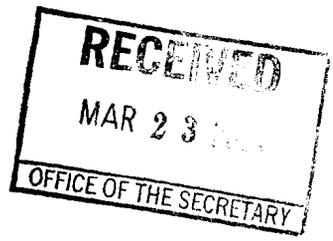


31



March 16, 2004

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

Re: Mandatory Redemption Fees for Redeemable Fund Securities (File No. S7-11-04)

Dear Mr. Katz:

The New York Law School Class on the Federal Regulation of Mutual Funds appreciates the opportunity to express our views on the Securities and Exchange Commission's recent proposal to impose a transaction fee on short-term trading in mutual funds (the "Proposed Rule"). We recognize the potential harms of market timing activity and excessive trading in mutual funds and support the Proposed Rule as a sensible remedy. However, we believe that these practices, especially when committed by mutual fund insiders, can and should be further redressed by bringing mutual funds under the purview of Section 16(b) of the Securities Exchange Act of 1934 ("Section 16(b)").¹

Section 16(b) was originally intended to address two concerns relevant to today's mutual fund practices. As described by the ABA Task Force on Regulation of Insider Trading:

First, section 16(b) was intended to remove the temptation for corporation executives to profit from short-term stock price fluctuations at the expense of the long-term financial health of their companies. It prevents insiders from being obsessed with trading in their companies' securities to the detriment of their managerial and fiduciary responsibilities... Second, the section was intended to penalize the unfair use of inside information by insiders. This includes both trading on inside information in violation of rule 10b-5 and the use of "softer" information of the type that insiders often have but that members of the investing public do not.²

¹ Mutual funds are currently exempted from Section 16(b) by Rule 16b-1(a) which states:

Any purchase and sale, or sale and purchase, of a security shall be exempt from Section 16(b) of the Act, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 and both the purchase and sale of such security have been exempted from the provisions of Section 17(a) of the Investment Company Act of 1940, by rule or order of the Commission.

² "Report of the Task Force on Regulation of Insider Trading – Part II: Reform of Section 16", 42 Bus. Law. 1087 (citing Senate Comm. on Banking and Currency, Stock Exchange Practices, S. Rep. No. 1455, 73d Cong., 2d Sess. 68 (1934)).

The recent market timing scandals underscore the timeliness of these concerns with respect to mutual funds. There are obvious dangers inherent in allowing fund managers to engage in short term trading for their own accounts, based on their non-public (or simply superior) "softer" information about their respective fund holdings at any particular moment. The Commission's recent proposed rule relating to codes of ethics for investment advisers takes note of these practices and underscores the need for additional controls on mutual fund insiders.³

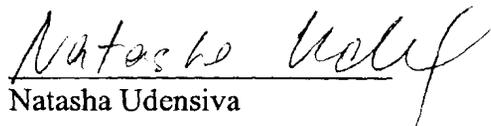
The proposed extension of Section 16(b) to cover mutual funds is in line with these and related reforms. This measure would allow a mutual fund to recover any profit from the purchase and sale or sale and purchase of its shares within a six month period by an officer or director of the fund (or a beneficial holder of more than 10% of the fund's shares). The extension of 16(b) would not cover market timing by unaffiliated investors, but would go far towards addressing abusive short term trading by mutual fund insiders. We view this approach as complementary to the Proposed Rule.

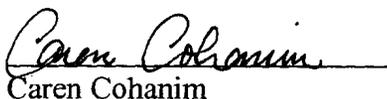
We would recommend that in line with the Proposed Rule, certain types of mutual funds that rely on short term trading and are less susceptible to insider trading abuses, such as money market funds, should remain exempted from Section 16(b).

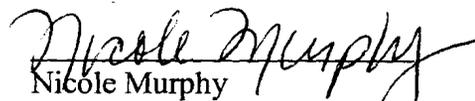
We commend the Commission for its efforts to address these pressing issues and hope the Commission will consider the additional reform proposed herein.

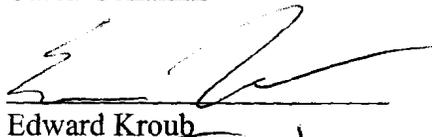
Sincerely,


Eman Eliya

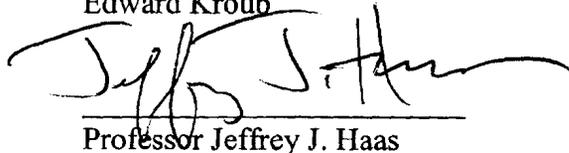

Natasha Udensiva

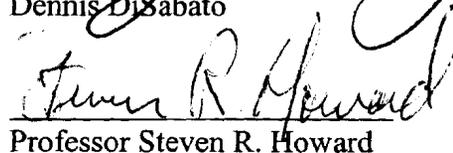

Caren Cohanim


Nicole Murphy


Edward Kroub


Dennis DiSabato


Professor Jeffrey J. Haas


Professor Steven R. Howard

³ Proposed Rule: Investment Adviser Codes of Ethics Securities and Exchange Commission, 17 CFR Parts 270, 275 and 279 Release Nos. IA-2209, IC-26337; File No. S7-04-04.