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April 10, 2006

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

Re: Mutual Fund Redemption Fees & Ongoing  
Monitoring of Implementation - File No. S7-06-06

Dear Ms. Morris:

The SPARK Institute, Inc. (“SPARK”)<sup>1</sup> is submitting this brief summary of its position regarding the U.S. Securities and Exchange Commission (“SEC”) Release No. IC-27255: Mutual Fund Redemption Fees, dated February 28, 2006 (“Amending Release”), which proposes to amend Rule 22c-2 under the Investment Company Act of 1940, as amended (“Rule 22c-2” or the “Rule”).<sup>2</sup> SPARK intends to submit a supplemental detailed comment letter.

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<sup>1</sup> SPARK represents the interests of a broad based cross section of retirement plan service providers, including members that are banks, mutual fund companies, insurance companies, third party administrators and benefits consultants. SPARK members include all of the largest service providers in the retirement plan industry and the combined membership services more than 95% of all defined contribution plan participants. Our members are the retirement plan service providers that will be considered “First Tier Intermediaries” under the proposed amendments, and as such will be required to enter into “Information Sharing Agreements” and provide information to the mutual funds as required.

<sup>2</sup> 17 CFR 270.22c-2.

The changes to Rule 22c-2 and new issues raised in the Amending Release required SPARK to conduct an in-depth survey of our members regarding their opinions and positions. Our members required substantial time to evaluate the Amending Release internally in order to determine their own institutions' positions, and to gather the data that was requested by the SEC. We have been working with our members to review their feedback to us in order to develop the consensus view that is the basis of this summary and our detailed submission. However, given the number of our members that are concerned about these important issues and the different perspectives each of them have, additional time is required in order to prepare a more informative comment that identifies our concerns, and perhaps more importantly, **suggests practical solutions that will assist the SEC in resolving these critical issues.**

## **I. Summary of The SPARK Institute Position**

- A. Redemption Fees:** Rule 22c-2 and the proposed amendments amount to a tacit endorsement by the SEC of “redemption fees” as the preferred method for controlling improper market timing and excessive trading. The Rule should not be narrowly focused on redemption fees as the preferred approach for controlling or preventing abusive trading but should also consider and authorize other approaches that can more effectively control and prevent such abusive trading (e.g., trade blocking and round trip limits).
- B. Alternatives to Information Sharing:** Rule 22c-2 should be revised to allow mutual fund companies to authorize retirement plan intermediaries to monitor for market timing and excessive trading on behalf of the funds as an alternative to the cumbersome and costly information sharing requirements. Additionally, the Rule should allow the funds to authorize such monitoring by retirement plan intermediaries according to a reasonable and consistent frequent trading policy, even if such policy is different from the policy otherwise followed by the fund for other investors (e.g., retail and direct shareholders).

To that end, a SPARK task force comprised of retirement plan industry service providers, including representatives from mutual fund companies, developed a sample standardized “Frequent Trading Policy for Retirement Plan Service Providers” (copy attached).<sup>3</sup> Under the Frequent Trading Policy retirement plan service providers can agree to conduct frequent trading monitoring on behalf of the funds in exchange for less cumbersome information sharing. The Frequent Trading Policy is intended to be used in connection with the “Sample Contract Language With Data Standards for Retirement Plan Service Providers” that was prepared by the same SPARK task force (copy attached).<sup>4</sup>

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<sup>3</sup> The Frequent Trading Policy was developed and released prior to the Amending Release and will be revised as needed.

<sup>4</sup> The Sample Contract Language With Data Standards for Retirement Plan Service Providers was developed and released prior to the Amending Release and will be revised as needed.

Based on the information we have gathered to date, all of our members intend to use the SPARK sample contract language and concepts as the primary basis for their trading and information sharing agreements with their fund trading partners. Additionally, over 60% have indicated that they intend to adopt the retirement plan service provider frequent trading monitor approach as a means of minimizing the cumbersome information reporting requirements.

- C. Increased Burdens on Intermediaries:** Rule 22c-2 and the proposed amendments inappropriately place increased burdens on retirement plan intermediaries.
- 1. Compliance:** The proposed amendments shift certain burdens of market timing and excessive trading compliance from the funds to intermediaries. This shift does not reduce the overall burden of compliance but merely reassigns certain complex and cumbersome aspects away from the funds to intermediaries.
  - 2. Costs:** The costs of complying with and enforcing each fund's abusive trading policies should be borne directly by the funds, however, the Rule and proposed amendments inappropriately shift substantial responsibility for such costs from the funds to intermediaries.
  - 3. Competitive Balance:** The Rule and proposed amendments skew the competitive balance in the retirement plan services industry in favor of funds at the expense of intermediaries. The funds control the ultimate costs of information sharing through the frequency and scope of their requests yet it is the intermediaries, not the funds that bear the costs of those requests. Additionally, the Rule's requirements give intermediaries little choice but to choose between whether to absorb those costs or not be allowed to offer the fund. The costs of compliance should be borne by the fund as they are better able to pass these costs to the funds' shareholders, an option that is not as readily available to retirement plan service providers.
- D. Cost-Benefits of the Rule:** The costs and benefits of implementing, and the ongoing compliance with, Rule 22c-2 have not been adequately evaluated. The costs associated with implementing and complying with the information sharing requirements may ultimately cost fund shareholders more than the costs associated with market timing activity. Other methods of addressing abusive trading practices that do not involve costly and cumbersome information sharing requirements are more cost effective.
- E. Privacy:** The Amending Release inadequately addresses our members' privacy compliance concerns. The SEC should expressly authorize the use of alternatives to social security numbers as part of the information sharing process.
- F. Compliance Date:** The SEC should extend the compliance date of Rule 22c-2 by 18 months. The unexpected shift in responsibilities to retirement plan service providers under the proposed amendments forces our members to grapple with certain compliance burdens in less time than what was originally provided to the funds when such burdens were assigned to them prior to their objections. The retirement plan and mutual fund

industries continue to work towards developing the systems, infrastructure, policies and procedures in order to address the requirements of the Rule. Until these standards are developed, negotiating and implementing the agreements required by the Rule will be both more time consuming and expensive.

## **II. Conclusion**

We will submit our detail comment letter as soon as possible. Should you have additional questions or need additional information, please do not hesitate to contact us at (860) 658-5058.

Respectfully,

/s/

Robert G. Wuelfing  
President

/s/

Larry H. Goldbrum  
General Counsel

encl: Sample Frequent Trading Policy for Retirement Plan Service Providers  
Sample Contract Language With Data Standards for Retirement Plan Service Providers

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

Susan Ferris Wyderko, Acting Director  
Robert E. Plaze, Associate Director  
C. Hunter Jones, Assistant Director  
Division of Investment Management

Alston & Bird LLP



February 21, 2006

## SEC Rule 22c-2 Sample Contract Language

### **Frequent Trading Policy for Retirement Plan Service Providers**

\_\_\_\_\_ (“Intermediary”) has entered into a [agreement name] Agreement (“Agreement”) with [fund or fund company name] (“Fund or Funds”) in order to make certain mutual funds available to employer sponsored retirement and benefit plans (“Plan” or “Plans”) serviced by the Intermediary. Under the Agreement the Intermediary will provide certain information to the Funds in order to (1) assist the Funds in complying with the Securities and Exchange Commission (“SEC”) Rule 22c-2, and (2) identify potentially harmful market timing or excessive trading activity (“Frequent Trading”).

The Funds have adopted policies and procedures to protect each Fund and their respective shareholders from potentially harmful Frequent Trading. Such policies and procedures include reserving the right to reject certain shareholder transactions. The Funds and the Intermediary agree that standardized Frequent Trading restrictions applied by the Intermediary with respect to the investment options of the Plans will enhance compliance with such policies and reduce Participant confusion.

#### **Section 1 – Definitions**

- a. Day(s) - calendar days unless noted otherwise.
- b. Excepted Funds – The Intermediary will not apply the Frequent Trading Policy with respect to “excepted funds” as defined in SEC Rule 22c-2(b) under the Investment Company Act of 1940. The Funds shall identify the excepted funds for the Intermediary in writing.
- c. Exchange Purchase – Participant-Initiated fund transfer of any portion of a Participant’s assets into a Fund. This does not include purchases into the Fund made with new assets contributed to a Plan, but does include the purchase side of a non-systematic reallocation or rebalancing transaction.
- d. Exchange Redemption – Participant-Initiated fund transfer of any portion of a Participant’s assets in a Plan out of a Fund. This does not include the withdrawal or distribution of assets out of a Plan, but does include the redemption side of a non-systematic reallocation or rebalancing transaction.

- e. Monitoring Period – [Rolling - The [30/60/90] Day period beginning as soon as administratively practicable following a “Round Trip” (as defined herein) executed by a “Participant” (as defined herein).] **OR** [Static - Each calendar [month/quarter/other] during which a Participant executes a “Round Trip” (as defined herein).
- f. Participant – any individual that invests in the Funds through any Plan.
- g. Participant-Initiated – a voluntary trade or other transaction effected at the direction of the Participant rather than the sponsor or fiduciary of a Plan.
- h. Purchase Restriction Period – The [30/60/90] Day period during which a Participant will be restricted from initiating Exchange Purchases into the affected Fund or Funds.
- i. Round Trip - an Exchange Redemption effected within [30/60/90] Days of an Exchange Purchase in the same Fund. The FIFO method will be used to match Exchange Redemptions to Exchange Purchases. The [30/60/90] Day look back period begins on the Day the Exchange Redemption was effected. If an Exchange Redemption is matched to an Exchange Purchase, neither the Exchange Redemption nor the Exchange Purchase will be matched with another trade for purposes of determining whether a subsequent Round Trip occurred.

**Section 2 – Frequent Trading Policy.** The Funds hereby direct the Intermediary to implement the Frequent Trading monitoring policy (“Frequent Trading Policy”) set forth herein. The Intermediary shall not be obligated to provide reports to the Funds with respect to Participant transactions more frequently than [monthly/quarterly/other], without “Good Cause” as defined in the Agreement. However, the Intermediary will provide additional reports to the Funds, in accordance with the terms of the Agreement as reasonably requested in writing (a) for due diligence or audit purposes, or (b) if the Funds suspect that certain trading activity may violate the Funds’ frequent trading policies.

**Section 3 - Intermediary Frequent Trading Monitoring.** The Intermediary agrees to use reasonable efforts to monitor Participant-Initiated Exchange Purchases and Exchange Redemptions in accordance with this Frequent Trading Policy. The Intermediary will monitor Participant trading activity and identify any Participant who initiates more than one Round Trip in a Fund during the Monitoring Period. Such monitoring will be done on a plan by plan basis and not across multiple plans.

- a. Participant Monitoring Period Trigger – The Intermediary will identify any Participant who executes a Round Trip in a Fund or Funds, and monitor the Participant’s subsequent trading activity in the affected Fund or Funds during the Monitoring Period.

- b. Participant Warning Event – The Intermediary will identify any Participant who executes an additional Exchange Purchase into an affected Fund or Funds during the Monitoring Period (the “Participant Warning Event”). The Intermediary will notify the Participant in writing about the Participant Warning Event, as soon as administratively practicable after identifying such event. Such notice will inform the Participant that if such Participant executes an Exchange Redemption in the Fund or Funds during the Monitoring Period, such Participant will be in breach of the Frequent Trading Policy and be subject to the Investment Transaction Restrictions set forth herein.
- c. Participant Breach – The Intermediary will identify any Participant who executes an Exchange Redemption following the Participant Warning Event during the Monitoring Period (the “Participant Breach”). The Intermediary will impose the “Participant Transaction Restrictions” set forth herein upon such Participant as soon as administratively practicable after identifying the Participant Breach. The Intermediary will notify the Participant in writing of such restrictions. Any Exchange Purchase initiated by a Participant after the Participant Breach that is executed prior to the date that the Intermediary actually imposes the Participant Trading Restrictions will not be reversed, revoked or otherwise cancelled by the Intermediary or the Funds.

**Section 4 - Participant Transaction Restrictions.** As soon as administratively practicable following a Participant Breach, the Intermediary will:

- a. Take reasonable steps to prevent the Participant from initiating Exchange Purchases into the affected Fund or Funds during the Purchase Restriction Period. The Purchase Restriction Period shall begin as soon as administratively practicable after the Intermediary identifies the Participant Breach.
- b. The Purchase Restriction Period will be imposed only with respect to the affected Fund or Funds in the Participant’s account in the Plan in which the breach or breaches occurred.
- c. [The Intermediary will restore the Participant’s Exchange Purchase capabilities upon the expiration of the Purchase Restriction Period.] **OR** [The Intermediary will restore the Participant’s Exchange Purchase capabilities after the Purchase Restriction Period upon the Participant’s request.]
- d. The Intermediary will provide to the Funds a monthly report that summarizes the [Participant Warning Event notices that were sent out and ← Optional] Participant Transaction Restrictions that were imposed during the prior month.

**Section 5 - Exempt Transactions.** The Funds understand and acknowledge that the following transactions will not be subject to or cause a breach of this Frequent Trading Policy:

- a. Exchange Purchases and/or Exchange Redemptions of [\$1,000/\$5,000] or less. However, multiple Exchange Purchases or Exchange Redemptions on the same Day

will be aggregated for purposes of determining whether a Participant exceeded this threshold.

- b. Any and all transactions other than an Exchange Purchase or an Exchange Redemption, including error corrections or “as-of” adjustments.
- c. Pre-scheduled systematic transactions such as Participant or model driven automatic rebalancing.

**Section 6 - Additional Monitoring by the Funds. [Optional]**

- a. Breaches Identified by the Funds – If the Funds determines that a Participant has violated the Funds’ frequent trading policies, at the Funds’ written direction, the Intermediary will send the Participant a Participant Warning Event notice described above. As soon as administratively practicable following receipt of said written direction from the Funds, the Intermediary will follow the Frequent Trading Policy set forth herein beginning with monitoring the Participants account for a Participant Breach, unless the Funds provide other reasonable written instruction to the Intermediary.
- b. Multiple Breaches by a Participant – If the Funds identify a Participant that has been subject to the Participant Trading Restrictions more than once because of multiple breaches of the Frequent Trading Policy, the Funds may provide written direction to the Intermediary regarding any special restrictions that the Funds deem are necessary to be imposed on said Participant. Such written direction shall include a short explanation regarding the special action that can be provided to the Plan and the Participant. The Intermediary will use reasonable efforts to impose such restrictions to the extent they are administratively feasible.

**Section 7 - Plan Fiduciary Directions.** At the direction of a fiduciary with respect to a Plan (e.g., trustee or plan sponsor), in lieu of following the policies and procedures set forth herein with respect to said Plan, the Intermediary will close a Fund or Funds to all new purchases including exchanges and contributions, for all Participants in the Plan.

**Section 8 – Miscellaneous.** The Intermediary reserves the right to modify this Frequent Trading Policy at any time, and will provide the Funds with reasonable prior written notice.



February 21, 2006

**Rule 22c-2**  
**Sample Contract Language**  
**With Data Standards**  
**for**  
**Retirement Plan Service Providers**

**Section [X] - Participant Information.**

A. Agreement to Provide Information. The Intermediary agrees to provide certain information to the Funds solely for the purpose of facilitating the Funds' compliance with Securities and Exchange Commission ("SEC") Rule 22c-2. The Intermediary agrees to provide the Funds, upon written request, any or all of the information set forth in Attachment "A" (the "Included / Reportable Data") with respect to all "Participants" (as defined herein) that purchased, redeemed, transferred or exchanged Shares through an account maintained by the Intermediary during the period covered by the request. The Funds acknowledge and agree that the Intermediary will only provide such information regarding a Participant that the Intermediary is permitted to provide without Participant consent under applicable laws, rules and regulations. If the Intermediary is required by law to obtain Participant consent in order to provide certain information to the Fund, the Intermediary will use reasonable efforts to obtain such consent. The Intermediary will not be required to provide to the Funds any information that is not identified in the Included / Reportable Data, including without limitation the "Excluded / Non-reportable Data" set forth in Attachment A, unless (i) the Intermediary is otherwise required to do so under applicable law, or (ii) the Intermediary and the Funds agree otherwise in writing.

1. Period Covered by Request. Requests shall set forth the specific period for which transaction information is sought. However, such period may not be earlier than [insert period] from the date of request. The Funds shall not request transaction information more frequently than [monthly/quarterly] except for "Good Cause" (as defined herein). If Good Cause exists, the Funds may request transaction information reasonably necessary to investigate compliance with the policies established by the Funds for the purpose of eliminating or reducing potentially harmful market timing or frequent trading. The Funds shall refrain from making unduly costly or burdensome requests.
2. Form and Timing of Response. The Intermediary agrees to transmit the requested information that is on its books and records to the Funds or their designee as soon as reasonably practicable after receipt of a request. If the accounts are sub-intermediary accounts and the requested information is not on the Intermediary's books and records,

the Intermediary agrees to use reasonable efforts either to (i) promptly obtain and transmit the requested information from the holder of the sub-intermediary account, (ii) obtain assurances from the holder of the sub-intermediary accounts that the requested information will be provided to the Funds promptly; or (iii) block further purchases from such account holder to the Funds. In such instances, the Intermediary agrees to inform the Funds regarding which of the foregoing options it will follow. The requested information shall be communicated in accordance with standards that are mutually agreed upon by the parties.

3. Limitations on Use of Information. The Funds shall not use the information received from the Intermediary or sub-intermediary for any purpose other than to comply with SEC Rule 22c-2, and such other applicable laws, rules and regulations.
  4. Costs. The Funds agree to reimburse the Intermediary for reasonable costs associated with complying with extraordinary requests.
- B. Agreement to Restrict Trading. The Intermediary agrees to take reasonable steps to execute written instructions from the Funds to restrict or prohibit further purchases or exchanges of Shares by a Participant that has been identified by the Funds as having engaged in transactions involving the Funds (directly or indirectly through the Intermediary's account) that violate the trading policies established by the Funds for the purpose of eliminating or reducing potentially harmful market timing or frequent trading.
1. Form of Instructions. Instructions must include the Taxpayer Identification Number ("TIN"), if known, and the specific restriction(s) to be executed. If the TIN is not known, the instructions must include an equivalent identifying number of the Participant(s) or account(s) or other agreed upon information to which the instruction relates. The instructions also shall provide a brief written explanation specifying how the Participant's trading activity violated the affected Funds' market timing or other abusive trading policies that the Intermediary may provide to the Participant.
  2. Timing of Response. The Intermediary agrees to use reasonable efforts to execute instructions within [insert number of days] business days after receipt of the instructions.
  3. Confirmation by Intermediary. The Intermediary must provide written confirmation to the Funds that instructions have been executed. The Intermediary agrees to provide confirmation as soon as reasonably practicable.
  4. Fund Policies. The Funds shall provide to the Intermediary upon request a brief written summary of the Funds' market timing or other abusive trading policies that the Intermediary may provide to Participants upon request. The Funds shall promptly notify the Intermediary in writing whenever such policies change significantly.

### C. Definitions.

1. The term “Fund” or “Funds” includes the Fund’s principal underwriter and transfer agent. The term does not include any “excepted funds” as defined in SEC Rule 22c-2(b) under the Investment Company Act of 1940.<sup>1</sup>
2. The term “Good Cause” shall mean situations where (i) the Intermediary has not agreed to enforce the policies established by the Funds for the purpose of eliminating or reducing potentially harmful market timing or frequent trading (or a substantially similar policy deemed sufficient by the Funds to effectuate the purpose of such Funds’ established policies), or (ii) the Intermediary has agreed to enforce policies as described in subparagraph (i) but the account has experienced unusual levels or patterns of volatility that appear to be inconsistent with such policies.
3. The term “Shares” means the interests of Participants corresponding to the securities of record issued by the Fund held by the Intermediary.
4. The term “Participant” means any individual who invests in the Funds through any employer sponsored retirement and benefit plans (“Plan”), notwithstanding that the Plan may be deemed to be the beneficial owner of Shares.
5. The term “written” includes electronic writings and facsimile transmissions.

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<sup>1</sup> As defined in SEC Rule 22c-2(b), the term “excepted fund” means any: (1) money market fund; (2) fund that issues securities that are listed on a national exchange; and (3) 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.

## Attachment “A”

### **Participant Transaction Reporting** **Data Standards for Retirement Plan Intermediaries**

#### **I. INCLUDED / REPORTABLE DATA**

##### **A. Identification Information**

1. Intermediary Identification – The Intermediary’s alpha or numeric company identifier (e.g., NSCC number).
2. Fund/Omnibus Account Number – The Intermediary’s trading account number known to the Fund.
3. Intermediary Fund Identification - The individual fund identifier used by the Intermediary’s system(s).
4. Sub-Intermediary Identification - The Intermediary’s alpha or numeric identifier for another party (e.g., a third party administrator for a Plan) that holds the account information.

##### **B. Plan Information**

1. Plan Identification – The Intermediary’s alpha or numeric identifier (e.g., Plan number).
2. Plan Name [Optional]

##### **C. Participant Information – Taxpayer identification number/social security number (if known), or such other unique participant identification number.**

##### **D. Trade Data**

1. Trade Date(s) (e.g., NAV date)
2. Transaction Type (e.g., purchase or redemption)
3. Dollar Amount
4. Security Identification (e.g., CUSIP)
5. System Identification - The Intermediary’s alpha or numeric identifier for certain trading systems or trade sources. [Optional]

#### **II. EXCLUDED / NON-REPORTABLE DATA**

- A. Participant or Plan share or dollar account balance information (e.g., share balance following a transaction, and share balance “as of” or for particular holding period).
- B. Information on funds of other fund companies.
- C. Agent or broker/dealer identification.
- D. Participant name and address