Securities Industry Association
120 Broadway - 35 Fl. • New York, NY 10271-0080 • (212) 608-1500, Fax (212) 968-0703
1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000, Fax (202) 216-2119
www.sia.com, info@sia.com

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Paul F. Roye, Esq.
Director
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

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Dear Mr. Roye,

We want to thank you, and your SEC colleagues, for meeting with SIA staff and various broker/dealer members on the important issues of late trading and market timing. We recognize that the problems that have arisen in this area are extremely serious and require significant and immediate action and we are committed to ensuring that public investors interests are protected. With this in mind we propose the following:

I. Require a "hard close" for order acceptance no later than the close of business of the NYSE for all open ended mutual funds. A "hard close" is defined as the point in time after which a transaction, without exception, will not be entitled to receive a fund's current day pricing.

A. The place of order acceptance to which this hard close would apply would be:

1. The broker/dealer's electronic order capture and routing system which assigns a verifiable order entry time aligned with the atomic clock currently used for equity order time stamping, provided certain other conditions are also met.

2. The mutual fund's processing agent for orders not sent through a broker/dealer intermediary. The agent would also be subject to maintaining an electronic order capture system, with verifiable order entry time aligned with the atomic clock to document receipt.

3. The electronic order capture system of regulated entities not currently under the SEC's jurisdiction, but regulated by the OCC or other bank regulator, which impose a companion rule to require a hard close on order acceptance by 4:00 p.m..

4. For entities which are unregulated, or unable to comply with the hard close time stamping requirement, orders would need to be placed with the fund directly, or some other designated regulated entity that has electronic time stamping capability to insure receipt by the hard close cutoff time.

B. Orders not accepted into the order entry system of one of these entities by the hard close, even where attributable to legitimate processing errors, or similar reasons, would without exception, be deemed executions on the next business day.

C. Provisions for major system outages on a firm, regional, utility, or industry level should be built into the fabric of any additional regulations.

While this hard cutoff will impose greater costs to broker-dealers processing orders, since they will no longer be able to obtain executions at current day prices, even for legitimate errors, we believe such risk exposure will encourage firms to make more internal changes in procedures, technology and resource allocation to effectively minimize the risk of missing the hard 4:00 p.m. close. Placing this exposure on broker-dealers is much more desirable than having an earlier order capture cutoff at the broker-dealer level, which would be necessary to enable processing by the broker-dealer and NSCC/Fund/Serv to be completed in time for orders to be transmitted to the fund by 4:00 p.m.. An earlier cut-off time is detrimental to the millions of individual mutual fund investors who expect and deserve access and liquidity during full market hours. This detrimental impact is discussed in more detail later in the letter.

11. Require that all firms accepting orders, and subject to the aforementioned order acceptance hard close, develop a system to insure compliance with such hard close. The components of such a system would include:

A. Maintaining written policies and procedures to insure compliance with the order acceptance hard close cutoff requirement.

B. Senior management member sign off on the adequacy of such procedures.

C. Conducting an annual external audit addressing compliance with, and the effectiveness of, such procedures.

We believe that having a clear rule for order acceptance, which allows for no exceptions, and establishing specific individual accountability (as is the case with anti-money laundering and financial reporting rules) will lead to more effective compliance oversight.

III. Encourage mutual fund product vendors to review their internal pricing practices to determine if changes in product design could effectively eliminate economic opportunities for late trading or market timing.

While SIA and its broker/dealer members do not purport to be fund product design experts, we do believe some merit exists to using product design as a deterrent to undesirable and potentially harmful short term trading of mutual funds designed as long term investment vehicles.

. . . .

It is certainly fair to ask why the above recommendations would produce better compliance than the current regulatory investigations seem to reflect presently exists. In that regard we believe:

1. A clear, unambiguous, hard close order acceptance rule applied to all who accept orders on behalf of mutual funds will eliminate any uncertainty about what is acceptable or not acceptable. This clarity will enhance compliance programs and cultures.

2. Documentation of firm procedures and controls, with senior management sign off, and annual independent review, raises both the awareness and accountability for internal compliance.

3. With documented procedures, management sign-off and independent review it will be easier for the SEC and other regulators to monitor broker-dealer adherence to applicable requirements in the course of normal on site reviews, or through periodic document requests.

4. A hard close at 4:00 pm, with no exceptions, creates a level playing field that would allow competitive forces to operate and incent firms to develop additional procedures and technology, and allocate resources so that customer orders are properly accepted and entered by the order acceptance cutoff.

5. A change in product design to eliminate the short term trading profit opportunities will effectively reduce the incentive to engage in late trading or market timing activities.

IV. To address the issue of market timing we propose the following:

A. Encourage review of product design alternatives to eliminate economic opportunities.

B. Require those accepting orders to have documented procedures, with appropriate senior management sign-off and independent review, to identify market timers in accordance with the Fund's prospectus.

C. Subject to customer privacy rights, require sufficient trade level customer detail to be provided to funds on transactions submitted on an aggregate basis (such as omnibus) to assist funds in identifying market timing activity.

<u>Impact on Mutual Fund Investors of a 4:00 p.m. Fund Level Hard **Close**</u>

Before addressing the impact of a 4:00 p.m. hard close at the fund level, it is important to note that such a requirement would necessitate broker-dealers imposing a much earlier order cut off time (estimated to be 2:00 p.m.) in order to complete all processing necessary to transmit orders to the fund by 4:00 p.m. Broker-dealers which self clear, or which act as introducing brokers and clear through a clearing broker-dealer, must process and batch these orders and perform break-point analysis on the orders before they are sent on to NSCC/Fund/Serv, which processes and clears the orders and transmits them to the fund company. This processing chain is complex, and various parties have regulatory, operational, technological and contractual obligations that must be satisfied. It is a process that has taken a long time to build and it works efficiently and to the significant benefit of fund investors.

We would not want individual fund investors, who desire or require the service of broker-dealers, to be prejudiced by an early cut-off, while other fund investors would be free to trade for two more hours solely by virtue of their account set-up.

The impact of imposing a 4:00 p.m. hard close on receipt of the order at the fund company, and thereby imposing a 2:00 p.m. hard close on the broker-dealer fund investors, is substantial. Investors holding mutual funds through brokerage accounts would lose the ability to shape their investment decisions by observing market developments in the last two hours of the trading day. Furthermore, moving fund holdings to fund distributors to trade fund shares until 4:00 p.m. may not be a viable option to investors because the distributor may not be able to provide the full array of services that investors require and receive from their broker-dealers. These could include special execution services such as the ability to liquidate equity or debt securities to purchase fund shares (or vice-a-versa) or to exchange shares of funds of different fund complexes. Additionally, investors selling mutual fund shares after 2:00 p.m. through a broker-dealer would not be able to utilize the proceeds of the sale to fund purchases of other securities made on the same trading day. **As** a general matter we are concerned that the 4:00 p.m. hard close at the fund level may also have additional significant unintended consequences for fund investors which have not yet been identified.

Additional factors to consider include the following:

1. NYSE stock prices change second by second and, therefore, real time capture, routing and execution of orders is critical. Mutual fund pricing is established by the valuation of all fund assets as of the NYSE close. Therefore, an order placed at 9:30 a.m. receives the same price as an order placed at 3:30 p.m. Since real time capture, routing and execution of orders is not critical to mutual fund executions, many firms extract such orders to batch and route to the fund or NSCC well after the NYSE closes for the day. To require that firms present mutual fund trades to the fund by 4:00 p.m. would result in many broker/dealers extracting a day's worth of orders and transmitting all of them to the fund near the 4:00 p.m. close creating a huge technology traffic jam at the fund.

2. Each NYSE order stands alone as an execution with its share quantity and fee charged. Mutual fund orders for the same customer and related parties in many instances, do not stand alone. Most mutual funds allow breakpoints (e.g., a reduced commission charge) when certain investment dollar thresholds are reached. A real time submission of such orders would prevent the broker/dealer from aggregating related trades and result in over charging commissions. Such over charging could be identified the next day, but at a considerable cost to investor confidence when the first confirmation contained an erroneous price and failed to apply an entitled breakpoint.

3. With real time NYSE order capture, routing and execution, customers have access to the market to buy or sell until the 4:00 p.m. close. Since mutual funds must be aggregated to determine proper commission charges and submitted in batch, (a process that even with modem technology, can take two hours or more) the access to the market for mutual fund investors will be significantly reduced. Lack of access imposes greater market risks on individual investors who may have to wait a day for an execution. While this may not seem material, a 1% move in the market is a $100 cost on a typical $10,000 investment. Since the SEC has made a very significant issue of migrating NYSE stocks to penny increments, timely mutual fund execution should be considered equally important. In addition to reduced access, the reduced liquidity will be a hardship on investors.

<u>Summary</u>

The aforementioned recommendations are designed to demonstrate the seriousness with which the SIA and its broker-dealer members view the late trading and market timing abuses. We believe such recommendations would effectively deter the undesirable behavior of those who would abuse the public trust or violate the law, yet it will protect the access and liquidity desired by the vast majority of individual mutual fund investors.

Again, we appreciate the willingness of the **SEC** staff to engage in active dialog to solve this issue on behalf of the investing public. We look forward to continuing to work with the SEC staff and other industry constituents to quickly resolve this matter. Should you have any questions or desire additional information, please do not hesitate to contact me or Michael Udoff of SIA staff

Sincerely,

Marc E. Lackritz

Marc E. Lackritz
President

cc: Cynthia Fornelli, Esq.
Robert E. Plaze, Esq.
Susan Nash, Esq.
Catherine McGuire, Esq.
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