

concentration of orders just prior to the pricing time. We do not know what the cost estimate for the increased capacity might be.

Funds might incur costs as a result of the proposed rule amendments. First, if third-party intermediaries, such as retirement plan administrators, find it too expensive to upgrade their computer systems, potential investors may end up investing in alternative financial products. For example, if a retirement plan sponsor determines that the system upgrades necessary to complete fund orders in a timely fashion are too expensive, the plan may discontinue offering investments in some or all funds and offer investments in alternative financial products, causing funds to lose potential investors. The Commission, however, cannot predict the potential loss in investments to funds. Second, some funds, particularly smaller funds, that do not have the financial resources to increase their advertising expenditures might lose potential investors as a result of investors bypassing third-party intermediaries and purchasing shares from fund designated transfer agents. Financial intermediaries are likely to be aware of and offer many or most funds regardless of whether the funds advertise. Individual investors, however, are less likely to be aware of funds that do not advertise extensively. Therefore, as a result of investors bypassing financial intermediaries, smaller funds may lose some potential investors.

Finally, if a fund chooses to select a designated transfer agent to receive order information, the fund would incur costs. A fund would have to identify its designated transfer agent in its registration statement and include a provision in its contract with the designated transfer agent requiring the designated transfer agent to receive order information and to maintain a record of the date and time it received the order information.⁴⁶ For purposes of the Paperwork Reduction Act, Commission staff has estimated that the one-time cost of identifying a designated transfer agent in the fund's registration statement would be negligible. The one-time cost of modifying the fund's existing contract with one of its transfer agents would be approximately 4.5 hours and \$287.66 per fund. It is estimated that all funds together would spend 17,662.5 hours and \$1,129,065.50 to comply with this contract modification requirement.

As noted above, as a result of the proposed amendments, some investors

might choose to send order information directly to a designated transfer agent instead of to an intermediary that transmits information through Fund/SERV. In that case, designated transfer agents might have to augment their capacity to handle increased order information and an expected concentration of orders shortly before pricing time. The Commission has no reasonable basis for predicting the increase in orders that may be directed to designated transfer agents, and therefore does not know how to estimate the cost for the increased capacity. An increase in order information directed to designated transfer agents also would result in the transmission of larger numbers of individual orders, rather than smaller numbers of aggregated and netted orders for omnibus accounts. We do not know what, if any, costs to funds would result if there were such an increase in order information.

We believe the costs of these rule amendments will be minimal for long-term investors. Long-term investors (who invest both on their own and through retirement funds) attempt to save for events that are years in the future, such as retirement. They may find a deposit or redemption is delayed by one day because it reached the fund after 4 p.m. However, because they have no special information about day-to-day deviations in a fund's NAV from its fair market value, long-term investors are likely to receive a better price as often as they receive a worse one. In addition, because day-to-day changes in NAVs are generally small, the effect on long-term investors who receive a worse price because their orders were received after 4 p.m. is likely to be small.

A possible consequence of the proposed amendments is that some long-term investors will choose other financial instruments to avoid the risk of getting the next day's price. These investors may believe the instruments they choose are inferior to mutual funds (which were these investors' first choice). However, this disadvantage is likely to be minimal because products such as exchange-traded funds are available.⁴⁷ These instruments offer features very similar to conventional mutual funds but are actively traded intra-day at market-determined prices. In addition, the proposed amendments would allow many investors, for whom mutual funds would be a first choice but for fear of share value dilution resulting from late trading, to invest in mutual funds with greater confidence. If returns on investments in the alternative financial products were higher than the

returns on investments in funds that investors would have chosen, investors would benefit. Conversely, if returns on investments in the alternative financial products were lower than the returns on investments in funds that investors would have chosen, investors would incur costs. The Commission, therefore, cannot quantify the potential costs (or benefits) to investors.

As discussed above, the proposed amendments would include an emergency exception so that orders would receive same-day treatment if, as a result of an emergency, the fund intermediary was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders.⁴⁸ The emergency exception would be available to fund intermediaries only if the chief executive officer of the intermediary certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the intermediary received the orders before the applicable pricing time.⁴⁹ A fund, or its designated agent, also would be required to keep a record of each certification it received for six years.⁵⁰ The certification requirement would impose costs on the intermediary, and the recordkeeping requirement would impose costs on funds. If an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or registered clearing agency would have to provide notice of the emergency to the fund.⁵¹ We have not specified the manner in which the chief executive officer must notify the fund, and seek comment on what method these entities are likely to use. The Commission, however, expects emergencies to occur infrequently. Therefore, we believe the costs involved in qualifying for the emergency exception would be minor.⁵²

⁴⁸ See proposed rule 22c-1(b)(1)(i).

⁴⁹ See proposed rule 22c-1(b)(1)(i)(A).

⁵⁰ The fund would be required to keep the records for six years, the first two years in an easily accessible location. See proposed rule 22c-1(b)(1)(ii).

⁵¹ See proposed rule 22c-1(b)(1)(i)(B).

⁵² Notification for emergencies preventing the receipt of orders by the designated transfer agent or NSCC could be by telephone or in writing and would not need to be certified. Therefore, the notification requirement would involve minimal, if any, costs. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 1 hour and \$163.53 per broker-dealer to comply with the certification requirement. It is estimated that all broker-dealers together would spend 2,203 hours and \$360,246 to comply with the certification requirement. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of approximately 1 hour

⁴⁶ See proposed rule 22c-1(c)(1).

⁴⁷ See *supra* note 12.