

VIA EMAIL

rule-comments@sec.gov

May 10, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Comment on Proposed Mandatory Redemption Fees For Redeemable Fund Securities Proposed Rule; file S7-11-04.

Dear Mr. Katz:

On behalf of Massachusetts Mutual Life Insurance Company (“MassMutual”) I am writing in response to the request for comments with respect to the proposed regulation regarding the mandatory redemption fees for redeemable fund securities, which was issued by the Securities and Exchange Commission (the “Commission”). MassMutual appreciates the opportunity to express our concern about the impact on millions of participants in qualified retirement plans plan service providers, plan fiduciaries and plan sponsors.

MassMutual is a mutual life insurance company that was organized in 1851. It is a member of the MassMutual Financial Group, which is a global, growth-oriented, diversified financial services organization with total assets under management in excess of \$285 billion. Its family of companies serves the needs of over ten million clients by providing a broad-based portfolio of financial products and services including: life insurance, annuities, disability income insurance, retirement planning products, mutual funds, money management, and other financial products and services.

MassMutual commends the Commission for its efforts to protect mutual fund investors and to restore investor confidence in mutual funds. We understand that the mandatory redemption fee is designed to reduce or eliminate the opportunity for short-term traders to exploit other investors in the mutual fund by: (i) requiring them to reimburse the fund for the approximate redemption-related costs incurred by the fund as a result of their trades, and (ii) discouraging short-term trading of mutual fund shares by reducing the profitability of the trades. However, we are concerned that the mandatory redemption fee proposal will unfairly affect retirement plans participants. Mandatory redemption fees will disadvantage retirement plan participants by transferring plan assets (in the form of the redemption fees) to the fund in which non-plan participants as well as plan participants are invested. MassMutual believes that plan assets should not be used to benefit or subsidize other investors. Moreover, the mandatory redemption fee will be administratively difficult to administer and require substantial investment in technological systems for plan

service providers. Plan Fiduciaries will be challenged by their duty to monitor and protect against such charges. Plan sponsors will be unable to prevent the dissipation of benefit to its participants.

Effects of the Proposed Mandatory Redemption Rule on Employer-Sponsored Plans and Intermediaries.

The rule as proposed would require mutual funds to impose a fee of two percent (2%) of the proceeds from fund shares redeemed within five business days of their purchase. The rule would not permit funds to impose a higher or lower fee than two percent. While MassMutual does not endorse the mandatory redemption fee proposal, we do believe that any redemption fee mandated by the Commission should be uniform so as to provide simplicity in administration. Similarly, the five day holding period under the proposal should be uniform to provide a standardize system for all funds. The proposal will create enormous and unnecessary problems for retirement plans if it allows all fund companies to impose different fees and holding periods.

Redemption Fee on all Contributions and Exchanges

The proposal will impose a mandatory redemption fee on all contributions and exchanges by retirement plan participants. This requirement will impose a burden on retirement plan participants. For example, the proposal seeks to impose mandatory redemption fees on transactions such as participant loans, automatic rebalancing and plan-to-plan rollovers transactions that by their nature are not part of an arbitrage opportunity. MassMutual recommends that the Commission adopt a proposal that will create an exemption from the mandatory redemption fee for these types of retirement plan transactions.

The goal of retirement plans is to provide participants and beneficiaries with income during retirement. During the last few years retirement plan service providers have developed systems to help participants better achieve this goal. The automatic rebalancing feature is one such function. With the automatic rebalancing feature, the participant elects to allocate plan assets in a certain manner and authorizes the retirement plan service provider to automatically rebalance the account at pre-set intervals to keep the allocation consistent. Participants who select this feature can continue to achieve their desired level of diversification. Retirement plan features such as automatic rebalancing should not be included in the mandatory redemption fee proposal. In the context of retirement plans, MassMutual recommends that the Commission apply the mandatory redemption fee only to participant-directed exchanges and transfers.

Standardizes System

Retirement plan service providers allow plan sponsors to offer a variety of investment options to their plan participants. As stated above, if the Commission allows each fund having to adopt its own holding period or level of redemption fee there will be an undue burden placed on retirement plan providers to administer each option. These changes will cause each retirement plan service provider to invest significant capital into developing new technological systems to administer all of the different holding period and/or redemption fees. Retirement plan service providers will need to set up billing and collection procedures with all of the fund companies in order to administer this rule. This would be a very costly proposition.

These changes will result in increase cost to the retirement plan service provider including third party administrators and will likely be passed along to the plan sponsors and/ the retirement plan participants.

Some retirement plan service providers and third party administrators may be unable to continue in the business, thereby decreasing competition among those service providers. For these reasons, we commend the SEC's proposal of a uniform redemption fee and holding period.

Exceptions

MassMutual applauds the Commission for including certain provisions designed to limit the imposition of the fee. First, the fee would be calculated by treating the shares held the longest time as being redeemed first which is also known as first in, first out (FIFO). This provision is anticipated to avoid the application of a mandatory redemption fee to regular purchases such as employee deferrals as part of periodic payrolls. Unfortunately retirement plan service providers will still need to setup systems to determine if and when the fee should apply. This provision will also not eliminate the mandatory redemption fee for retirement plan transfers such as loans and rollovers.

Second, the fund would have the option of not imposing the fee if the shares redeemed are \$2500 or less. This de minimis provision does not sufficiently address the concerns of small investors or plan service providers. It is not uncommon for small investors to have more than \$2500 in their 401(k) accounts. While the need to provide such an exception is appreciated, the provision should be mandatory and not optional. As stated above, the provisions adopted by the Commission should be standardized so as to allow for easier administration by retirement plan service providers.

Finally the proposal allows for the waiver of redemption fees in the case of an unanticipated financial emergency upon written request of the shareholder. The proposal should allow for retirement plan sponsors to define what hardship will qualify for this exemption. The plan sponsor should be allowed to provide for the terms of the distribution and any limitations on such distributions. Plan sponsors are capable of safeguarding this exception because retirement plans regularly administer hardship withdrawals and are governed by significant regulations. Plan sponsors also have significant fiduciary responsibilities to both the retirement plan participants and beneficiaries to properly process hardship withdrawals.

Transmittal of the fees to Fund Company

The current proposal also would require that retirement plan intermediaries to transmit to the fund companies the taxpayer identification number and the amount and dates of all purchases, redemptions or exchanges for each shareholder within an omnibus account during the previous week. The proposal provides three methods by which this information may be transmitted to the fund company. Regardless of which method is used, this requirement presents substantial issues regarding the privacy rights of individuals. As a retirement plan service provider and a plan sponsor, MassMutual, like other financial institution, has an affirmative and continuing obligation to respect the privacy of its customers, employees and plan participants to protect the security and confidentiality their customers non-public information. For these reasons, MassMutual believes that the non-public personal information of plan participants should not be provided to the fund company. It is unclear what value the disclosure of identities and financial information would provide to fund companies. Additional rules would need to be developed to safeguard the privacy of retirement plan participants in the hands of the fund companies, who would otherwise treat all customers identically. Furthermore retirement plan service providers would be incented under the proposal to only offer its proprietary funds in the retirement plan investments line up. That is, the proposal

will serve to substantially discourage diversification of investment among multiple fund families under participant directed retirement plans.

As described above, the changes caused by the proposed rule would be substantial and would negatively affect plan participants in a multitude of ways. If the Commission decides to implement this rule, retirement plan service providers would face significant costs to update and create new technological systems. These costs in turn will likely be passed on to retirement plan sponsors and participants.

In addition ERISA impose on plan fiduciary a duty of loyalty. Under ERISA a plan fiduciary must act in the best interest of the participants and beneficiaries. It is our contention that a fiduciary in exercising this duty should not send to a third party non-public personal information regarding the participants transactions to be used for a purpose that does not explicitly benefit the participant or beneficiaries.

Additional Comments

MassMutual appreciates the Commissions intent to design a proposal that will impede market timing while allowing retirement plan administrators and other intermediaries to continue to trade on an omnibus basis. One significant issue that MassMutual faces as well as other intermediaries is the inability to tract transaction done through a third party administrator at the participant level since all trades are done on an omnibus level. This means that if participant X trades stock Y today and participant Z trades stock Y tomorrow participant Z will be subject to the redemption fee because the transaction is done on an omnibus level and the trade occurred with in the stated time frame from participant X trade the fee will be imposed.

The elimination of Omnibus trading will increase significantly the transaction cost associated with the exchanges of funds in retirement plans, which is passed on to plan participants. Without the ability to trade using omnibus accounts participants fees will increase substantially.

Furthermore the imposition of a mandatory redemption fee alone will not eliminate market timing. MassMutual believes that the use of fair value pricing will better serve to reduce or eliminate the arbitrage opportunities that market timers seek.

We appreciate the opportunity to provide further input to the development of potential rules in this area, and to comment on such rules. We believe that MassMutual brings an important and unique perspective and are pleased to make this information and perspective available to the Commission. If additional information from us would be helpful, please do not hesitate to contact me at 413-744-0243 or Patricia Walsh at 413-744-2865.

Sincerely,

Camille Donald