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February 13, 2004

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

Re: Amendments to Rules Governing Pricing of Mutual Fund Shares, File No. S7-27-03, 68 Federal Register 70388 (December 17, 2003).

Dear Mr. Katz:

The American Bankers Association¹ appreciates the opportunity to express its views regarding proposed amendments to Rule 22c-1 under the Investment Company Act. The Rule requires forward pricing of redeemable securities issued by registered investment companies. The proposed amendments to the Rule would provide that an order to purchase or redeem fund shares would receive the current day's price only if the fund, its designated transfer agent, or a registered securities clearing agency, *i.e.*, the National Securities Clearing Corporation ("NSCC"), receives the order by the time that the fund establishes for calculating its net asset value (hereinafter referred to as a "4 p.m. hard close"). The amendments are designed to prevent unlawful late trading in fund shares.

Our members are very concerned about the late trading issue. As investors in mutual funds, either for our own portfolio or for that of our fiduciary and brokerage clients, as well as transfer agents and investment advisers to mutual funds, we applaud the Commission's goal to protect mutual fund investors and to restore investor confidence in mutual funds by taking steps to eliminate the potential for illegal late trading.

¹ The American Bankers Association brings together all elements of the American banking community to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings institutions, trust companies and savings banks—makes ABA the largest banking trade association in the United States. The views expressed in this letter are also endorsed by the ABA Securities Association ("ABASA"). ABASA is a separately chartered trade association and non-profit affiliate of the ABA whose mission is to represent before the Congress, the federal government and the courts the interests of banking organizations engaged in underwriting and dealing in securities, proprietary mutual funds and derivatives.

We continue to strongly oppose a mandatory 4 p.m. hard close.² A 4 p.m. hard close to the mutual fund or its agents disadvantages investors by denying them the choice of distribution channels and limiting their investment options. Specifically, investors who invest directly with a mutual fund will get the benefit of today's NAV, while investors who invest through intermediaries, such as bank trust departments, custodians and broker-dealers, will get the next day's NAV, at best. It is our strong belief that the Securities and Exchange Commission ("Commission") should avoid creating a system that discriminates against investors based solely upon their choice of distribution channel.

In addition, by encouraging investors to deal directly with mutual funds or their agents, a 4 p.m. hard close may deny them investment diversification. For example, many employee benefit plans today offer participants fifteen or more investment options from a variety of mutual fund providers. If a 4 p.m. hard close is in place, investors may sacrifice choice to be able to receive daily valuation and trading. If an investor is invested entirely in one fund family, there is far greater potential for loss if that fund family encounters difficulties. History has shown time and again that lack of diversification hurts investors.

We are pleased, however, that the Commission has agreed to seek comment on alternatives to a 4 p.m. hard close. Many industry groups, including the ABA, have previously advocated an alternative that we believe can accomplish both the Commission's goal of eliminating the potential for illegal late trading, while, at the same time, not disadvantaging investors. Such an alternative could include:

- Electronic time-stamping of orders in a manner that cannot be altered or discarded once the order is entered into the trading system;
- Annual certification that the intermediary has policies and procedures in place designed to prevent late trades, and that no late trades were submitted to the fund or its designated transfer agent during the period; and
- Submission of the intermediary to an annual audit of its controls conducted by an independent public accountant who would submit his report to the fund's chief compliance officer.

In particular, we would like to focus our comments on potential technological solutions, that if put in place with appropriate controls, would, we believe, offer a tamper-proof system for preventing late trading.

² See Letter from Donald G. Ogilvie, President and CEO, *American Bankers Association*, to William H. Donaldson, Chairman, *Securities and Exchange Commission* (December 1, 2003); Letter from Edward L. Yingling, Executive Vice-President, *American Bankers Association*, to Paul F. Roye, Director, *Division of Investment Management, Securities and Exchange Commission* (November 12, 2003).

DISCUSSION

The Technological Solution

Since the Commission published its proposal to amend Rule 22c-1 to require a 4 p.m. hard close, ABA staff have had discussions with various parties regarding current technology.³ As a result of those discussions, we believe the technology, namely cryptography, is now suitably developed to permit the creation of a tamper-proof system for ensuring that trades are, in fact, received at the time the trade is stamped and cannot be altered after the time stamped without detection.

Today, banks, corporations, and the Federal government, as well as many international governments, all rely on public key or PKI cryptography to guarantee the authenticity of parties and integrity of data for commerce across electronic networks. PKI technology is used by researchers for patent validation, by corporations for intellectual property protection, and by companies such as Amazon.com and E-bay for Internet commerce transactions. With PKI, each user has a public key and a private key. The public key allows for encryption while the private key supports decryption. Digital signatures are one example of PKI technology that identifies the signer and ensures the integrity of the signed data. Digital signatures on every transmission authenticate the parties involved and also encrypt the content of every message, thereby permitting any alteration to a message content, even a single character, to be detected.

Any technology solution would also need to include electronic time-stamping to ensure that the file was created at or before the time stamped. When a file is time-stamped, a computer algorithm creates a unique identifier, often referred to as a fingerprint for the file. Mathematicians refer to this unique identifier or fingerprint as a hash algorithm. To ensure that the files have not been tampered with after the file has been time stamped, providers of digital fingerprinting/time-stamping typically use a one-way hash function. In this “one-way” system, one can go from the file to the hash value, but one cannot reproduce the file from the hash value. Thus, if the file’s contents change at all – even if only an extra space is put in one line – then a different fingerprint is created.

Most of the companies who use digital time stamping use encryption hardware that is certified by the National Institute of Science and Technology. We believe that the time-stamping of the file should be done by an independent company storing the certified encryption hardware.

Through PKI, the data originator submits their data to the independent company who then time-stamps and digitally signs the data using a hash of the information using their “private key.” The “public key” could then be used by any other party to verify that the independent company had actually signed the transaction at or before the time stamped and that the transaction had not been

³ While the ABA is reluctant to endorse any one particular solution or vendor, we would be most happy to put Commission staff in touch with these parties.

changed from its original state. We believe this solution can accommodate trade orders placed by intermediaries either individually or in batch form.

Other commentators may suggest other tamper-proof solutions. We strongly encourage the Commission staff to fully explore all creditable options as they consider what steps to take to eliminate the potential for illegal late trading.

The Audit Trail

Beyond the technology, the tamper-proof part of the solution would require institutions to have in place a set of operating business standards and technical interoperability requirements that ensure consistency and legal reliability. Audit programs and compliance review programs could then examine and validate that the entire process contains necessary and sufficient controls and processes to ensure integrity in the trading process.

These systems must have in place a strong audit trail of transactions. As the Commission is aware, trade orders do fail due to a variety of reasons including errors in data input, insufficient information inputted to process the transaction and insufficient assets in an account to support a requested participant loan. We envision a system that creates an automatic exception report when orders are modified post the 4 p.m. hard close. An automatic exception report can be audited to ensure that the underlying order was properly placed before the hard 4 p.m. close.

Other

The ABA recognizes that not all mutual fund companies, transfer agents, or intermediaries have the capability or desire to input a technology solution such as we have suggested. For example, we understand that some mutual fund companies only accept trade orders with original signatures and accompanying medallion stamps through the mail. Moreover, we understand that PKI technology has, to date, been somewhat expensive, although we are aware of programs that are just now coming to market that will make PKI technology more accessible to smaller financial institutions and intermediaries.

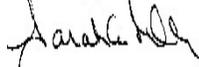
As a result, we would urge the Commission in adopting a final rule addressing late trading abuses to be open-minded and flexible, but, at the same time, be mindful of the cost attendant to these proposals. Some intermediaries may prefer the Commission's proposal to the technology solution suggested herein. Others may feel that the money spent on technology is well worth the investment to ensure that investors have choice in both fund families and distribution channels.

Finally, we are appreciative of the fact that the Commission has suggested that it expects to provide a one-year transition period to accommodate system changes associated with any final rule revisions put in place to address late trading. We would suggest that a one-year transition period would be the minimum necessary to implement a technology solution.

Conclusion

The ABA appreciates the opportunity to offer our comments on this most important issue. We believe that a technology solution can be developed to ensure that mutual fund orders are, in fact, received by intermediaries by 4 p.m. without the need for the Commission to mandate a 4 p.m. hard close to the mutual fund, its designated transfer agent or NSCC. If you have any questions or wish to discuss this matter further, please do not hesitate to contact either the undersigned or Lisa Bleier at 202-663-5479.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah A. Miller". The signature is written in a cursive style with a large initial "S".

Sarah A. Miller