ASPPA
WORKING FOR AMERICA'S RETIREMENT

Mandatory Redemption Fees for Redeemable Fund Securities

Re: Mandatory Redemption Fees for Redeemable Fund Securities (Release No. IC-26375A; File No. S7-11-04)

October 8, 2004

Jonathon G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, NW
Washington , DC 20549

SUBMITTED ELECTRONICALLY: rule-comments@sec.gov

Dear Mr. Katz:

The American Society of Pension Actuaries (ASPPA) appreciates this opportunity to supplement its comments(1) on Securities and Exchange Commission ("Commission") rule proposals relating to mandatory redemption fees.(2) This letter reiterates concerns of ASPPA members that non-uniform redemption fee requirements imposed by different mutual fund families will result in significant confusion and additional administrative and other costs for working Americans participating in tax-qualified 401(k) and similar tax-qualified defined contribution retirement plans ("plans"). Because the adverse impact on plan participants and beneficiaries from non-uniform redemption fee requirements should not be underestimated, ASPPA believes that the Commission should act to facilitate the adoption of more uniform mutual fund redemption fee policies. In particular, ASPPA continues to urge the Commission to consider adopting—

- A standardized redemption fee percentage and holding period;
- A mandatory*de minimis* rule providing that redemption fees may not be applied unless the value of the redemption exceeds $5,000; and
- A rule that limits the application of redemption fees (and reporting requirements under the proposed rule) to participant-directed exchanges and transfers, which are the only transactions participants could use to engage in abusive "market-timing" activities.

ASPPA represents more than 5,000 retirement plan professionals who assist employers in establishing and maintaining retirement plans, including senior representatives of "third party administrators" and banks, trust companies and insurance companies providing recordkeeping and other plan administration services ("plan recordkeepers and administrators"). In recent months, many of ASPPA's members have been involved in discussions between mutual fund and plan recordkeepers and administrators concerning how new mutual fund policies imposing redemption fees on transactions in participant-directed plans will be implemented. A variety of problems based on the experience of these ASPPA members is described below. We hope this information will assist the Commission in concluding that rules imposing uniformity with respect to mutual fund redemption fee policies will be helpful and appropriate.

A. Background. As we previously noted to the Commission, participants of participant-directed plans direct their account investments among plan investment options that are selected by a plan fiduciary who is responsible for prudently selecting and monitoring the plan investment options. Plan fiduciaries very often select mutual funds as plan investment options and are able to select mutual funds from several different mutual fund complexes under an "open architecture" model. In this regard, plan recordkeepers and administrators that are not affiliated with mutual fund investment managers have developed the capability of providing plans access to a broad, diversified selection of mutual funds and other investment options. As a result, even plan recordkeepers and administrators that are affiliated with large mutual fund complexes often offer their competitors' mutual funds. ASPPA believes that this trend provides important benefits to plans and participants because plan fiduciaries may select from a broad range of mutual funds to obtain the best combination of investment performance and cost for plan participants.

Having a variety of mutual fund options available to plans and plan participants is now proving to be problematic because of the new mutual fund redemption fee policies under consideration. Until recently, most mutual funds have waived redemption fees on shareholder transactions through an "omnibus" account, including plans. However, most likely in anticipation of the Commission's final rule respecting this issue, mutual fund complexes are now beginning to request that plan recordkeepers and administrators assist them in imposing redemption fees in connection with short-term trading activities by plan participants.

Currently, mutual funds impose a broad array of differing redemption fees on individual (*i.e.,* non-omnibus account) trades. There are different holding periods (*e.g.,* ranging from a few days to over a year) and different fee rates (*e.g.*, 0.5% up to 2%). Some mutual funds may use "tiered" redemption fees (*e.g.,* 2% for a short holding period and then 1% for redemptions made within a longer holding period). These variations may occur even on different funds within the same mutual fund complex.(3) Mutual fund redemption fee policies also may vary with respect to whether there is a *de minimis* rule. With respect to participant-directed plans in particular, mutual funds will also likely differ as to the types of transactions that should be subject to redemption fees—some funds have said that all participant transactions, including "routine" transactions such as contributions and loan repayments, should be subject to redemption fees even if such transactions could not be used for market-timing purposes, while other funds would only impose redemption fees on participant-directed exchanges and transfers.

B. Problems of a Non-Uniform Scheme. The lack of uniformity among mutual fund redemption fee policies means that each investment option offered to plan participants is likely to be subject to a different redemption fee policy. The lack of uniformity may be further complicated where a plan invests among funds from different fund complexes. As a result, plan recordkeepers and administrators are finding that imposing redemption fees on plans and plan participants involves burdensome complexity. ASPPA strongly believes that this burdensome complexity will adversely impact plans and plan participants, in a variety of ways.

1. Participant Communications, Cost and Confusion. All different redemption fee rules must be communicated to plan participants, increasing plans' costs for producing and reviewing participant communications materials.

More importantly, participants are likely to find confusing the fact that each plan investment option is subject to different redemption fee restrictions. Explaining non-uniform redemption fee rules requires lengthier participant disclosure documents, which are less likely to be reviewed by participants. As a result, participants will be frustrated with non-uniform redemption fee structures, negatively impacting their confidence in their plans as effective investment vehicles.

2. Increased Implementation Costs. To effectively apply redemption fee rules and collect redemption fees, recordkeeping and participant order taking systems (*e.g.*, automated voice response systems and Internet order taking systems) must be programmed. This reprogramming will be initially expensive for plan administrators and recordkeepers, but it will be far more expensive if systems must be programmed to accommodate a broad range of redemption fee rules, including different rates, different holding periods, different *de minimis* rules, and application to different participant transactions. These costs are compounded by the fact that each plan administrator or recordkeeper will be required to develop systems to accommodate mutual funds from the multiple different fund families that are available to their plan clients. Although system programming costs are initially paid by plan recordkeepers and administrators, plans and participants will ultimately pay through higher plan administrative and recordkeeping costs.

3. Ongoing Costs. On an ongoing basis, plan recordkeeping systems and participant-order taking systems must be maintained to apply each fund's policies on redemption fees. Maintaining systems that support a range of different rules and requirements relating to redemption fees will be more expensive than maintaining systems imposing uniform redemption fee policies, resulting in ongoing additional plan administrative costs.

In addition, the complexity of a non-uniform system of redemption fees increases the possibility of errors, resulting in greater potential liability for plan administrators and recordkeepers for improper administration of redemption fees, including potential liability to funds as well as possible claims by plan participants. This potential liability further increases the costs of plan recordkeepers and administrators, which ultimately would be paid by plans and participants.

4. Impact on Investment Choice. Non-uniform mutual fund redemption fee policies among mutual fund complexes may also result in fewer investment choices for plan participants. Non-uniform redemption fee policies will likely discourage plan administrators and recordkeepers from making available a wide range of mutual fund investment options under an "open architecture" service model, because it will be less expensive and easier to implement and administer redemption fee policies of a smaller universe of mutual funds. For similar reasons, plan fiduciaries may be encouraged to seek more uniformity in redemption fee policies among plan investment options rather than seeking out the most suitable plan investment choices.

5. Impact on the Plan Services Industry. It is critical to recognize that, as a result of Commission actions responding to mutual fund scandals, plan recordkeepers and administrators are already facing substantial new plan administrative and other costs. The costs of administering and collecting redemption fees under a uniform structure will be substantial; non-uniform policies would make an already difficult situation even worse. In this context, ASPPA anticipates that the burdens of administering non-uniform redemption fee policies will force more plan recordkeepers and administrators to exit the plan services business, which would further harm participants by reducing competition among plan service providers.

The Commission can address the problems that would be caused by a non-uniform regime of mutual fund redemption fee policies by proposing rules imposing some uniform requirements. In particular, it is critical that the Commission establish a uniform holding period and uniform rates for assessing redemption fees, given the enormous number of possible variations that mutual funds may impose if there are not uniform standards.

ASPPA further urges the Commission to establish a uniform *de minimis* rule, under which redemption fees are not imposed unless the redemption transaction exceeds $5,000. This rule would promote uniformity while substantially simplifying the number of individual participant transactions subject to redemption fees. Finally, we recommend the Commission establish a rule providing that the only transactions considered for redemption fees should be participant-directed exchanges and transfers, which are the only types of participant transactions that have the potential to involve market timing activities. By taking this approach, the Commission would protect mutual fund investors against abusive trading by plan participants, while substantially reducing the adverse impact and administrative costs of new mutual fund redemption fee policies that will apply to plans and plan participants.

Thank you for your consideration of these additional comments. We appreciate the ongoing efforts of the Commission and its staff to address the problem of abusive market timing by mutual fund investors, while still recognizing and taking into account the concerns of the retirement plan industry. We are available to discuss these comments and any other questions that may arise as you continue to consider these issues.

Sincerely,

Brian H. Graff, Esq., APM
Executive Director/CEO

cc:

Paul F. Roye
Robert Plaze

Comments on Proposed Rule: Mandatory Redemption Fees for Redeemable Fund Securities *[IC-26375A; File No. S7-11-04]* of Brian H. Graff, Esq., Executive Director; Jeffrey C. Chang, Esq., Co-chair, Government Affairs Committee; Sal L. Tripodi, Esq., Co-chair, Government Affairs Committee, American Society of Pension Actuaries, April 21, 2004.

Mandatory Redemption Fees for Redeemable Fund Securities; Proposed Rule, Release No. IC-26375A (March 5, 2004), 69 Fed. Reg. 11762 (March 11, 2004).

This is illustrated by a Fidelity Investments attachment to its mandatory redemption fees comment letter submitted to the Commission on June 4, 2004. The three-page attachment details the different fee rates and holding periods applicable to various Fidelity funds. Redemption fee rates of 2%, 1.5%, 1.0%, 0.75%, 0.50% and 0.25% may apply and the applicable holding period might be 2 years, 90 days, 60 days or 30 days. *See also* Coalition of Mutual Fund Investors, "Analysis of Mutual Fund Redemption Fee Policies, Largest Fifty (50) Mutual Fund Groups (Ranked by Long Term Assets), August 3, 2004.