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May 30, 2018

Doug Scheidt, Esquire  
Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-8549

Re: Request for No-Action Relief Under the Redemption Requirements of Section 22(e) of the Investment Company Act of 1940

Dear Mr. Scheidt:

The Investment Company Institute<sup>1</sup> seeks assurances from the staff of the Division of Investment Management (the “Staff”) that it will not recommend enforcement action to the Securities and Exchange Commission (the “Commission” or “SEC”) against a registered open-end investment company (a “mutual fund”) or its SEC-registered transfer agent under the redemption requirements of Section 22(e) of the Investment Company Act of 1940 (the “Act”) if, in the limited circumstances described in this letter, the transfer agent, acting on behalf of a mutual fund, temporarily delays for more than seven days the disbursement of redemption proceeds from the mutual fund account of a Specified Adult held directly with the transfer agent based on the transfer agent’s reasonable belief that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.<sup>2</sup> Providing mutual funds and their transfer agents the relief we request is consistent with

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$20.9 trillion and serve over 100 million shareholders.

<sup>2</sup> The terms “Specified Adult,” “account,” and “financial exploitation” as used in this letter have substantially the same meaning as those terms are defined in FINRA Rule 2165, Financial Exploitation of Specified Adults. A Specified Adult is:

the Commission's mission of protecting investors, particularly senior investors, and will enable mutual funds and their transfer agents to protect senior and other vulnerable adult investors in a manner consistent with that permitted for broker-dealers under a rule recently adopted by the Financial Industry Regulation Association (FINRA).

## I. BACKGROUND

### A. Financial Exploitation of Senior and Other Vulnerable Adult Investors

Mutual funds are the investment product of choice for senior investors. Approximately 43.9% of all US households – or about 54.9 million – owned mutual funds in mid-2016.<sup>3</sup> Approximately 48% of households headed by a Baby Boomer (head of household born between 1946 and 1964) owned mutual funds in mid-2016, accounting for 38% of mutual fund-owning households and 50% of households' mutual fund assets. Approximately 33% of Silent and GI Generation households (born between 1904 and 1945) owned mutual funds in mid-2016, accounting for 11% of mutual fund-owning households and 15% of households' mutual fund assets. These statistics are not surprising when one considers that 92% of mutual fund investors invest to save for retirement.<sup>4</sup> This being the case, we believe it necessary for the industry and regulators to work together to protect from financial exploitation the mutual fund assets senior and other vulnerable adult investors depend upon for retirement.

We commend the Commission and its regulatory counterparts at FINRA and in the states for long recognizing the need to protect senior and other vulnerable adult investors from financial exploitation.<sup>5</sup>

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(A) a natural person age 65 and older; or (B) a natural person age 18 and older who the transfer agent reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. The transfer agent's reasonable belief pursuant to part (B) of the definition of Specified Adult may be based on the facts and circumstances observed in the transfer agent's business relationship with the person; however, the transfer agent may not ignore contrary evidence (*e.g.*, a court order) of which it is aware. Account means an account for which a Specified Adult has the authority to transact business. Financial exploitation means: (A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or (B) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a Specified Adult, to (i) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property, or (ii) convert the Specified Adult's money, assets or property. The definition of "Specified Adult" covers those investors who are particularly susceptible to financial exploitation.

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<sup>3</sup> *2017 Investment Company Fact Book*, 57<sup>th</sup> ed., Investment Company Institute (2017) ("Fact Book") at p. 115.

<sup>4</sup> Fact Book at p. 113.

<sup>5</sup> See, *e.g.*, *Protecting Senior Investors: Compliance, Supervisory, and Other Practices Used by Financial Services Firms in Serving Senior Investors*, published jointly by the SEC's Office of Compliance Inspections and Examinations, the North American Securities Administrators Association (NASAA), and FINRA (September 22, 2008).

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Notwithstanding this recognition, financial exploitation of seniors and other vulnerable adults has continued to grow and remains a serious problem. At least \$2.9 billion is lost annually to senior financial abuse.<sup>6</sup> As recently noted by FINRA:

With the aging of the U.S. population, financial exploitation of seniors and other vulnerable adults is a serious and growing problem. FINRA's experience with the FINRA Securities Helpline for Seniors<sup>®</sup> has highlighted issues relating to financial exploitation of seniors and other vulnerable adults. A number of reports and studies also have explored various aspects of this important topic. Moreover, studies indicate that financial exploitation is the most common form of elder abuse. Financial exploitation can be difficult for any investor, but it can be particularly devastating for seniors and other vulnerable adults, many of whom are living on fixed incomes without the ability to offset significant losses over time or through other means. Financial exploitation can occur suddenly, and once funds leave an account they can be difficult, if not impossible, to recover, especially when they ultimately are transferred outside of the U.S. Members need more effective tools that will allow them to quickly and effectively address suspected financial exploitation of seniors and other vulnerable adults.<sup>7</sup>

NASAA, too, has noted the growing exploitation of senior investors:

Financial exploitation is the fastest growing category of elder abuse in many states. According to the 2010 Investor Protection Trust Elder Fraud Survey, one out of every five citizens over the age of 65 has been victimized by a financial fraud. These frauds can be perpetrated by strangers, con artists, or even by family members and caregivers in whom the elderly have placed their trust.<sup>8</sup>

## **B. Regulatory Remedies**

Based upon their concerns, FINRA and NASAA each took action to enable certain financial professionals to protect senior and other vulnerable adult accountholders from financial exploitation by

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<sup>6</sup> See The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders, 2 (June-2011), available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>.

<sup>7</sup> See *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults)*, SEC Release No. 34-79215; File No. SR-FINRA-2016-039 (Nov. 1, 2016); 81 Fed. Reg. 215 (Nov. 7, 2016) at p. 78238 (footnotes omitted).

<sup>8</sup> See <http://serveourseniors.org/about/policy-makers/nasaa-model-act/commentary/>.

delaying the disbursement of redemption proceeds for up to 25 days if the financial professional reasonably believes the disbursement may result in the financial exploitation of a senior or other vulnerable adult accountholder, provided the financial professional complies with certain conditions designed to protect the accountholder.<sup>9</sup> FINRA's action consisted of adopting new Rule 2165, Financial Exploitation of Specified Adults, which was approved by the SEC in February 2017.<sup>10</sup>

FINRA proposed the rule to address the above discussed concerns with financial exploitation of Specified Adults. Pursuant to the rule, when a FINRA member (*i.e.*, a broker-dealer) has a reasonable belief that financial exploitation of a Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the member may, but is not required to, place a temporary hold on the disbursement<sup>11</sup> of funds or securities from the Specified Adult's account. To do so, however, the FINRA member must comply with each of the following conditions set forth in the rule:

- (1) The FINRA member must reasonably believe that financial exploitation of a Specified Adult has occurred, is occurring, has been attempted, or will be attempted;
- (2) The FINRA member, not later than two business days after the date that the member first placed the temporary hold on the disbursement of funds or securities must provide notification orally or in writing, which may be electronic, of the temporary hold and the reasons for it to: (i) all parties authorized to transact business on the account, including the customer, and (ii) the Trusted Contact Person(s), unless a party authorized to transact business on the account or Trusted Contact Person is unavailable or the member reasonably believes that a party authorized to transact business on the account or Trusted

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<sup>9</sup> NASAA's action consisted of the adoption in February 2016 of a Model Act to Protect Senior and Vulnerable Investors. See *NASAA Adopts Model Act to Protect Senior and Vulnerable Adults*, NASAA Press Release (Feb. 1, 2016), which is available at: <http://www.nasaa.org/38777/nasaa-members-adopt-model-act-to-protect-seniors-and-vulnerable-adults/>.

<sup>10</sup> See Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039) (Approval Order). At the time it approved Rule 2165, the SEC also approved FINRA amendments to FINRA Rule 4512 requiring broker-dealers to make reasonable efforts to obtain the name of and contact information for a trusted contact person age 18 or older upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account in existence prior to the effective date of the amendments.

<sup>11</sup> Rule 2165 does not permit a broker-dealer to delay effecting a transaction requested by a shareholder. . Instead, it only permits a broker-dealer to delay paying out the redemption proceeds of such requested transaction. See Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059, 10066 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039); FINRA Regulatory Notice 17-11, p. 4 (March 2017) (Financial Exploitation of Seniors).



Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult;<sup>12</sup> and

- (3) The FINRA member must immediately initiate an internal review of the facts and circumstances that caused the member to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.

Rule 2165 also requires that each temporary hold expire not later than either (a) 15 business days after it was imposed unless sooner terminated or extended by a state regulator or agency or court of competent jurisdiction; or (b) 25 business days after it was imposed provided the member's internal review of the facts and circumstances under (3), above, supports the member's reasonable belief regarding financial exploitation of the Specified Adult. Any member relying on the rule is also required to establish and maintain written supervisory procedures that are reasonably designed to achieve compliance with the rule<sup>13</sup> and maintain specified records,<sup>14</sup> which must be available to FINRA upon request.

Because all broker-dealers that distribute mutual fund shares are subject to FINRA's rules, this rule provides those FINRA members that distribute mutual funds a new and important tool to protect their senior and other vulnerable adult customers.

### **C. A Gap in the Protection of Mutual Fund Investors**

Some mutual fund shareholder accounts are held directly with the mutual fund and serviced by the fund's transfer agent. Accounts held this way are referred to as "direct-at-fund" accounts. With direct-at-fund accounts, the mutual fund's transfer agent typically is responsible for opening and servicing the accounts, maintaining account records, and serving as the fund's point of contact with shareholders. Given its relationship with the fund's shareholders in direct-at-fund accounts, the fund's transfer agent

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<sup>12</sup> "Trusted Contact Person" is defined in Subsection (a)(3) of Rule 2165 as the person who may be contacted about the Specified Adult's Account in accordance with Rule 4512.

<sup>13</sup> A member's written supervisory procedures under the rule must include, but are not limited to, procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of Specified Adults and they must identify the title of each person authorized to place, terminate, or extend a temporary hold on disbursements. Such persons must be an associated person of the member who serves in a supervisory, compliance, or legal capacity for the member.

<sup>14</sup> These records must include: (1) request(s) for disbursement that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement; (3) the name and title of the associated person that authorized the temporary hold on a disbursement; (4) notification(s) to the relevant parties as required by the rule; and (5) records relating to the internal review of the facts and circumstances the member is required to conduct to impose a temporary hold.

may be best positioned to detect financial exploitation of certain of the fund's senior and other vulnerable adult shareholders. Notwithstanding this, under current law, when a fund's transfer agent suspects financial exploitation in a direct-at-fund account, it cannot lawfully delay the disbursement of redemption proceeds while it investigates the situation. This is because the transfer agent is acting as an agent of the fund, and Section 22(e) of the Act prohibits a mutual fund from delaying the disbursement of redemption proceeds for more than seven days.<sup>15</sup> For all practical purposes, the fund's transfer agent stands in the shoes of the fund in dealing with fund shareholders regarding the shareholders' accounts and it is the transfer agent that ensures a mutual fund's compliance with Section 22(e)'s seven-day redemption period. Mutual fund transfer agents may wish to protect Specified Adult shareholders from financial exploitation to the same extent that broker-dealers may do so under FINRA Rule 2165.<sup>16</sup>

The requirements of Section 22(e) may put certain mutual fund shareholders who own their shares direct-at-fund at a greater risk of harm from financial abuse than shareholders protected by FINRA's rule. Unless the Commission provides mutual funds and their transfer agents relief from the seven-day period in Section 22(e), this disparate treatment will continue. To address our concerns with this disparity, the Institute respectfully requests assurance that the Staff would not recommend enforcement action to the Commission against a mutual fund or its SEC-registered transfer agent based upon Section 22(e) if the transfer agent delays the disbursement of redemption proceeds from a Specified Adult's direct-at-fund account for more than seven days under the terms and conditions described below.

## II. REQUEST FOR NO-ACTION ASSURANCES

As noted above, Section 22(e) of the Act prohibits a mutual fund from delaying the payment of mutual fund redemption proceeds for more than seven days. As a practical matter, the redemption process is administered, and the redemption proceeds are paid, by a mutual fund's transfer agent. Section 22(e) was designed to prevent mutual funds from interfering with the redemption rights of shareholders for "ulterior motives," such as to retain fund assets for the benefit of the management company.<sup>17</sup> While Section 22(e) provides an important protection to mutual fund shareholders, in light of FINRA Rule 2165, it results in a disparity between the tools a broker-dealer may use to protect its senior and other vulnerable adult investors and those available to mutual funds and their transfer agents. A transfer agent's temporary hold on a disbursement of redemption proceeds under the circumstances described

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<sup>15</sup> Section 22(e) of the Act prohibits any mutual fund from postponing the payment of redemption proceeds from a shareholder account "for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption."

<sup>16</sup> This request reflects the Institute's consultation with representatives of our members' mutual fund transfer agents.

<sup>17</sup> See *Hearings Before a Subcomm. of the Comm. On Banking and Currency on S. 3580*, 76<sup>th</sup> Cong., 3d Sess. (1940) at p. 291 (statement of David Schenker).

in this letter does not raise the “ulterior motives” concern underlying Section 22(e) because, among meeting other conditions, such a hold will be for the sole purpose of protecting a Specified Adult from financial exploitation and will be based on a reasonable belief that such exploitation has occurred, is occurring, has been attempted, or will be attempted.

Accordingly, we respectfully request assurance that the Staff would not recommend enforcement action to the Commission under Section 22(e) of the Act against a mutual fund or its SEC-registered transfer agent if a temporary hold is placed on the disbursement<sup>18</sup> of redemption proceeds for the protection of Specified Adults in the case of direct-at-fund accounts, provided such transfer agent complies with each of the following conditions that correspond to the conditions imposed on broker-dealers under FINRA Rule 2165:

1. At the time of opening a non-institutional direct-at-fund account, the transfer agent holding the account:
  - A. Will request from the accountholder the name of and contact information for a trusted contact person age 18 or older who may be contacted about the customer’s account (“Trusted Contact Person”).<sup>19</sup> If the accountholder provides the name of a Trusted Contact Person, the transfer agent must maintain such person’s name and contact information.
  - B. Will disclose in writing, which may be electronic, to the customer that the transfer agent or an employee of the transfer agent is authorized to contact the Trusted Contact Person and disclose information about the customer’s account to address possible financial exploitation

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<sup>18</sup> A temporary hold pursuant to the requested relief may be placed on a particular suspicious disbursement(s) but not on other, non-suspicious disbursements. Where a questionable disbursement involves less than all assets in an account, the transfer agent may not place a blanket hold on the entire account. Each disbursement must be analyzed separately.

<sup>19</sup> The Trusted Contact Person is intended to be a resource for the transfer agent in administering the customer’s account, protecting assets, and responding to possible financial exploitation. The transfer agent may use its discretion in relying on any information provided by the Trusted Contact Person. The transfer agent may elect to notify an individual that he or she was named as a Trusted Contact Person; however, such notification is not required. The transfer agent and the customer may benefit from the trusted contact information in many different settings. For example, consistent with the disclosure, if the transfer agent has been unable to contact the customer after multiple attempts, the transfer agent could contact a Trusted Contact Person to inquire about the customer’s current contact information. Or if the customer is known to be ill or infirm and the transfer agent has been unable to contact the customer after multiple attempts, the transfer agent could contact a Trusted Contact Person to inquire about the customer’s health status. The transfer agent also could reach out to a Trusted Contact Person if it suspects that the customer may be suffering from Alzheimer’s disease, dementia or other forms of diminished capacity. The transfer agent could contact a Trusted Contact Person to address possible financial exploitation of the customer before placing a temporary hold on a disbursement.

or to confirm the specifics of the customer's current contact information, health status, or the identity of any legal guardian, executor, trustee, or holder of a power of attorney.<sup>20</sup>

2. With respect to any direct-at-fund account that was opened prior to the issuance of the requested relief, the transfer agent will comply with conditions 1.A. and 1.B. above when updating the information for the account either in the course of the transfer agent's routine and customary business or as otherwise required by applicable laws or rules.<sup>21</sup>
3. The absence of the name of or contact information for a Trusted Contact Person will not prevent reliance on the requested relief in the case of a direct-at-fund account, provided that the transfer agent makes reasonable efforts to obtain such information from the accountholder as required under conditions 1 or 2, above.<sup>22</sup>
4. The transfer agent may place a temporary hold<sup>23</sup> on a disbursement of redemption proceeds from a direct-at-fund mutual fund account provided that, in addition to satisfying conditions 1 and 2, above, it satisfies each of the following conditions:
  - A. The transfer agent reasonably believes that financial exploitation of the Specified Adult who holds mutual fund shares in a direct-at-fund account has occurred, is occurring, has been attempted, or will be attempted;<sup>24</sup>

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<sup>20</sup> The transfer agent will provide this disclosure even if a customer fails to identify a trusted contact. Among other things, such disclosure may assist a customer in making an informed decision about whether to provide the Trusted Contact Person information

<sup>21</sup> In the absence of applicable laws or rules, the transfer agent should consider asking the customer to review and update the name of and contact information for a Trusted Contact Person on a periodic basis or when there is a reason to believe that there has been a change in the customer's situation. The transfer agent should note as well that a customer's request to change his or her Trusted Contact person may be a possible red flag of financial exploitation. For example, a senior customer instructing the transfer agent to change his Trusted Contact Person from an immediate family member to a previously unknown third party may be a red flag of financial exploitation.

<sup>22</sup> Asking a customer to provide the name of and contact information for a Trusted Contact Person ordinarily would constitute reasonable efforts to obtain the information. A mailing address, phone number and email address for the Trusted Contact Person may be the most useful contact information to the transfer agent.

<sup>23</sup> Unless the transfer agent reasonably believes that doing so would cause further harm to a Specified Adult, the transfer agent is encouraged to attempt to resolve a matter with a customer before placing a temporary hold.

<sup>24</sup> This relief will not impact a mutual fund's obligations under Federal law relating to the reporting of suspicious financial activity (*e.g.*, anti-money laundering and SAR reporting), the prevention of identity theft under the SEC's Red Flags Rules, and activities related to Customer Identification Programs. As a practical matter, as with other transfer agent services noted herein, mutual fund transfer agents provide services to mutual funds in these areas and perform these functions on their behalf.



- B. The transfer agent, not later than two business days after the date that the transfer agent first placed the temporary hold on the disbursement of redemption proceeds, provides notification orally or in writing, which may be electronic, of the temporary hold and the reason for the temporary hold to: (i) all parties authorized to transact business on the account, including the accountholder, unless a party is unavailable or the transfer agent reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and (ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the transfer agent reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult;<sup>25</sup>
  - C. The transfer agent will immediately initiate an internal review of the facts and circumstances that caused the transfer agent to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and
  - D. The transfer agent will hold the delayed redemption proceeds in the transfer agent's Demand Deposit Account ("DDA"). The transfer agent will maintain records for both the DDA and the Specified Adult's account documenting that such proceeds in the DDA are being held for the accountholder pending their disposition pursuant to this relief. The amount of redemption proceeds being held for the Specified Adult's direct-at-fund account will also be accurately reflected on or with the next confirmation or account statement that the transfer agent is required to provide to the accountholder.
5. The temporary hold permitted by condition 4 will expire not later than 15 business days after the date that the transfer agent first placed the temporary hold on the disbursement of redemption proceeds, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to condition 6.<sup>26</sup>

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<sup>25</sup> The lack of an identified Trusted Contact Person, the inability to contact the Trusted Contact Person, or a person's refusal to act as a Trusted Contact Person would be considered to mean that the Trusted Contact Person is not available. Furthermore, the inability to contact a party authorized to transact business on an account would be considered to mean that the party was not available.

<sup>26</sup> The transfer agent is not precluded from terminating a temporary hold after communicating with either the customer or a Trusted Contact Person. A customer's objection to a temporary hold or information obtained during an exchange with the customer or Trusted Contact Person may be used in determining whether a hold should be placed or lifted. While not dispositive, the transfer agent should weigh a customer's or Trusted Contact Person's objection against other information in determining whether a hold should be placed or lifted.

6. Provided that the transfer agent's internal review of the facts and circumstances supports the transfer agent's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold may be extended by the transfer agent for no longer than 10 business days following the date authorized by condition 5, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.
7. The transfer agent will establish and maintain written procedures reasonably designed to achieve compliance with the terms and conditions of this relief, including, but not limited to, procedures related to the identification, escalation, and reporting of matters related to the financial exploitation of Specified Adults, as well as procedures on whether to release or reinvest delayed redemption proceeds, taking into account the facts and circumstances of each case, should the transfer agent's internal review support the transfer agent's reasonable belief that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.
8. The transfer agent's written procedures will identify the title of each person authorized to place, terminate, or extend a temporary hold on behalf of the transfer agent pursuant to this relief. Any such person will be an employee of the transfer agent who serves in a supervisory, compliance, or legal capacity for the transfer agent.<sup>27</sup>
9. The transfer agent will retain records related to compliance with this relief, which will be readily available to the SEC upon request. The retained records will include records of: (a) request(s) for disbursement that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (b) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement; (c) the name and title of the employee that authorized the temporary hold on a disbursement; (d) notification(s) to the relevant parties pursuant to condition 4.B. of this relief; and (e) the internal review of the facts and circumstances pursuant to condition 4.C. of this relief.<sup>28</sup>

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In addition to the transfer agent satisfying each of the conditions set forth above, prior to imposing a temporary hold on the disbursement of redemption proceeds from a direct-at-fund account in reliance

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<sup>27</sup> This condition is intended to ensure that the transfer agent's decision to place a temporary hold is elevated to an employee with appropriate authority.

<sup>28</sup> SEC-registered transfer agents are subject to record retention requirements of Rules 17Ad-6 and 17Ad-7 under the Securities Exchange Act of 1934. Consistent with the records required by Rule 17Ad-6(c), the records listed in condition 9 will be maintained for a period of not less than six years, the first six months in an easily accessible place.

on the requested relief: (a) the transfer agent will develop and document training policies or programs reasonably designed to ensure that the transfer agent's employees comply with the terms and conditions of the requested relief; and (b) the mutual fund for which the transfer agent acts as the recordkeeper for the direct-at-fund account will disclose in its prospectus or statement of additional information that the fund may place a temporary hold on the disbursement of redemption proceeds in accordance with the terms and conditions of the requested relief.

Further, the fund has established or will establish, as part of the fund's compliance policies and procedures pursuant to Rule 38a-1 under the Act, escalation and periodic reporting protocols between the fund and the transfer agent<sup>29</sup> under which the transfer agent will provide the fund or its designee information regarding instances in which the transfer agent relied upon this relief. Such information should include, for example, the transfer agent's findings of a reasonable belief, as documented under condition 9 above, that financial exploitation of a Specified Adult holding mutual fund shares in a direct-at-fund account has occurred, is occurring, has been attempted, or will be attempted, and how the matter was resolved consistently with the terms and conditions of this relief.<sup>30</sup>

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The Institute appreciates the staff's consideration of our request for relief. If granted, our relief will permit mutual fund transfer agents to do their part to protect seniors from financial exploitation and abuse and ensure that similar protections are afforded to senior and vulnerable mutual fund investors without regard to where or how they hold their mutual fund account. Indeed, a shareholder's protection should not depend on where or how the shareholder elected to purchase her or his mutual

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<sup>29</sup> As the Commission stated in the adopting release for Rule 38a-1 under the Act: "The chief compliance officer, in exercising her responsibilities under the rule, will oversee the fund's service providers, which will have their own compliance officials. A chief compliance officer should diligently administer this oversight responsibility by taking steps to assure herself that each service provider has implemented effective compliance policies and procedures administered by competent personnel. The chief compliance officer should be familiar with each service provider's operations and understand those aspects of their operations that expose the fund to compliance risks. She should maintain an active working relationship with each service provider's compliance personnel. Arrangements with the service provider should provide the fund's chief compliance officer with direct access to these personnel, and should provide the compliance officer with periodic reports and special reports in the event of compliance problems." 68 FR 74714, 74722 (Dec. 24, 2003) (the "Rule 38a-1 Adopting Release"). We understand that transfer agents generally have established fraud prevention processes as well as escalation and reporting protocols with the funds they service.

<sup>30</sup> This information could be provided to the mutual fund separately or included with other information already shared with the mutual fund as part of the fund's existing oversight of the transfer agent. As recognized in the Rule 38a-1 Adopting Release, mutual funds already "contractually delegate functions under [the anti-money laundering program required of them] to a fund's service provider, but must take steps to ensure that the service provider's compliance program is reasonably designed, and to monitor its implementation to ensure its effectiveness." *See* fn. 91.

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fund shares. The requested relief is also wholly consistent with both the purposes behind Section 22(e) and with the Commission's authority under Section 22(e)(3) to relax the statutory mandate when necessary to protect investors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tamara K. Salmon", with a long horizontal flourish extending to the right.

Tamara K. Salmon

Associate General Counsel

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