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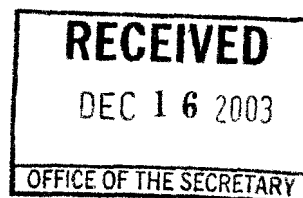
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November 14, 2003

William H. Donaldson
Chairman
U.S. Securities and Exchange Commission
450 5th Street
Mail Stop 6000
Washington, D.C. 20549



Dear Commissioner Donaldson:

On behalf of the SPARK Institute, I thought it would be worthwhile to follow-up our discussions with the Commission's Division of Investment Management staff with some information we have developed regarding the effect that proposed regulatory action to address late trading and market timing abuses in the mutual fund industry would have on the retirement services industry and the 70 million American workers who are participants in 401(k) and other defined contribution benefit plans ("plans"). As you are well aware, plans are major investors in mutual funds, holding more than \$3.2 trillion in assets as of the end of 2002. It is estimated that 45 percent of the assets of 401(k) plans are invested in mutual funds, and that 50 percent or more of mutual fund transactions are derived from plans. Members of The Society of Professional Recordkeepers and Administrators ("SPARK") provide services to plans servicing 95 percent of all 401(k) participants.

In this letter, we describe how the proposed "hard" 4:00 p.m. EST cut-off for delivery of orders to mutual funds will affect plan participants. As discussed below, the 4:00 p.m. cutoff would have significant adverse consequences for American workers who participate in plans as well as the companies servicing plans. Under current systems, plan mutual fund transactions are electronically time-stamped before 4:00 p.m., but the processing of these transactions cannot be completed by 4:00 p.m.¹ It is simply not possible. Accordingly, under

¹ Processing systems accept plan transactions that generate investment instructions, including participant instructions for the allocation of periodic plan contributions, requests for exchanges among plan investment choices, requests for loans, benefits and other distributions, and plan sponsor instructions as to the investment of amounts participants do not direct, plan conversions, and other sponsor-level transactions. AS transactions are entered to the front-end processing system they are tested to ensure that certain plan rules are satisfied. Once accepted, the transactions are electronically date-time stamped and held for processing, generally on a daily

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the proposal mutual fund transactions involving plans would need to be held over for processing at a later day. This would essentially result in the creation of two classes of investors: those who invest directly with a mutual fund who would get today's NAV until 4:00 p.m., and plans and others who use intermediaries who would be subject to an earlier cut off time. For 401(k) plans, it is estimated that the earlier cut off time would need to be between four to six hours before the market closes (i.e., 10:00 ~~am~~ to Noon Eastern Time). For this reason, a hard 4 p.m. deadline would cause plan participants to become "second-class" investors vis-a-vis other mutual fund investors.

Moreover, exchanges between plan investment options would take at least two days (one day to sell and another day to purchase). Exchanges requested on a Friday would not be completed until the following Tuesday, at the earliest. This scenario is reminiscent of the "balance forwarding" trading systems prevalent in the 1980s. Given that most plans currently allow participants to trade mutual fund shares daily, the change mandated by a hard 4:00 p.m. deadline is a harsh penalty for American workers, given that not a single late-day trading allegation has been leveled at plan participants. Fixing late trading by plan participants is fixing a problem that does not exist. In fact, under the proposed "fix," participants would bear the burden for the actions of hedge fund late day traders and mutual fund insiders. Not only is this unfair, but it would in all likelihood be ineffective. We describe below a few of the consequences of a 4:00 p.m. hard deadline on plan participants.

1. Lost Investment Opportunities and More Float

Where processing of trades takes two days or more, plan assets will be held in suspense, uninvested and potentially losing the advantage of investment opportunities. For example, a plan participant seeking to exchange a stock investment for an interest-bearing investment, who places the exchange order after the cut-off time on a Friday, would likely not start accruing interest from the interest-bearing investment until the following Tuesday or Wednesday – a full three or four days after the trade was initiated. This essentially amounts to taking money out of the retirement accounts of working Americans and contributing it to those who will benefit from the "float" earned on this uninvested cash. The handling and disposition of float presents difficult fiduciary issues that the Department of Labor ("Department") has wrestled with over the years.

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cycle. Under these systems, investment instructions received after a cut-off time (which may not be later than 4 p.m. EST) are held for processing on the next business day. Recordkeeping systems require fund price information to complete the daily processing, which allows the system to price and process participant instructions to make exchanges between plan investment options on the same day. This processing can take several hours or longer. Because the system is reconciled with trade confirmations, trust records and fund reports as part of the daily processing cycle, the overall process is fairly complex.

2. Disappearance of Open Architecture

The Department has long advocated open architecture, giving participants the ability to choose fund investments from several mutual fund families. A hard 4:00 p.m. deadline would likely favor a bundled approach among 401(k) and other plan service providers and discourage use of outside funds. This is because the processing of participant instructions using a single fund family may be accomplished within a 4:00 p.m. deadline where open architecture (i.e. use of multiple fund families) would not.

3. Second Class Status will be Detrimental and Confusing to Participants

Most plan participants currently have access to daily trading, as if investing on a retail basis. Participants will view a change to "next-day" trading (and a two-day process for any exchanges) as confusing and unfair. It is also worth noting that, even if plan participants are generally seen as "long-term" investors, they remain sensitive to short-term price volatility whenever they become eligible for plan benefits, *e.g.*, when approaching termination of employment or retirement. Further, in plans with an employer stock investment option, delays in mutual fund trading would also delay participant trades in employer stock under the plan. Given the volatility of today's markets, even a one-day delay in trading may be significant to the value of the participant's plan benefit.

An example illustrates this problem. Suppose that plan participants are subject to an internal cut-off time of 11:00 a.m. EST, so that trades can be processed and submitted to the mutual fund by the hard 4:00 p.m. deadline. Suppose further that at 12:00 p.m. news breaks which would cause a prudent investor to sell the fund. Consequently, large numbers of shareholders place sell orders. Because plan participants are unable to receive today's price, retail shareholders will sell at a higher price than plan participants.

4. A Hard Deadline will Create Additional Opportunities for Abuse

Under a hard 4:00 p.m. deadline, mutual fund insiders and unscrupulous persons could take advantage of knowledge (or even assumptions) regarding the cue of millions of plan investment instructions waiting to be processed and use that knowledge to "front-run" the fund, resulting in losses to plan participants. **An** investor with direct and timely access to their mutual fund assets (*e.g.* a retail investor) could simply place orders directly with the mutual fund company shortly before market close, knowing that the large number of buy or sell orders placed today will drive the markets up or down. This new brand of market timing would be a direct result of the hard 4:00 p.m. deadline.

In addition, the imposition of a hard 4:00 p.m. deadline would increase the likelihood that large market swings today would be repeated the following day as the reaction to

significant news is executed over two days. The potential for hedge fund managers and similar investors to "game" a system with two classes of investors is enormous.

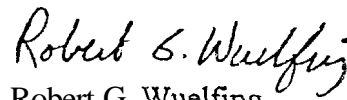
Thus, the hard 4:00 p.m. deadline, which has been touted as a way to **fix** the problem of mutual fund arbitrage could easily become a tool for new forms of arbitrage. Ultimately, the opportunity for arbitrage arises not because trades are processed after 4:00 p.m., but because mutual funds are priced **as** of 4:00 p.m. EST rather than during the trading day like common stocks. Those with criminal intentions will always **seek** to exploit this inefficiency in the marketplace for personal gain. The hard 4:00 p.m. deadline actually creates market inefficiencies where none previously existed.

5. Alternative Approaches

A 4:00 p.m. hard deadline will not work. Nevertheless, we believe that other approaches may be implemented to address late trading and market timing problems. The fact is that automated systems used for plan recordkeeping and trade processing are already subject to internal control procedures designed to ensure the integrity and effective operation of these systems. Importantly, virtually all plan recordkeeping systems already place an electronic date-time stamp on each transaction record. These internal controls and procedures, augmented by independent audit processes, provide a strong basis against the possibility **of** late trading abuses in connection with after-hours trade processing for 401(k) and similar plans.

We would be happy to discuss these issues with you in more detail at your convenience.

Respectfully submitted,


Robert G. Wuefing