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March 24, 2004

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



Re: Proposed Amendments to Rule 22c-1 Relating to Pricing of Fund Shares;
File No. S7-27-03

Dear Mr. Katz:

OppenheimerFunds, Inc. appreciates the opportunity to comment on the revisions proposed by the Securities and Exchange Commission to Rule 22c-1 under the Investment Company Act of 1940, as amended (the "Rule"), as contained in SEC Release No. IC-26288 (December 11, 2003) (the "Proposing Release"). OppenheimerFunds, Inc. is the investment adviser to the more than 65 investment companies that comprise the Oppenheimer family of mutual funds, having more than 7 million shareholder accounts. Including its affiliates, OppenheimerFunds, Inc. manages assets in excess of \$155 billion, including more than \$140 billion of mutual fund assets. The Oppenheimer mutual funds are sold primarily to members of the public by broker-dealer firms, banks, trust companies, insurance companies, financial advisors, retirement plan administrators and other firms (we refer to these types of firms as "intermediaries" in this letter) that have selling agreements with our subsidiary, OppenheimerFunds Distributor, Inc., a registered broker-dealer that acts as the general distributor for the Oppenheimer funds.

We strongly support the Commission's efforts (and those of state securities regulators) to prevent "late trading" in mutual fund shares.¹ However, we believe that the approach taken in the Rule amendments described in the Proposing Release, which would impose a so-called "hard 4:00 P.M. close" for the acceptance of orders for mutual fund shares only by a fund, or the fund's principal transfer agent, or a registered clearing agency, will be more harmful to the investing public than the illegal conduct the Commission is attempting to eradicate. The proposed changes to Rule 22c-1 will, in effect, create two classes of mutual fund investors, one

¹ By "late trading," we refer to the attempt to obtain the current day's offering price for a mutual fund's shares by the placement and acceptance of an order to purchase, redeem or exchange mutual fund shares from the investor after the fund's net asset value has been determined on that business day.

of which will be seriously disadvantaged because they purchase shares through intermediaries. The proposed Rule amendments would favor those funds that sell their shares directly to members of the public and will create substantial competitive and operational disadvantages to funds sold through intermediaries. We believe that the Commission should not promulgate rules that provide a competitive advantage to one distribution channel over another. Moreover, the proposed Rule amendments may well make it less desirable for investors to choose mutual funds rather than other types of investments, such as brokerage accounts, bank accounts, insurance products and separate accounts that will not be subject to such time constraints for valuation of securities. Virtually all of the billions of dollars of purchases of the shares of the Oppenheimer funds during 2003 were made through intermediaries, not directly through our funds' distributor or transfer agent.

In our view, there are strong public policy arguments against the proposed approach, as well as practical problems posed by the proposed Rule amendments. Moreover, the proposal to move the final acceptance of orders away from intermediaries to mutual funds and their transfer agents will probably not, regrettably, assure that illegal late trading activities will not occur in the future nor do we believe that it will necessarily make it any easier for the Commission staff to police trading activities in mutual fund shares. As discussed below, we believe that there is a more appropriate and fair way to prevent the late trading abuses that the Commission has identified without disrupting existing mutual fund distribution practices and without disadvantaging millions of investors, by focusing on the requirements for the processing of transactions and by closer SEC staff supervision and inspection of intermediaries that accept orders for mutual fund shares to assure their compliance with the existing requirements of Rule 22c-1.

The Proposed Rule Amendments Will Harm Investors. Under current distribution practices and interpretations of Rule 22c-1, intermediaries play a critical role in the distribution of mutual fund shares by acting as duly appointed agents of a fund's distributor (typically pursuant to a selling agreement or special agency intermediary). In that capacity they are able to accept orders from their customers to buy, sell and exchange shares of a mutual fund as long as those orders are received by the intermediary/agent from the customer no later than the time or times the fund's board of directors has set for the calculation of the fund's net asset value per share. Typically, that calculation is done either at 4:00 P.M. Eastern Standard Time or at the close of The New York Stock Exchange on a business day, although some funds may price their shares more frequently or at other times of the day. For purposes of convenience, this letter will refer to the time of calculation of net asset value for funds as "the 4:00 P.M. NAV calculation." Orders timely placed by customers with such intermediaries are processed at that day's offering price based on the current net asset value even if the orders are submitted by the intermediaries to the fund's distributor or transfer agent for processing after that time.

Today, broker-dealers, retirement plan third-party administrators ("TPAs"), trust companies and banks that are participants in N.S.C.C.'s Fund/SERV system process millions of dollars of mutual fund orders for their customers each day, with those orders receiving that day's offering price if they were received by the intermediaries from their customers before the 4:00 P.M. NAV calculation is made. Those orders typically cannot be gathered and processed by the intermediaries on their computer systems in time to submit them through Fund/SERV to the

mutual fund's distributor or transfer agent before the 4:00 P.M. NAV calculation is made on a business day. If the intermediaries were not permitted to submit to Fund/SERV after 4:00 P.M. those orders received from their customers prior to the fund's 4:00 P.M. NAV calculation and receive that day's price, there would be a delay of one or more days in the processing of those orders. As a result, the customers of those intermediaries would probably not receive that current day's share price, while investors submitting orders directly to a fund's distributor would receive that current day's price. As noted above, that would result in a "second class" status for investors purchasing shares through intermediaries.

The intermediaries receiving such orders from their customers typically must process such orders on their computer systems before they can provide the trading information to the mutual fund distributor or transfer agent, either through NSCC Fund/SERV or direct data feeds. In many cases the intermediaries need to know the actual net asset value calculations by the funds to apply them to the transactions received from their customers on their record-keeping systems. That processing by the intermediaries typically requires those holding shares in omnibus accounts on the books of the mutual funds to net purchases, redemptions and exchanges in order to balance the account holdings properly. Intermediaries must assure that proper sales charge breakpoints are applied to orders, and that letters of intent and rights of accumulation are properly credited to reduce sales charges. Because of the variety in "rules" for those account features that apply to different mutual fund companies whose shares are typically offered by intermediaries, that process is time-consuming and may, in many cases, be manual. However, that process is vital to assure fairness to the investor. The current system allows sufficient time for that to be done, even if the data is not finally provided to the mutual fund transfer agent or distributor until long after the 4:00 P.M. NAV calculation, as long as it is provided before the transfer agent or distributor's pricing cycle is run for that day's activity. The system has worked well, and served investors, mutual funds and intermediaries well. Abuses by a few miscreants do not require shutting that system down.

The current system, allowing funds' distributors and transfer agents to process at the current price those orders received from intermediaries after the 4:00 P.M. NAV calculation is made, has greatly contributed to the ease of purchasing mutual fund shares. It has facilitated the availability of mutual funds to millions of investors around the country and contributed to the tremendous growth of the mutual fund industry. It has also helped reduce the disadvantages that investors in far western regions of the United States, including California, Hawaii and Alaska, would otherwise face in attempting to place their orders with mutual fund companies before the 4:00 P.M. NAV calculation in order to receive the current day's price.

In the Proposing Release, the Commission notes that recent investigations by the staff of the Commission and state securities regulators uncovered instances of "late trading" in mutual fund shares by intermediaries. However, the instances of reported late trading have been relatively few compared to the overall sales, exchanges and redemptions of mutual fund shares, and the proposed solution would be draconian by requiring a "hard 4:00 P.M. close." That solution would require intermediaries to establish earlier order acceptance cut-off times during the day in order to process the purchase, redemption and exchange orders they receive from their customers, to be able to transmit them to the fund or its transfer agent by the "hard 4:00 P.M. close." For investors in time zones farther away from the East Coast, orders will have to be

submitted to the intermediaries very early in the day and more likely than not, those orders will not be able to be processed in time to be placed with the fund or its transfer agent to receive that day's offering price. There will likely be a full day's delay in the processing of those orders by the time they are submitted to the relevant mutual fund. Those investors will, in effect, be relegated to "second-class" status, compared to investors who purchase shares directly from fund companies or who live on the East Coast and deal with intermediaries whom can process their transactions in time to receive that day's offering price. Those investors will have greater market risk than their direct-purchasing counterparts. That approach will ultimately disadvantage funds sold through intermediaries. It is important for the Commission to remember that investors holding shares in retirement plan accounts do not have the option of submitting their orders directly to the mutual funds in which their plan account is invested: they must submit their orders to the retirement plan trustee or administrator to process. The same is true for other investors holding shares in other types of omnibus accounts, such as accounts at broker-dealer firms. As a matter of public policy and fairness to those investors, the "hard 4:00 P.M. close" in the Proposing Release is undesirable.

We believe that it is a mistake to think that investors are not sensitive to receiving the offering price on the day they submit their purchase, redemption or exchange orders. We strongly believe that investors who submitted redemption orders on the day prior to the 1987 market crash would have been severely disadvantaged and angered if their orders had been delayed for a day because of the effect of a "hard 4:00 P.M. close" due to processing limitations by their intermediaries. The inability to redeem or exchange shares in a timely fashion in a rapidly declining market would result in tremendous exposure to market risk for millions of mutual fund investors. There are ample studies that show the positive long-term effects on total return in a mutual fund account from purchasing shares on the day when the offering price was at its lowest level, compared to the next day when the price rose. Whether or not investors are sensitive to receiving a particular day's price, the rules and regulations governing market operations and conduct should assure fairness and equality of access and application, and it is imperative that rules not be adopted that will reduce the goal of equality of market access to the "law of averages." Any action by the Commission to adopt a rule, such as the "hard 4:00 P.M. close," that will result in the delay of processing mutual fund share orders for some investors will result in fundamental unfairness in the operation of the market.

There Are Alternative Solutions That Are Practical and Fair. As stated above, we believe that there are two alternate approaches the Commission should pursue to achieve the dual goals of preventing unlawful order entry for mutual fund transactions and assuring equal market access to mutual funds for all investors:

- **Require Intermediaries That Accept Orders to be Registered with the Commission and Subject to Inspection by the Commission Staff:** We believe that intermediaries should be permitted to accept and process purchase, redemption and exchange orders on behalf of mutual funds and their distributors, provided that those intermediaries are registered with the Commission as broker-dealers and/or transfer agents, and thus subject to the Commission's rules and inspection and compliance oversight by the Commission staff. We believe that the Commission Office of Compliance Inspections and Examinations can be effective in helping assure the integrity of the order processing

requirements of Rule 22c-1 by closely inspecting intermediaries that process orders on behalf of mutual funds and their distributors. To the extent that the OCIE staff is overburdened, additional resources should be committed to increase the numbers of inspectors and the breadth of the inspection program. We strongly support increases in funding for the Commission to enable it to carry out its mission to assure the integrity of the U.S. capital markets and the efficiency of their operation to foster capital formation and the protection of investors. We are certain that there is widespread support for those goals in the mutual funds industry today, as well as by investors.

- **Require Intermediaries and Others Processing Orders to Use Verifiable Order Processing Systems.** While there must ultimately be a “hard close” imposed at some level in the flow of orders to mutual fund distributors to assure compliance with Rule 22c-1, The Commission could impose a requirement that order processing intermediaries that are designated in selling or agency agreements by a fund’s distributor as intermediaries authorized on behalf of the distributor to accept orders to purchase, redeem and exchange shares of the fund must use electronic or physical time stamping of orders that could not be changed once the order is entered into the intermediary’s trading system, perhaps using an atomic clock or similar method to record the time and date the order was received by the intermediary from its customer. Because certain mutual fund platforms may receive and process orders from other intermediaries, the “hard close” should be applied only at the level of the final intermediary placing the order with the mutual fund distributor.
- **Require Intermediaries Appointed as Agents to Receive Orders to Certify Compliance with Rule 22c-1.** The certification regime imposed by the Sarbanes-Oxley Act could be a paradigm for requiring that any mutual fund distributor desiring to appoint intermediaries to accept orders for mutual fund trades from the intermediary’s customers on behalf of the distributor must annually provide a certification by their chief executive officer or other executive officer to the fund’s distributor that the intermediary has complied with the requirements of Rule 22c-1 and the terms and conditions for placement of orders set forth in the prospectus of the relevant fund. Such intermediaries could be required to secure independent verification of their internal controls and procedures designed to assure compliance with Rule 22c-1 and other applicable laws and regulations relating to the receipt and processing of mutual fund transaction orders, pursuant to a review under Statement of Accounting Standards 70 or similar means, and provide such reports to the mutual fund distributor annually, as an additional verification of such compliance with Rule 22c-1.
- **Intermediaries Should be Required to Provide Greater Transparency as to Customer Accounts.** Coupled with that requirement should be the requirement that such intermediaries provide mutual funds, their distributors and their transfer agents with greater transparency as to the customer accounts for which the intermediaries process orders on behalf of the funds. We believe it would be desirable to require such intermediaries to provide sufficient account level information, including requiring that all transactions be held in “partially-revealed” sub-accounts for which tax identification

numbers of the customer are furnished.² This would also facilitate the imposition of redemption fees on accounts held by and in the name of intermediaries for their beneficial owners.

We believe that these alternatives would preserve the vital role that intermediaries play in providing access to mutual fund investments for millions of investors, especially those seeking to invest for retirement in 401(k) plans and those using financial advisors to help select mutual fund investments. These alternatives could help provide assurance as to the integrity of the order processing system for mutual fund transactions. To be sure, no set of rules or procedures can ever prevent all acts of fraud or dishonesty, but these proposals will provide the Commission with the enhanced ability to regulate and inspect the intermediaries and safeguard the integrity of the system to assure compliance with Rule 22c-1. In the process, the Commission can help assure that there is equality of access within the mutual fund industry, such that no one means of distribution is favored over another, and that mutual funds continue to be a viable competitor to other types of investment products.

Again, we appreciate the opportunity to comment on this proposal and the efforts by the Commission to find ways to enhance the integrity of the mutual fund transaction processing system.

Sincerely,



Robert G. Zack
Executive Vice President and
General Counsel

cc: The Hon. William H. Donaldson
The Hon. Paul S. Atkins
The Hon. Roel C. Campos
The Hon. Cynthia Glassman
The Hon. Harvey J. Goldschmid
The Boards of Directors/Trustees of the Oppenheimer Funds
Mr. John V. Murphy, Chairman, President and CEO, OppenheimerFunds, Inc.
Paul Roye, Esq.
Cynthia Fornelli, Esq.
Robert E. Plaze, Esq.

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² This would provide sufficient protection to the intermediaries and/or their clients against "poaching" of customers by the fund companies and their distributors while providing sufficient detail to enable the funds and their distributors and transfer agents to monitor accounts for excessive exchange activity, for example.