on the following calculations: 350 broker-dealer times $200,000 (start-up costs) equals $70,000,000; and 350 broker-dealer times $100,000 (start-up costs and annual costs) equals $35,000,000.123 We understand that these approximately 350 intermediaries will incur a total of approximately $210,000,000 in start-up costs and $122,500,000 in annual costs associated with the information-sharing provisions of the rule.\textsuperscript{128}

The fund complexes and intermediaries that do not use these service providers’ systems to process their trades will have to either develop their own systems to share information under the rule or engage some other third-party administrator to process the information. Our staff estimates that approximately 1,400 intermediaries will not utilize these service provider systems to process this information, and estimates that each of these intermediaries will incur $50,000 in system development costs and $50,000 in annual costs in complying with the rule, for a total of $70,000,000 in development costs and $70,000,000 in annual costs for those intermediaries.\textsuperscript{129}

Although the amended rule does not require first-tier intermediaries to enter into agreements with their indirect intermediaries to share the indirect intermediaries’ underlying shareholder data to funds upon a fund’s request, we anticipate that some, if not all, intermediaries will nonetheless enter into such agreements, or at least into informal arrangements and design methods by which to collect the shareholder information. Our staff estimates that each of the 7,000 intermediaries potentially affected by the rule will spend approximately 150 hours of service representatives’ time at $40 per hour, and 10 hours of legal counsel time at $300 per hour, for a total of $1,050,000 hours of service representatives’ time at a cost of $42,000,000, and $70,000,000 in-house legal time at a cost of $21,000,000 to design and enter into these arrangements with other intermediaries.\textsuperscript{130} The Commission staff therefore estimates that intermediaries will expend a total of approximately 1,120,000 hours at a cost of $63,000,000 to enter into arrangements to ensure the proper transmittal of information to funds through chains of intermediaries.\textsuperscript{131}

\textsuperscript{130}This estimate is based on the following calculations: $70,000,000 (intermediary start-up costs) equals $1,089,090,000 (3 years at $343,000,000 in one-time start-up costs; and $192,500,000 (annually for other intermediaries that use service providers start-up costs) plus $70,000,000 (other intermediaries’ start-up costs) plus $122,500,000 (annual costs for processing information through service providers) plus $87,500,000 (intermediary annual costs for handling information through other channels) equals $1,089,090,000.

\textsuperscript{131}This estimate is based on the following calculations: $70,000,000 (intermediary start-up costs) equals $1,089,090,000 (3 years at $343,000,000 in one-time start-up costs; and $192,500,000 (annually for other intermediaries that use service providers start-up costs) plus $70,000,000 (other intermediaries’ start-up costs) plus $122,500,000 (annual costs for processing information through service providers) plus $87,500,000 (intermediary annual costs for handling information through other channels) equals $1,089,090,000. We anticipate that in many cases, intermediaries will not enter such agreements, or at least enter into informal arrangements or design methods by which to collect the shareholder information. Our staff estimates that each of the 7,000 intermediaries potentially affected by the rule will spend approximately 150 hours of service representatives’ time at $40 per hour, and 10 hours of legal counsel time at $300 per hour, for a total of $1,050,000 hours of service representatives’ time at a cost of $42,000,000, and $70,000,000 in-house legal time at a cost of $21,000,000 to design and enter into these arrangements with other intermediaries.\textsuperscript{132} The Commission staff therefore estimates that intermediaries will expend a total of approximately 1,120,000 hours at a cost of $63,000,000 to enter into arrangements to ensure the proper transmittal of information to funds through chains of intermediaries.\textsuperscript{133}

Our staff estimates that the information-sharing provisions of the rule will cost all intermediaries a total of approximately $343,000,000 in one-time capital costs to enter into agreements and develop or upgrade their software and other technological systems to collect, store, and transmit the required identity and transaction information to funds and from other intermediaries, and a total of $192,500,000 each year thereafter in operation costs related to the transmission and receipt of the information.\textsuperscript{134}

\textsuperscript{132}This estimate is based on the following calculations: $210,000,000 (intermediaries that use service providers start-up costs) plus $70,000,000 (other intermediaries’ start-up costs) plus $63,000,000 (intermediary agreement costs) equals $343,000,000 in one-time start-up costs; and $122,500,000 (annual costs of intermediaries that use service providers) plus $70,000,000 (other intermediaries’ annual costs) equals $192,500,000 in annual costs.

\textsuperscript{133}This estimate is based on the following calculations: $343,000,000 (intermediary start-up costs) equals $443,625,000 in total start-up costs; and $22,500,000 (fund annual costs) plus $192,500,000 (intermediary annual costs) equals $215,155,000 in total annual costs.

\textsuperscript{134}This estimate is based on the following calculations: $443,625,000 in total start-up costs plus $64,565,000 (5 years at $215,155,000 in total annual costs) equals $1,089,090,000 in total costs over a three-year period. $1,089,090,000 divided by three years, equals a weighted average cost of $363,030,000 per year.

\textsuperscript{135}This estimate is based on the following calculations: $1,089,090,000 in one-time capital costs; plus $64,565,000 (five years at $215,155,000 in total annual costs) equals $1,153,655,000 in total costs over a three-year period. $1,153,655,000 divided by three years, equals a weighted average cost of $384,551,667 per year. For purposes of the Paperwork Reduction Act, Section VI of the Adopting Release, supra note 4, included an estimate of the total start-up costs to
anticipate that there will be a total of approximately 7900 respondents, with approximately 14,310,000 total responses in the first year, and 14,040,000 annual responses each year thereafter.\textsuperscript{137}

\section*{VII. Final Regulatory Flexibility Analysis}

This Final Regulatory Flexibility Analysis (“FRFA”) has been prepared in accordance with 5 U.S.C. 604. It relates to amendments to rule 22c–2 under the Investment Company Act, which we are adopting in this Release. The Initial Regulatory Flexibility Analysis (“IRFA”) which was prepared in accordance with 5 U.S.C. 603 was published in the 2006 Proposing Release.

\subsection*{A. Need For and Objectives of Rule}

Rule 22c–2 allows funds to recover some, if not all, of the direct and indirect (e.g., market impact and opportunity) costs incurred when shareholders engage in short-term trading of the fund’s shares, and to deter this short-term trading. As discussed more fully in Sections I and II of this Release, the amendments to rule 22c–2 are necessary to clarify the operation of the rule, to enable funds and intermediaries to reduce costs associated with entering into agreements under the rule, and to enable funds to focus their short-term trading deterrence efforts on the entities most likely to violate fund policies.

These amendments also set forth the limitations on transactions between a fund and an intermediary with whom the fund does not have an agreement.

\subsection*{B. Significant Issues Raised By Public Comment}

We requested comment on the IRFA. We specifically requested comment on the number of small entities that would be affected by the rule amendments, and the likely effect of the amendments on small entities, the nature of any impact, and any empirical data supporting the extent of the impact. We received a number of comments discussing the impact that the rule amendments will have on small entities in the mutual fund marketplace. Generally, these comments supported the rule amendments, and agreed that the amendments would reduce the costs of compliance with the rule for small entities, and would reduce the number of small entities that would be required to comply with the rule.\textsuperscript{138} They indicated that the rule amendments would reduce costs for all mutual fund marketplace participants and would alleviate many of the concerns they had expressed with the rule as it was originally adopted.

Although most commenters supported the rule amendments, some commenters also suggested other changes that may reduce the costs of compliance. A few commenters noted that as proposed, the amended rule might have posed some difficulties to funds (including small funds) in contracting with certain entities that do not qualify as financial intermediaries under the rule, but who nevertheless submit trades directly to funds on behalf of financial intermediaries.\textsuperscript{139} In light of this concern, we have clarified the amended rule to require that if a financial intermediary submits orders directly, itself or through its agent, the fund must enter into a shareholder information agreement with that financial intermediary. This clarification should eliminate any confusion and attendant costs to small entities in determining whether and with which entities funds must enter into shareholder information agreements.

Some commenters noted that in some cases (such as foreign shareholders) Taxpayer Identification Numbers (“TINs”) may not always be available, and suggested that the rule allow for the use of alternate forms of identification in those cases.\textsuperscript{140} To reduce the costs of compliance, alleviate any confusion, and provide flexibility to funds and intermediaries, we have revised the rule to allow for the use of Individual Taxpayer Identification Numbers or other government issued identifiers when a TIN is not available.

We also received many comments requesting an extension of the compliance date. Commenters noted that with the uncertainty accompanying the exact requirements of the rule, the significant technical challenges associated with compliance, and the current unsettled state of contracting and information sharing standards in the marketplace it would be very beneficial to provide an extended compliance date. We agree, and are extending the compliance date for all entities.\textsuperscript{141}

\subsection*{C. Small Entities Subject to the Rule}

A small business or small organization (collectively, “small entity”) for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.\textsuperscript{142} Of approximately 3,925 funds (2,700 registered open-end investment companies and 825 registered unit investment trusts), approximately 163 are small entities.\textsuperscript{143} A broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital.\textsuperscript{144} Of approximately 7,000 registered broker-dealers, approximately 880 are small entities.

As discussed above, rule 22c–2 provides funds and their boards with the ability to impose a redemption fee designed to reimburse the fund for the direct and indirect costs incurred as a result of short-term trading strategies, such as market timing. These amendments are designed to maintain these investor protections while reducing costs to market participants and clarifying the operation of the rule. While we expect that the rule and these

\textsuperscript{136} See Comment Letter of the Investment Company Institute (Apr. 10, 2006); Supplemental Comment Letter of the SPARK Institute, Inc. (May 1, 2006).

\textsuperscript{137} See supra Section III.

\textsuperscript{138} 17 CFR 270.0–10.

\textsuperscript{139} Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

\textsuperscript{140} 141 17 CFR 240.0–10.
amendments will require some funds and intermediaries to develop or upgrade software or other technological systems to enforce certain market timing policies, or make trading information available in omnibus accounts, the amendments we are adopting today are specifically designed to reduce the costs incurred by small entities. In particular, we anticipate that the changes we are making to the definition of financial intermediary will significantly reduce the number of small intermediaries that funds must enter into agreements with, and reduce the burden of complying with the rule for small funds and small intermediaries.

D. Reporting, Recordkeeping, and Other Compliance Requirements

These amendments do not introduce any new mandatory reporting requirements. Rule 22c–2 already contains a mandatory recordkeeping requirement for funds that redeem shares within seven days of purchase. The fund must retain a copy of the written agreement between the fund and financial intermediary under which the intermediary agrees to provide the required shareholder information in omnibus accounts. These amendments reduce the number of small entities that would otherwise be subject to this recordkeeping requirement.

E. Commission Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying the compliance requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of these amendments or any part of the rule, where we believe additional such changes would be impracticable. These amendments in effect except a large number of smaller entities from the scope of the rule, by revising the definition of financial intermediary. We have designed these amendments to reduce the cost and compliance burden on small entities to the greatest extent practicable while still maintaining the investor protections of the rule as adopted.

Small entities are as vulnerable to the problems uncovered in recent enforcement actions and settlements as large entities. Therefore, shareholders of small entities are equally in need of protection from short-term traders. We believe that the rule and these amendments will enable funds to more effectively discourage short-term trading of all fund shares, including those held in omnibus accounts. Further excepting small entities from coverage of the rule or any part of the rule could compromise the effectiveness of the rule. We anticipate that the amendments will alleviate much of the burden imposed by the rule on small entities, and result in a more cost effective system for discouraging short-term trading for all entities. Alternatives that we considered but are not adopting included, among others, (i) fully exempting all small entities from complying with the information-sharing aspect of the rule, (ii) not requiring that the information-sharing agreement obligate first-tier intermediaries to assist in providing information from indirect intermediaries to funds, and (iii) extending the compliance date for small entities.

VIII. Statutory Authority

The Commission is amending rule 22c–2 pursuant to the authority set forth in sections 6(c), 22(c), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–22(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amended Rule

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 et seq., 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

2. Section 270.22c–2 is revised to read as follows:

§ 270.22c–2 Redemption fees for redeemable securities.

(a) Redemption fee. It is unlawful for any fund issuing redeemable securities, its principal underwriter, or any dealer in such securities, to redeem a redeemable security issued by the fund within seven calendar days after the security was purchased, unless it complies with the following requirements:

(1) Board determination. The fund’s board of directors, including a majority of directors who are not interested persons of the fund, must either:

(i) Approve a redemption fee, in an amount (but no more than two percent of the value of shares redeemed) and on shares redeemed within a time period (but no less than seven calendar days), that in its judgment is necessary or appropriate to recoup for the fund the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the value of the outstanding securities issued by the fund, the proceeds of which fee will be retained by the fund; or

(ii) Determine that imposition of a redemption fee is either not necessary or not appropriate.

(2) Shareholder information. With respect to each financial intermediary that submits orders, itself or through its agent, to purchase or redeem shares directly to the fund, its principal underwriter or transfer agent, or to a registered clearing agency, the fund (or on the fund’s behalf, the principal underwriter or transfer agent) must either:

(i) Enter into a shareholder information agreement with the financial intermediary (or its agent); or

(ii) Prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund. For purposes of this

145 Rule 22c–2(a)(3).
paragraph, “purchasing” does not include the automatic reinvestment of dividends.

(3) Recordkeeping. The fund must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.

(b) Excepted funds. The requirements of paragraph (a) of this section do not apply to the following funds, unless they elect to impose a redemption fee pursuant to paragraph (a)(1) of this section:

(1) Money market funds;

(2) Any fund that issues securities that are listed on a national securities exchange; and

(3) Any fund that affirmatively permits short-term trading of its securities, if its prospectus clearly and prominently discloses that the fund permits short-term trading of its securities and that such trading may result in additional costs for the fund.

(c) Definitions. For the purposes of this section:

(1) Financial intermediary means:

(i) Any broker, dealer, bank, or other person that holds securities issued by the fund, in nominee name;

(ii) A unit investment trust or fund that invested in the fund in reliance on section 12(d)(1)(E) of the Act. A shareholder does not include a fund investing pursuant to section 12(d)(1)(C) of the Act (15 U.S.C. 80a–12(d)(1)(C)), a trust established pursuant to section 529 of the Internal Revenue Code (26 U.S.C. 529), or a holder of an interest in such a trust.

(5) Shareholder information agreement means a written agreement under which a financial intermediary agrees to:

(i) Provide, promptly upon request by a fund, the Taxpayer Identification Number (or in the case of non U.S. shareholders, if the Taxpayer Identification Number is unavailable, the International Taxpayer Identification Number or other government issued identifier) of all shareholders who have purchased, redeemed, transferred, or exchanged fund shares held through an account with the financial intermediary, and the amount and dates of such shareholder purchases, redemptions, transfers, and exchanges;

(ii) Execute any instructions from the fund to restrict or prohibit further purchases or exchanges of fund shares by a shareholder who has been identified by the fund as having engaged in transactions of fund shares (directly or indirectly through the intermediary’s account) that violate policies established by the fund for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund; and

(iii) Use best efforts to determine, promptly upon request of the fund, whether any specific person about whom it has received the identification and transaction information set forth in paragraph (c)(5)(i) of this section, is itself a financial intermediary (“indirect intermediary”) and, upon further request by the fund:

(A) Provide (or arrange to have provided) the identification and transaction information set forth in paragraph (c)(5)(i) of this section regarding shareholders who hold an account with an indirect intermediary; or

(B) Restrict or prohibit the indirect intermediary from purchasing, in nominee name on behalf of other persons, securities issued by the fund.

Dated: September 27, 2006.

By the Commission.

Nancy M. Morris,
Secretary.

[FR Doc. E6–16273 Filed 10–2–06; 8:45 am]

DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM06–24–000; Order No. 683]

Critical Energy Infrastructure Information

Issued September 21, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this final rule amending its regulations for gaining access to Critical Energy Infrastructure Information (CEII). The definition of CEII is being clarified to exclude information that the Commission never intended to be deemed as containing critical infrastructure information. In addition, procedural changes are being made based on over three years experience processing CEII requests. These changes simplify the procedures for obtaining access to CEII without increasing vulnerability of the energy infrastructure.

DATES: Effective Date: The rule will become effective November 2, 2006.


SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sueseen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. It has been over three years since the Commission issued its final order on Critical Energy Infrastructure Information (CEII). See Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31.140 (2003); order on reheg, Order No. 630–A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31.147 (2003). Since the issuance of Order No. 630, the Commission has continually monitored and evaluated the effectiveness of the CEII process. The most recent review indicates that changes are needed to assure the rules work in the manner intended.

2. As explained below, the Commission makes strictly procedural changes in this instant and final rule. In a notice of proposed rulemaking in Docket No. RM06–23–000, which is being issued concurrently with this final