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BYLINE: John Churchill

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A new study of mutual fund firms' enforcement capabilities affirms what many in the industry have known for some time - omnibus accounting practices by fund intermediaries make catching timers virtually impossible.

The study, conducted by the Coalition of Mutual Fund Investors CMFI, a shareholder advocacy group made up of three lawyers, attempts to shed light on the problem for the uninitiated. CMFI examined public filings to the SEC of the 50 largest mutual fund companies and concluded that they can't effectively enforce their timing policies when intermediaries use third-party omnibus accounts.

Niels Holch, executive director of CMFI, says he hopes the report will result in increased disclosure and improve awareness within the industry and among investors that funds are still vulnerable to timers.

Indeed, the SEC has been looking at the potential for this type of abuse for more than a year now. Last year the commission requested the NASD convene a working group to analyze the extent of the problem and propose solutions.

The result was the NASD Omnibus Task Force, consisting of 16 professionals from broker/dealer's mutual fund sponsors, banks and others. It issued a report in January 2004 that suggested a combination of a mandatory redemption fee on each account engaging in this type of trading and increased disclosure to shareholders of such activities.

This would allow fund companies to, at a minimum, audit whether intermediaries are applying the rules, says the report. The problem, says Holch's study, is that in order to mete out penalties, individual shareholder trading activity and records have to be available, and they're not.

With omnibus accounts, an intermediary consolidates all of its mutual fund transactions into one order during the trading day, consequently keeping the identities and transactions of the individual fund shareholders invisible. Many third-party financial institutions, including the largest b/ds, buy and sell mutual fund shares through these types of accounts.

"Intermediaries, like broker/dealers, use omnibus accounting to save themselves money," says Matt Bienfang, an analyst with Boston-based TowerGroup. "It's a reasonable expectation then, especially since all the information about the shareholder resides with them, that they do the policing of timers."

Among the findings of CMFT's study, 88 percent of the fund groups with a redemption policy said in public filings to the SEC that they exclude, limit or waive the enforcement of redemption fees in third-party accounts where the outside financial institution maintains the underlying shareholder account.

Early praise for the study has come from Washington's loudest critic of the mutual fund industry, Sen. Peter Fitzgerald R-Ill. . Included in Sen. Fitzgerald's controversial Mutual Fund Reform Act of 2004 - which seeks, among other things, to ban 12b-1 fees, soft dollars, directed brokerage and revenue sharing - is a section specifically requiring financial intermediaries to disclose to mutual funds the identities and trading activities of shareholders in omnibus accounts who buy and sell that fund's shares.

Not surprisingly, the bill is unpopular within the industry. People familiar with the bill say the approaching election and the SEC's request for hands-off from Congress will keep it shelved indefinitely.

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