

MEMO# 19800

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SEC Proposes Revisions to the Redemption Fee Rule

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<http://www.sec.gov/rules/proposed/ic-27255.pdf>. 2 DEFINITION OF FINANCIAL

INTERMEDIARY The Commission has proposed to exclude from the rule's definition of "financial intermediary" any person that the fund treats as an individual investor for purposes of its market timing policies. This provision is intended to relieve small intermediaries (e.g., a small business retirement plan that holds mutual fund shares on behalf of only a few employees) from having to execute an agreement with the fund. If, however, the fund does not have a policy to treat these smaller intermediaries as individuals for purposes of the fund's market timing policies, the fund would not be able to rely upon this exclusion. CHAIN OF INTERMEDIARIES The proposed amendments would address concerns with the rule's application to "chain of intermediaries" by revising the agreement the fund must execute with its financial intermediaries. In particular, these agreements would be required to include a provision under which the financial intermediary agrees, promptly upon request of the fund, to "use best efforts" to determine whether any

other persons that holds fund shares through the intermediary is itself a financial intermediary (i.e., whether it is an “indirect intermediary” of the fund). If so, upon further request of the fund, the financial intermediary must either: ³/₄ Provide or arrange to have provided, to the fund upon request, identification and transaction information for any shareholder who holds an account with an indirect intermediary; or ³/₄ Restrict or prohibit the indirect intermediary from purchasing, on behalf of itself or other persons, securities issued by the fund. According to the Release, the proposed revisions would not require first-tier intermediaries to enter into formalized information-sharing agreements with indirect intermediaries. The Release seeks comment, however, on whether the Commission should add such a requirement to the rule. It also seeks comment on whether the rule should require funds to collect information from indirect intermediaries instead of having first-tier intermediaries assume this responsibility. **FAILURE TO HAVE AN AGREEMENT WITH A FINANCIAL INTERMEDIARY** The rule has also been revised to clarify that a fund that fails to have an agreement with a financial intermediary must prohibit that intermediary from purchasing, on behalf of itself or other persons, securities issued by the fund. **3 PRIVACY** According to the Release, the Commission’s review of the federal privacy laws indicates that exceptions in those laws permit financial intermediaries to share with funds the shareholder information required by the rule. The Release also notes that, to the extent a financial intermediary’s privacy policy permits the intermediary to make disclosures to nonaffiliated third parties as permitted by law, the intermediary may not need to provide new privacy notices or opt-out opportunities to their customers. Tamara K. Salmon Senior Associate Counsel