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OFFICE OF THE SECRETARY

December 12, 2003

Sec .rities Exchange Commission (SEC)
Jonathan G. Katz, Secretary
450 Fifth Street, NW
Washington, DC 20549-0609

RE: **File No. S7-27-03 Am**endments to Rules Governing Pricing of Mutual Fund Shares
File No. S7-26-03 Proposed Rule: Disclosure Regarding Market Timing and Selective Disclosure **of Portfolio Holdings**

Mr. Katz:

Regarding the "Cost-Benefit Analysis" of the proposed rule amendments, I'll offer my personal thoughts on the matter.

INCOMPLETE COST ANALYSIS
First, I don't think the SEC has an accurate handle on the true known costs of these new mutual fund amendment rules, much **less** the estimated cost. In fact, in the comments of File No. **S7-27-03** under the subheading *IV. Cost* Benefit Analysis, heading *B. Costs*, the Commission contradicts itself, when on one hand it states, 'We believe the costs of these rule amendments will be minimal for long-term investors", and then later in the next paragraph states, "The Commission, therefore, cannot quantify the potential costs (or benefits) to investors." Which one is it? Competing statements such as these merely underscore that the true cost analysis of the above listed proposals is missing, incomplete, or worse yet, unknown. I don't think unknown costs sit very well with the investing public, or with the negatively impacted parties affected by them. Do you?

Furthermore, the Commission's estimated cost analysis mentions nothing about the negative cost consequences to Short-term investors that own mutual funds. Why does the Commission unwittingly separate short-term and long-term investors of mutual funds from each other by only mentioning long-term investors in its subheading section *IV. Cost* Benefit Analysis, heading *B. Costs,* in matters relating to amendments of rule 22c-1? Additionally, if the new rule amendment consequences are "minimal" for long-term investors, then I'm guessing they are 'maximum" for short-term investors. Doesn't that create an unfair bias? My point is this: *All* fund shareholders are affected by these new rules, and the amendments and statements by your Agency should reflect that understanding, without implied discrimination against fund shareholder types.

I truly doubt the Commission's assertion that the proposed rule amendments will be "minimal" for long-term investors. What's the Commission's definition of 'minimal"? I suppose when it's not your own money that's affected by these proposals, that yes, its consequences can be called "*minimal*".

Beyond the unknown costs of these proposed rules, I am deeply concerned about certain statements the Commission makes in its proposals in reference to how the amended rules would affect mutual fund complexes. For example, in section *IV. Cost* Benefit Analysis, heading A. Benefits the Commission states, "Funds would benefit by the increase in investor confidence, as investors would be **less** likely to seek alternative financial products in which to invest." Since when does the Commission concern itself with "investors seeking alternative financial products" to mutual funds? Is that necessarily a bad thing? Shareholder defections are the unintended consequences of fraudulent behavior and the fund industry is merely "reaping what it has sown". (Galatians 6:7)

Instead of sheltering the mutual fund industry from mass exodus, perhaps the **SEC** is better served to focus on its duty and obligation to minimize the negative consequences of these new rules upon fund shareholders, and all related innocent parties affected by the revealed abuses, including but not limited to, broker/dealers, retirement plan administrators, and the many others. The fund industry should receive last considerations about any potential impacts of the new rules, not *first*. Ultimately, its their own aggregated mischief that caused these proposed rule amendments in the first place.

THE CORE **OF** THE MATTER
If the Commission wants to justify its own claim that it's sensitive to the cost burdens of the proposed rule amendments upon investors and all innocent affected parties like, broker/dealers, retirement plan administrators and the many others, then your Agency should insert a mandatory provision into the proposed rules that require mutual fund companies to pay for unknown compliance cost burdens that the SEC has characterized as "minimal" and "one-time expenses". If these costs are indeed actually as the SEC characterizes them, then the mutual fund industry should have no qualms footing the inconsequential tab.

Without this mandatory provision, fund companies will likely defer the costs associated with the new rules right on to fund shareholders. From another perspective, the mutual fund industry will get others to pay for their own mistakes. What kind of penalty is that?

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An alternative method of viewing the unknown costs of compliance and change with the proposed amendments is to view these costs as a kind of financial penalty. The uncertainty surrounding 'the final price tag of this financial penalty should be underwritten and insured by the mutual fund industry. Once this cost becomes fiscally quantifiable, then the fund industry can pay for it. Anything less, is totally unacceptable. A penalty is not a penalty, unless it's a penalty.

BENEFITS OF OUR INSERTED PROVISION
The benefits of forcing the mutual fund industry **to** pay for the cost burdens associated with the **SEC** proposed rule amendments are the following:

- Prevents the fund industry from passing on the administration and compliance cost of the proposed rules (the indirect financial penalty for their illegal activities) to fund shareholders and affected innocent victims, like broker/dealers, retirement plan administrators, etc.

- It redirects the penalty burdens to the guilty party, in this case, the entire mutual fund industry and their disgraced brethren.

- Reinforces to the entire mutual fund industry that when one fund family messes up, the consequences are negative and severe for all fund companies.

- Acts as a kind of insurance premium to dissuade potential future offenders that the cost of illegal activity is harsh and can't be frivolously "written off as a routine business **expense.**

Fund advocates may argue that only the guilty parties should pay for these costs; however I feel this would create upheaval for fund shareholders, as implicated fund companies struggle with the new and unexpected cost burdens. Rather, **I** believe the entire mutual fund industry should share this cost. When times are good, they win together, so when times are bad, they should lose together.

Lastly, I don't believe it's necessary to include exchange-traded funds ("ETFs") as part of the proposed disclosure requirements that pertain to File No. S7-26-03. As things stand today, nearly ail U.S. listed exchange-traded funds track benchmark indexes that allow very little room for portfolio manipulation or deviation. Creating another layer of quasi-disclosure rules are mostly useless, since the transparency of index portfolios already exists. Simply put, ETFs do not suffer from the same product structure issues as their mutual fund cousins. Therefore, they can't and shouldn't be regulated the same.

In closing, the ideas and notes expressed herein represent my private opinions, and do not attempt to chastise, supersede, or correct the regulatory path of the SEC

We appreciate your kind attention to these matters and **we look** forward to reviewing recommendations received from the Commission.

Sincerely,

Ronald *L.* DeLegge

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