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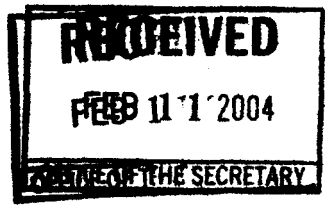


February 6, 2004

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

Re: Comment on proposed amendment to rules governing pricing of mutual fund shares; File No. S7-27-03

Dear Mr. Katz:

As an employer sponsoring a 401(k) plan for our employees, I am writing to express my concern about the impact on millions of participants in retirement plans of the proposed "hard 4 p.m. Eastern Time (ET) close" contained in Release No. IC-26288 (proposed amendment to rules governing pricing of mutual fund shares).

Imposition of a hard 4 p.m. ET close will significantly burden retirement plans and result in delayed trading for plan participants compared to other investors, creating an uneven playing field.

Millions of retirement plan participants will be relegated to next-day trading if transactions must be provided to the mutual fund itself (rather than a third-party intermediary) by 4 p.m. ET. Participants typically place their retirement plan trades through recordkeepers or third party administrators (TPAs) that perform significant administrative activity after trades are closed to participants. These recordkeepers and TPAs enter into agreements with mutual fund companies, allowing the recordkeepers or TPAs to take trades from participants as the mutual funds' agent until the 4 p.m. deadline, and then provide trades to the mutual fund at a later deadline. Under the proposed rule, however, the best case scenario would result in a trading deadline for participants as early as 10 a.m. ET (or 7 a.m. PT) in order to meet a mutual fund's hard 4 p.m. ET deadline.

We believe this proposal is contrary to the wishes of most Americans and governmental leaders who recently sought to equalize the trading rules between 401(k) plan participants and individual investors, particularly following the Enron situation in which 401(k) participants testified they had felt disadvantaged in comparison to individual investors.

Because qualified plans are subject to many regulatory requirements, the recordkeeper or TPA performs a variety of functions after trades are closed to participants. These functions, which currently occur after the 4 p.m. close, include gathering transfer

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instructions from participant web sites and telephone voice response systems, running various regulatory checks and edits to determine the validity of transfer requests, reviewing loan and distribution requests and verifying cash availability for contributions. With employees' choices in many plans (participants can trade in and out of funds across different mutual fund companies), the recordkeeper or TPA also needs the funds' calculated NAV to process a trade involving multiple mutual funds on the same day the participant trading instructions are received. It is impossible to know how much of another mutual fund to purchase until after 4 p.m. when the sales price for the old fund is available and we know how many dollars to spend. Although the NAV is provided after the 4 p.m. close, recordkeepers and TPAs can make those calculations with the NAV post-4 p.m. under the present system as long as the trades have been submitted to them by 4 p.m.

Some have argued that the trading delays for retirement plan participants caused by the hard 4 p.m. close do not significantly disadvantage these participants because their investments are long-term investments for retirement. The Enron employees certainly did not buy that argument. Not all long-term investors are committed to a particular fund for the long term. Many investors perform strategic asset reallocation periodically and those investors justifiably expect same day trading. The length of one's investment time horizon is not a reason to disadvantage that investor.

Studies have shown that being out of the market for even a few days periodically can result in a decrease in returns. A major world event could significantly affect the market after trading is closed to plan participants under the proposed rule. These participants would be blacked out from trading for an extra day while private investors would not.

These adverse consequences can be avoided while addressing the late-trading issues through a technology solution. The solution proposed by the U.S. House of Representatives in the Mutual Funds Integrity and Fee Transparency Act of 2003 (H.R. 2420), which passed the House in November 2003 on a 418 to 2 vote, would address many of the mutual fund industry problems including late-trading issues.

H.R. 2420, as passed by the House, has specific language designed to remedy the harm that will otherwise occur to plan participants under the hard 4 p.m. close approach. The language directs the Commission to issue rules to prevent after-hours trading but states the rules are to include an exception for broker-dealers, retirement plan administrators and other intermediaries if the trades are collected by the intermediaries using procedures:

- Designed to prevent the acceptance of trades by such intermediaries after the time at which net asset value was determined, and
- Subject to an independent annual audit to verify that the procedures do not permit the acceptance of trades after the time at which such net asset value was determined.

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Technology exists today that will time stamp trades placed with most recordkeepers and TPAs. These systems, which could be subjected to outside audit, could be modified quickly to provide the protections that investors and the SEC are seeking.

Because not one of the after hours trading abuses has involved 401(k) participants trading after 4:00 p.m. ET, I believe it is not good policy to impact millions of Americans negatively for the bad actions of a few insiders.

We urge you to consider and adopt these technology solutions that would address the legitimate concerns surrounding late trading without relegating plan participants to second-class investor status.

Sincerely,

TEXAS PENSION CONSULTANTS

Jim Hudson

Jim Hudson, C.P.A.

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