

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33-8427; 34-49817; IC-26464; File No. S7-28-03]

RIN 3235-AI95

Disclosure of Breakpoint Discounts by Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Form N-1A under the Securities Act of 1933 and the Investment Company Act of 1940 to require an open-end management investment company to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Under the amendments, an open-end management investment company will be required to describe in its prospectus any arrangements that result in breakpoints in sales loads and to provide a brief summary of shareholder eligibility requirements.

DATES: *Effective Date:* July 23, 2004.

Compliance Date: All initial registration statements, and all post-effective amendments that are either annual updates to effective registration statements or that add a new series, filed on Form N-1A on or after September 1, 2004, must include the disclosure required by the amendments. Section II.G. of this release contains more information on the compliance date.

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, (202) 942-0721, or with respect to questions about disclosure by financial intermediaries, Joseph P. Corcoran, Special Counsel, Office of Chief Counsel, Division of Market Regulation, (202) 942-0073, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Form N-1A,¹ the registration form used by open-end management investment companies to register under the Investment Company Act of 1940 ("Investment Company Act") and to offer their securities under the Securities Act of 1933 ("Securities Act").²

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I. Introduction and Background

The shares of open-end management investment companies ("mutual funds") are sold to investors in a variety of ways. Many shares are sold without a sales load, including shares sold directly by the fund and those sold through retirement plans. An estimated 37% of mutual fund shareholders purchase shares through a broker-dealer or another financial intermediary.³ Fund shares sold through a broker-dealer or other intermediary often are subject to a sales charge or "front-end sales load" that is based on a percentage of the purchase price. The broker-dealer that sells the fund shares is compensated out of the proceeds of the front-end sales load.

Mutual funds with a front-end sales load typically establish a schedule of sales load percentages that are used to calculate the sales load that an investor pays. Some mutual funds that charge front-end sales loads will charge lower sales loads for larger investments. For example, a fund might charge a 5% front-end sales load for investments up to \$50,000, but charge a load of 4% for investments between \$50,000 and \$100,000 and 3% for investments exceeding \$100,000. The investment levels required to obtain a reduced sales load are commonly referred to as "breakpoints."⁴

No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)] ("Proposing Release").

³ Investment Company Institute, 2001 Profile of Mutual Fund Shareholders 13-14 (Fall 2001).

⁴ Information for investors concerning mutual fund breakpoints—including how funds calculate breakpoints and the steps investors can take if they fail to receive the benefit of a breakpoint to which they were entitled—is available on the Commission's Web site at <http://www.sec.gov/answers/breakpt.htm>. In addition, the Commission has jointly developed educational material with NASD and industry groups that explains breakpoints and discusses ways in which an

Each mutual fund company establishes its own formula for how it will calculate whether an investor is entitled to receive a breakpoint. Funds typically offer investors two principal options that enable them to take advantage of breakpoints in sales loads for aggregate purchases made over time: a letter of intent and a right of accumulation.⁵ A mutual fund that offers breakpoint discounts must disclose its schedule of breakpoints in its prospectus.⁶ A fund must disclose its aggregation rules for determining breakpoints, such as letters of intent and rights of accumulation, in either its prospectus or statement of additional information ("SAI").⁷ A broker-dealer who sells fund shares to retail customers must disclose breakpoint information to its customers and must have procedures reasonably designed to ascertain information necessary to determine the availability and appropriate level of breakpoints.⁸

investor might earn these discounts. See *Making the Most of Mutual Fund Breakpoints* (April 2004), at http://www.nasd.com/Investor/Choices/breakpoints_brochure.htm.

⁵ See Section I, "Introduction and Background," Proposing Release, *supra* note 2, 68 FR at 74732-33 (description of letters of intent and rights of accumulation, and of the methods used by funds to value accounts in order to determine whether aggregate holdings have reached a sales load breakpoint).

⁶ Item 7(a)(1) of Form N-1A. Rule 22d-1 under the Investment Company Act [17 CFR 270.22d-1] permits a mutual fund to sell shares at prices reflecting scheduled breakpoints if it meets certain requirements, such as furnishing to existing shareholders and prospective investors the information regarding breakpoints required by applicable registration statement form requirements.

⁷ Items 7(a)(2) and 17(a) of Form N-1A. The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System.

⁸ *In re American Express Financial Advisors*, Securities Act Release No. 8365 (Feb. 12, 2004) (finding violations of securities laws where a broker-dealer failed to disclose to customers that they were not receiving the benefit of applicable breakpoint discounts, and failed to charge these customers correct sales loads and to disclose in confirmations the remuneration received from the sales loads charged). See *In re Application of Harold R. Fenocchio for Review of Disciplinary Action Taken by the NASD*, 46 SEC 279 (1976) (sustaining NASD's finding of violation of its Rules of Fair Practice where registered representatives failed to have customers execute a letter of intent or to inform them of their rights of accumulation in connection with mutual fund purchases); *NASD Special Notice to Members 02-85* (Dec. 23, 2002) (directing all member firms to immediately review the adequacy of their existing policies and procedures to ensure that investors are charged the correct sales load on mutual fund transactions); *NASD Notice to Members 94-16* (Mar. 1994) (discussing the obligation of member firms to ensure that communications with customers are accurate and complete regarding mutual fund breakpoints). Cf. NASD Conduct Rule IM-2830-1

¹ 17 CFR 239.15A; 17 CFR 274.11A.

² The Commission proposed these amendments in December 2003. Investment Company Act Release

In late 2002, the staffs of the Commission and NASD identified concerns regarding the extent to which mutual fund investors were receiving breakpoint discounts, which were first uncovered by NASD's routine examination program. As a result, the Commission and NASD launched a multifaceted action plan to address these concerns,⁹ including an examination sweep (with the New York Stock Exchange ("NYSE")) of 43 broker-dealers that sell front-end sales load mutual funds,¹⁰ and the formation of the Joint NASD/Industry Task Force on Breakpoints ("Task Force") to recommend ways in which the mutual fund and broker-dealer industries could prevent breakpoint problems in the future.¹¹

In addition, the Commission and NASD recently announced enforcement and disciplinary actions against 15 brokerage firms for failure to deliver mutual fund breakpoint discounts during 2001 and 2002.¹² The firms agreed to compensate customers for the overcharges, pay fines that total over \$21.5 million, and undertake other corrective measures.¹³

Today we are continuing to attack breakpoint discount problems by adopting form amendments that

("Breakpoint" Sales); NASD Conduct Rule 2110 (Standards of Commercial Honor and Principles of Trade).

⁹ SEC and NASD Action Plan on Mutual Fund Sales Load Charges, Securities and Exchange Commission Press Release, Jan. 16, 2003, <http://www.sec.gov/news/press/2003-7.htm>.

¹⁰ The Commission, NASD, and NYSE conducted their examination sweep of broker-dealers between November 2002 and January 2003. The examination revealed that most firms, in some instances, did not provide investors with breakpoint discounts for which they appeared to have been eligible. Securities and Exchange Commission *et al.*, Joint SEC/NASD/NYSE Report of Examinations of Broker-Dealers Regarding Discounts On Front-End Sales Charges On Mutual Funds 14-15 (Mar. 2003) [hereinafter Joint Report], available at <http://www.sec.gov/spotlight/breakpoints.htm>.

¹¹ NASD Announces Joint NASD/Industry Breakpoint Task Force, NASD News Release, Feb. 18, 2003, http://www.nasdr.com/news/pr2003/release_03_006.html.

¹² Fifteen Firms to Pay Over \$21.5 Million in Penalties to Settle SEC and NASD Breakpoints Charges, Securities and Exchange Commission Press Release, Feb. 12, 2004, <http://www.sec.gov/news/press/2004-17.htm>. The Commission and NASD each brought cases against a group of 7 firms, and NASD separately brought actions against the other 8 firms. *Id.*

¹³ Each of the 15 firms agreed to review all front-end load mutual fund trades in excess of \$2,500 conducted between January 1, 2001, and November 3, 2003; to provide written notification of the firm's problem delivering breakpoint discounts to each customer who purchased front-end load mutual funds from January 1, 1999, through November 3, 2003, and advise these customers that they may be entitled to a refund; to provide refunds where appropriate; and to pay a fine equal to the amount of the firm's projected overcharges. *Id.*

implement recommendations of the Task Force. The Task Force issued its report in July 2003 and, among other things, recommended that the Commission adopt rules requiring a fund to disclose certain information regarding breakpoints in its prospectus and on its Web site.¹⁴ In December 2003, we issued a release proposing form amendments intended to address these recommendations ("Proposing Release").¹⁵ Specifically, we proposed to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we proposed to require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We also proposed to require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Further, we proposed to require a mutual fund to state in its prospectus whether it makes available on or through its Web site information regarding its sales loads and breakpoints.

The Commission received 14 comment letters on the proposed amendments regarding breakpoint discounts from an investment adviser, professional and trade associations, investor advocacy and consumer groups, and individuals. These commenters generally supported the Commission's proposals to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. We are now adopting these proposed amendments, which are intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors as to the information that they may need to provide to funds and broker-dealers to take full advantage of

¹⁴ NASD *et al.*, Report of the Joint NASD/Industry Task Force on Breakpoints 10, 13-14 (July 2003), available at http://www.nasdr.com/pdf-text/breakpoints_report.pdf. The Task Force also made a number of recommendations to the NASD, NYSE, and mutual fund and brokerage industries. NASD recently reported that the financial industry has taken the steps necessary to implement 7 of the Task Force's 13 recommendations and that substantial progress has been made toward implementing the remainder of the recommendations. NASD, Status Report: Implementation of Recommendations of Joint NASD/Industry Breakpoint Task Force (Mar. 2004), available at http://www.nasdr.com/breakpoints_status.asp.

¹⁵ See Proposing Release, *supra* note 2.

all available breakpoint discounts. The amendments also should help broker-dealers to access information about available breakpoint discounts.

II. Discussion

The Commission is adopting, with one technical change,¹⁶ amendments to Form N-1A, the registration form for mutual funds, that will require enhanced disclosure regarding breakpoint discounts on front-end sales loads. Nothing in the amendments will eliminate, or diminish in any respect, a broker-dealer's obligations to its customers with respect to mutual fund breakpoints, including its obligations to disclose information about breakpoints.¹⁷

A. Disclosure of Arrangements That Result in Breakpoints in Sales Loads

We are revising Form N-1A to require a mutual fund to provide a brief description in its prospectus of arrangements that result in sales load breakpoints, including a summary of shareholder eligibility requirements. Currently, Item 7(a)(2) of Form N-1A requires disclosure of arrangements that result in breakpoints in, or elimination of, sales loads, including letters of intent and rights of accumulation.¹⁸ Item 7(a)(2) also requires that each class of individuals or transactions to which the arrangements apply be identified and that each different breakpoint be stated as a percentage of both the offering price and the amount invested. This information may be provided in either the prospectus or the SAI.

The amendments will require that a mutual fund include the description required by Item 7(a)(2) of arrangements

¹⁶ The technical amendment to General Instruction C.3.(d)(i) to Form N-1A that the Commission is adopting is discussed in Section II.E. of this release.

¹⁷ See *supra* note 8 and accompanying text; *In re Russell C. Turek*, Exchange Act Release No. 45459 (Feb. 20, 2002) (Commission sanctioned registered representative for, among other violations, failing to inform customers of the availability of breakpoint discounts); *In re Mason, Moran & Co.*, Exchange Act Release No. 4832 (Apr. 23, 1953) (registrant claimed it complied with disclosure requirements of the federal securities laws by furnishing the customer with a prospectus which included breakpoint information; Commission held that while the prospectus requirements were intended to provide the investor with more information than had theretofore been generally available in the ordinary securities transaction, these requirements were not intended to abrogate the greater disclosure duties traditionally imposed on brokers and dealers in a fiduciary position).

¹⁸ The amendments to Form N-1A reflect the recent adoption of amendments to the form that renumber Items 7 (Shareholder Information), 8 (Distribution Arrangements), and 18 (Purchase, Redemption, and Pricing of Shares) as Items 6, 7, and 17, respectively. See Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)].

that result in breakpoints in, or elimination of, sales loads in its prospectus. Our amendments direct that prospectus disclosure regarding breakpoints be brief in order to avoid overwhelming investors with excessively detailed information. Item 7(a)(2) will not require the prospectus to include the information currently required in the SAI regarding breakpoints for affiliated persons of the fund and breakpoints in connection with a reorganization.¹⁹ This information will continue to be required in the SAI.

We are amending Item 17(a) of Form N-1A to require that information regarding breakpoint arrangements that is not included in the prospectus be included in the SAI. We are also modifying Item 17(a) to conform the enumeration of types of special purchase plans or methods in that Item to the enumeration in Item 7(a)(2) of types of arrangements that result in breakpoints. Specifically, we are adding references to "dividend reinvestment plans," "employee benefit plans," and "redemption reinvestment plans" to Item 17(a) and eliminating "services in connection with retirement plans" from Item 17(a). The amendments also add "waivers for particular classes of investors" to the enumeration in both Items 7(a)(2) and 17(a). To assist investors and financial intermediaries in finding all information about breakpoints, the prospectus will be required to state, if applicable, that additional information concerning sales load breakpoints is available in the SAI.

Our amendments add an instruction to require that the description of arrangements resulting in breakpoints include a brief summary of shareholder eligibility requirements. This summary will be required to include a description or list of the types of accounts (e.g., retirement accounts, accounts held at other financial intermediaries), account holders (e.g., immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (e.g., funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

Several commenters provided recommendations regarding the location

of the breakpoint disclosure. For example, two commenters argued that the Commission should require a fund to provide the breakpoint disclosure at the front of its prospectus, such as in the fee table required by Item 3 of Form N-1A, so that the disclosure would be easier to locate. We believe, however, that the amendments strike an appropriate balance between providing enhanced disclosure regarding breakpoint discounts and not overwhelming investors with information. Although important information regarding breakpoint discounts should be included in the prospectus, including this information in the fee table could tend to detract from the presentation of more basic information about fund costs. In addition, some commenters recommended that breakpoint information be provided to investors at the point of sale or in confirmation statements. We note that we recently proposed rules that would require a broker-dealer to provide its customers with information regarding breakpoints at the point of sale and in transaction confirmations.²⁰

B. Disclosure of Methods Used To Value Accounts

The amendments also require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies.²¹ The methods required to be disclosed, if applicable, will include historical cost, net amount invested, and offering price.²²

C. Disclosure Regarding Information and Records Necessary To Aggregate Holdings

Our amendments will also require a mutual fund to state in its prospectus, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the fund or his or her financial intermediary of the

existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints.²³ In addition, a mutual fund will be required to describe any information or records, such as account statements, that may be necessary for a shareholder to provide to the fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. The description will be required to include, if applicable:

- Information or records regarding shares of the fund or other funds held in all accounts (e.g., retirement accounts) of the shareholder at the financial intermediary;²⁴
- Information or records regarding shares of the fund or other funds held in any account of the shareholder at another financial intermediary;²⁵ and
- Information or records regarding shares of the fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.²⁶

In addition, if a mutual fund permits breakpoints to be determined based on historical cost, it will be required to state in its prospectus that a shareholder should retain any records necessary to substantiate historical costs because the fund, its transfer agent, and financial intermediaries may not maintain this information.²⁷

D. Disclosure of Availability of Sales Load and Breakpoint Information on Fund's Web Site

The amendments require that a mutual fund state in its prospectus whether it makes available free of charge, on or through its Web site at a specified Internet address, and in a clear and prominent format, the information that is required regarding the fund's sales loads and breakpoints in the prospectus and SAI pursuant to Items 7(a) and 17(a), including whether the Web site includes hyperlinks that facilitate access to the information.²⁸ A mutual fund that does not make the sales load and breakpoint information available in this manner will be required to disclose the reasons why it does not do so (including, where applicable, that the fund does not have an Internet Web site).

The amendments will require that the disclosure about Web site availability of

¹⁹ Instruction 2 to Item 7(a)(2) of Form N-1A. Item 12(d) of Form N-1A requires that a mutual fund disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the fund. Item 17(b) of Form N-1A requires that a mutual fund disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization.

²⁰ Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438, 6479-83 (Feb. 10, 2004)] (proposing rules 15c2-2 and 15c2-3 under the Securities Exchange Act of 1934).

²¹ Item 7(a)(3) of Form N-1A.

²² See *Proposing Release*, *supra* note 2, 68 FR at 74733 (discussing net asset value, public offering price, and historical cost methods of valuing accounts). We refer here to "net amount invested" rather than "net asset value," and to "offering price" rather than "public offering price," because these are the terms currently used in Form N-1A. See Instruction 3(a) and (b) to Item 7(a)(1) of Form N-1A.

²³ Item 7(a)(4)(i) of Form N-1A.

²⁴ Item 7(a)(4)(i)(A) of Form N-1A.

²⁵ Item 7(a)(4)(i)(B) of Form N-1A.

²⁶ Item 7(a)(4)(i)(C) of Form N-1A.

²⁷ Item 7(a)(4)(ii) of Form N-1A.

²⁸ Item 7(a)(5) of Form N-1A.

sales load and breakpoint information indicate whether the information is in a clear and prominent format, including whether the Web site includes hyperlinks that facilitate access to the information. We believe that it is important for Web site disclosure regarding sales loads and breakpoint discounts to be clear and prominent in order to help investors and financial intermediaries find this information easily. Hyperlinks that facilitate access to the information may contribute to a clear and prominent presentation. Thus, Web sites could provide sales load and breakpoint information in a clear and prominent format by, for example, using clear and prominent hyperlinks that provide direct linkage to the relevant portions of the fund's prospectus and SAI or the specific pages on a third-party Web site containing the information.²⁹

Three commenters argued that breakpoint information should be included on a fund's Web site. For example, one commenter recommended that the Commission require an explanation of breakpoint eligibility requirements on the Web sites of funds that maintain them because the Web sites may be useful in conveying these requirements to investors. Another commenter, by contrast, argued that we should revise our proposed amendments so that a fund disclosing the availability of breakpoint information on its Web site would not be required to discuss the format of this information, and so that a fund which does not make breakpoint information available on its Web site would not be required to disclose that fact and explain the reasons why it does not do so.

We believe, however, that our proposed approach, which we are adopting, more appropriately reflects our intention to encourage mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts.³⁰ The increased availability of information through the Internet has helped to promote transparency, liquidity, and efficiency by making information available to investors quickly and in a cost-effective manner.

²⁹ See Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)] (requiring companies to include disclosure in their annual reports on Form 10-K about availability on company Web sites of reports on Forms 10-K, 10-Q, and 8-K). We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking to a third-party Web site.

³⁰ Cf. *id.*

E. Presentation Requirements

The amendments will require that the disclosure in Item 7(a)(2) regarding arrangements resulting in breakpoints in, or elimination of, sales loads, and all other sales load disclosure required by Item 7(a), be adjacent to the table of sales loads and breakpoints required by Item 7(a)(1).³¹ This will include the description of sales loads required by Item 7(a)(1), as well as the information about breakpoints, including valuation methods, shareholder information and records, and Web site availability that will be required by Items 7(a) (3), (4), and (5). The amendments also will require that a mutual fund present the information required by Item 7(a) in a clear, concise, and understandable manner, and include tables, schedules, and charts as expressly required by Item 7(a)(1) or where doing so would facilitate understanding.³²

General Instruction C.3.(a) to Form N-1A currently requires the information required by Item 7 to be in one place in the prospectus. This includes the information about sales loads and breakpoints required by Item 7(a)(1), information about 12b-1 fees required by Item 7(b), and information about multiple class and master-feeder funds required by Item 7(c). It does not include the information on breakpoints currently required by Item 7(a)(2) because this information may be included in the SAI or in a separate purchase and redemption document pursuant to Item 6(g). Item 6(g) of Form N-1A currently permits a mutual fund to omit from the prospectus information about purchase and redemption procedures required by Items 6(b)-(d)³³ and 7(a)(2), other than information that is also required by Item 6(e),³⁴ and provide it in a separate disclosure document if the fund delivers the document with the prospectus, incorporates the document into the prospectus by reference and files the document with the prospectus, and provides disclosure explaining that the information disclosed in the document is part of, and incorporated into, the prospectus.

³¹ Instruction to Item 7(a) of Form N-1A.

³² *Id.* Cf. rule 421 under the Securities Act of 1933 [17 CFR 230.421] (plain English requirements for prospectuses).

³³ Items 6(b)-(d) require a description of the procedures for purchasing and redeeming the fund's shares, as well as the fund's policy with respect to dividends and distributions.

³⁴ Newly-adopted Item 6(e) requires disclosure regarding frequent purchases and redemptions of fund shares. This information may not be omitted from the prospectus in reliance on Item 6(g). Investment Company Act Release No. 26418 (Apr. 16, 2004) [69 FR 22300 (Apr. 23, 2004)].

Under our amendments, Item 6(g) will continue to permit the breakpoint information required by Item 7(a)(2) to be included in a separate purchase and redemption document.³⁵ In addition, we are amending Item 6(g) to permit the information about breakpoints required by new Items 7(a) (3), (4), and (5) (*i.e.*, valuation methods, shareholder information and records, and Web site availability) to be included in the separate purchase and redemption document. We are also amending General Instruction C.3.(a) to Form N-1A to make it clear that this information may be disclosed in a separate purchase and redemption document, provided that all the information required by paragraphs 7(a) (2), (3), (4), and (5) is included in the separate document. This instruction will also clarify that if the information required by paragraphs 7(a) (2)-(5) is disclosed in a separate purchase and redemption document, the table of sales loads and breakpoints required by Item 7(a)(1) must be included in the separate purchase and redemption document, as well as the prospectus, in order to comply with the requirement that all disclosure required by Item 7(a) be adjacent to the table of sales loads and breakpoints.

General Instruction C.3.(d)(i) to Form N-1A currently permits a fund to modify or omit, if inapplicable, the information required by Items 6(b)-(d) and 7(a)(2) for funds used as investment options for certain defined contribution plans, tax-deferred arrangements, and variable insurance contracts. The Commission is adopting a technical amendment to General Instruction C.3.(d)(i) to extend the instruction to the information required by new Items 7(a) (3), (4), and (5).

F. Omnibus Accounts

Typically, a brokerage firm has one omnibus account with each of the mutual funds with which it does business and through which all of its brokerage customers purchase and redeem shares of those mutual funds. Consequently, these mutual funds do not have information on the identity of the underlying brokerage customer who is purchasing or redeeming the funds' shares. In the breakpoint context, omnibus accounts make it difficult for funds to track information about the underlying shareholder that could entitle the shareholder to breakpoint discounts.

Although omnibus accounts were not addressed in the proposed amendments, several commenters provided

³⁵ We are, however, eliminating, as duplicative, the reference to this alternative in Item 7(a)(2).

suggestions regarding these accounts. One commenter urged the Commission to end the practice of using omnibus accounts, and in the meantime to require broker-dealers who rely on omnibus accounts and other methods of settling transactions without providing identifying information to show that their methods are as accurate in providing breakpoints as methods that do provide this information. Another commenter argued that the Commission should require financial intermediaries to disclose shareholder identity and transaction information to mutual funds.

We note that the Commission addressed omnibus account issues in our proposed rules regarding mandatory redemption fees.³⁶ Specifically, we proposed to require that, on at least a weekly basis, a financial intermediary provide to a fund the Taxpayer Identification Number and the amount and dates of all purchases, redemptions, or exchanges for each shareholder within an omnibus account. If the Commission adopts this proposed requirement, the information provided under this requirement may in some cases be helpful to funds that would be able to use it to determine whether shareholders received appropriate breakpoint discounts on purchases of fund shares sold with a front-end sales load.³⁷

G. Compliance Date

The effective date for these amendments will be July 23, 2004. We are requiring all initial registration statements, and all post-effective amendments that are either annual updates to effective registration statements or that add a new series, filed on Form N-1A on or after September 1, 2004, to include the disclosure required by the amendments. We believe that this will provide funds with sufficient time to draft new disclosure to reflect the amendments.

III. Paperwork Reduction Act

Certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*]. The title for the collection of information is: "Form N-1A under the Investment Company Act

of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number.

Form N-1A (OMB Control No. 3235-0307) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a-8] and section 5 of the Securities Act [15 U.S.C. 77e]. We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collection of information to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We received no comments on the proposed collection of information requirements.

We are adopting amendments to Form N-1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are requiring a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also requiring a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our amendments also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints. In addition, our amendments will require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts.

Form N-1A, including the amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure

requirements of Form N-1A is mandatory. Responses to the disclosure requirements are not confidential.

The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N-1A covering 483 portfolios, and file post-effective amendments on Form N-1A covering 6,542 portfolios. We continue to estimate that the amendments will increase the hour burden per portfolio per filing of an initial registration statement on Form N-1A by 2 hours and will increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement on Form N-1A by 1 hour. We also continue to estimate that 30% of mutual fund portfolios will be affected by the amendments.³⁸ The additional incremental hour burden resulting from the amendments will be 2,252 hours (2 hours for initial registration statements \times 483 portfolios \times 30%) + (1 hour per post-effective amendment \times 6,542 portfolios \times 30%). The estimated total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N-1A is 1,142,296 hours.³⁹

IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments that the Commission is adopting require mutual funds to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Specifically, the amendments:

- Require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements;
- Require a mutual fund to describe in its prospectus the methods used to

³⁸ This estimate is based on information regarding the number of mutual fund portfolios with one or more classes of shares that have front-end sales loads, derived by the staff from Commission filings and third-party information sources.

³⁹ This number represents 2,252 hours added to the current total annual hour burden for the preparation and filing of Form N-1A, which is 1,140,044 hours. This total annual hour burden differs from the estimate of 1,107,078 hours contained in the Proposing Release due to the following additional hour burdens for Form N-1A that relate to amendments proposed subsequent to the Proposing Release: 30,998 hours resulting from proposed amendments relating to portfolio manager disclosure; and 1,968 hours resulting from the proposed rules relating to disclosure of sales loads and revenue sharing in connection with the proposals for new mutual fund confirmation and point of sale disclosure. Investment Company Act Release No. 26383 (Mar. 11, 2004) [69 FR 12752, 12759 (Mar. 17, 2004)]; Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438, 6474 (Feb. 10, 2004)]. The estimate is based on the following calculation: 1,107,078 hours + 30,998 hours + 1,968 hours = 1,140,044 hours.

³⁶ Investment Company Act Release No. 26375A (Mar. 5, 2004) [69 FR 11762 (Mar. 11, 2004)]. An Omnibus Account Task Force convened by the NASD to study the issue of trading through omnibus accounts recommended this proposed approach in a report to the Commission. See NASD, Report of the Omnibus Account Task Force 7 (Jan. 30, 2004).

³⁷ Investment Company Act Release No. 26375A, *supra* note 36, 69 FR at 11767.

value accounts in order to determine whether a shareholder has met sales load breakpoints;

- Require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary;

- Require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints; and

- Require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

A. Benefits

The form amendments are expected to benefit mutual fund investors by providing them with enhanced disclosure about breakpoint discounts on front-end sales loads. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts. An examination sweep by the Commission, the NASD, and the NYSE between November 2002 and January 2003 found that in 32% of the transactions reviewed that appeared to be eligible for a reduced sales charge, investors did not receive a breakpoint discount or appeared to have incurred other unnecessary sales charges.⁴⁰ The average discount not provided was \$364 per transaction.⁴¹ We anticipate that our amendments may result in a decrease in the number of transactions in which investors do not receive breakpoint discounts to which they are entitled.

Specifically, we believe that the amendments relating to disclosure of arrangements that result in breakpoints in sales loads will benefit investors by requiring that information regarding breakpoints, which can significantly affect the cost of a shareholder's investment, be included in the prospectus that is delivered to all shareholders. In addition, the requirement that this prospectus disclosure include a summary of the eligibility requirements for sales load breakpoints may assist investors in better understanding the ways in which

they may take full advantage of breakpoint opportunities.

The amendments relating to disclosure of methods used to value accounts in determining breakpoint eligibility also may benefit investors by assisting them and their financial intermediaries in more effectively determining investors' eligibility. Also, the disclosure relating to information and records necessary to aggregate holdings may benefit investors because prospectus disclosure regarding the information or records that it may be necessary for a shareholder to provide may facilitate the correct application of breakpoint discounts in transactions in which shares are aggregated to meet sales load breakpoints. In addition, the disclosure may heighten investors' awareness of the importance of maintaining records when breakpoints are determined using the historical cost method.

The amendments relating to disclosure regarding the availability of sales load and breakpoint information on a mutual fund's Web site may benefit investors by encouraging mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts to complement the prospectus disclosure regarding breakpoints. In addition, the amendments relating to the presentation of disclosure regarding breakpoints should benefit investors by encouraging mutual funds to present information regarding sales loads and breakpoints in an integrated manner that will be easily understood by investors.

B. Costs

The amendments impose new requirements on mutual funds that have front-end sales loads to provide several new prospectus disclosures regarding breakpoint discounts on these front-end sales loads. We estimate that complying with the new disclosures will entail a relatively small financial burden. The information regarding breakpoint discounts should be available to management and the board of directors of a fund, and mutual funds already disclose much of the breakpoint disclosure that is required by the amendments in their registration statements (although they have not been required to include this information in their prospectuses). Therefore, we expect that the cost of compiling and reporting this information should be limited.

Specifically, we are adopting amendments to Form N-1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including

a summary of shareholder eligibility requirements. In addition, we are requiring a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also requiring a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our amendments also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints.

The costs of adding these new prospectus disclosures may include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure). For purposes of the Paperwork Reduction Act, we have estimated that the new disclosure requirements will add 2,252 hours to the total annual burden of completing Form N-1A.⁴² We estimate that this additional burden will equal total internal costs of \$188,650 annually, or approximately \$89 per fund portfolio.⁴³

We expect that the external costs of providing the new prospectus

⁴² This estimate is based on the following calculation: (2 hours per initial registration statement \times 483 portfolios \times 30% of portfolios) + (1 hour per post-effective amendment \times 6,542 portfolios \times 30% of portfolios) = 2,252 hours.

⁴³ These figures are based on a Commission estimate that approximately 781 registered investment companies, with 2,108 portfolios, will file initial registration statements or post-effective amendments annually that will be subject to the disclosure requirements, and an estimated hourly wage rate of \$83.77. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage rate is a blended rate, based on published hourly wage rates for assistant/associate general counsels (\$82.05) and programmers (\$42.05) in New York City, and the estimate that staff in these categories will divide time equally on compliance with the disclosure requirements, yielding a weighted wage rate of \$62.05 $((\$82.05 \times .50) + (\$42.05 \times .50)) = \$62.05$. See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2003* (Sept. 2003). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of \$83.77 $(\$62.05 \times 1.35) = \83.77 . This estimate differs from the estimate in the Proposing Release, which was based on published compensation for compliance attorneys outside New York City (\$37.60) and programmers (\$29.44) contained in the Securities Industry Association's *Report on Management & Professional Earnings in the Securities Industry 2002* (Sept. 2002).

⁴⁰ Joint Report, *supra* note 10, at 14–15.

⁴¹ *Id.* at 16.

disclosure will be limited, because the amendments relating to disclosure of arrangements that result in breakpoints in sales loads require the description of the arrangements to be brief. We expect that the disclosure will not add significant length to the prospectus.

V. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act [15 U.S.C. 80a-2(c)] and Section 2(b) of the Securities Act [15 U.S.C. 77(b)] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation. We received no comments on this section of the proposals.

The amendments are intended to provide greater transparency for mutual fund shareholders regarding breakpoint discounts on front-end sales loads. These changes may improve efficiency. The enhanced disclosure requirements are intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts, which could promote more efficient allocation of investments among mutual funds. The amendments may also improve competition, as enhanced disclosure regarding the ways in which investors can aggregate holdings to meet sales load breakpoints may prompt investors to seek out mutual funds that offer the most favorable breakpoint schedules and aggregation rules for their particular circumstances, and may prompt funds to compete for the business of these better informed investors. Finally, the effects of the amendments on capital formation are unclear.

Although, as noted above, we believe that the amendments will benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation, and the extent to which they would be offset by the costs of the amendments, are difficult to quantify. We note that, with respect to the amendments, in many cases mutual funds currently provide disclosure in their registration

statements regarding breakpoint discounts on front-end sales loads.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's form amendments under the Securities Act and the Investment Company Act to require mutual funds to provide enhanced disclosure about breakpoint discounts on front-end sales loads. An Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release.

A. Reasons for, and Objectives of, the Amendments

Sections I and II of this release describe the reasons for and objectives of the amendments. As discussed in detail above, the amendments adopted by the Commission include disclosure reforms intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts.

B. Significant Issues Raised by Public Comment

In the IRFA for the proposed amendments, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the likely impact of the proposals on small entities, and the nature of any impact, and we asked commenters to provide any empirical data supporting the extent of the impact. We received one comment letter specifically on the IRFA, in which the commenter argued that the Commission should ensure that small mutual funds, and small investment management companies, are not negatively impacted by the proposed rules beyond that permitted by the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*].

C. Small Entities Subject to the Rule

The amendments adopted by the Commission will affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal

year.⁴⁴ Approximately 145 investment companies registered on Form N-1A meet this definition.⁴⁵

D. Reporting, Recordkeeping, and Other Compliance Requirements

We are adopting amendments to Form N-1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are requiring a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also requiring a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our amendments also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints. In addition, our amendments will require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

The Commission estimates some one-time formatting and ongoing costs and burdens that will be imposed on all mutual funds, including funds that are small entities. We note, however, that in many cases funds currently provide disclosure in their registration statements regarding breakpoint discounts. For purposes of the Paperwork Reduction Act, we have estimated that the new disclosure requirements will increase the hour burden per portfolio per filing of an initial registration statement on Form N-1A by 2 hours and will increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 1 hour. We estimate that this additional burden will increase total internal costs of filing an initial registration statement by approximately \$168 per affected mutual fund portfolio annually, and will increase total internal costs of filing a post-effective amendment by

⁴⁴ 17 CFR 270.0-10.

⁴⁵ This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc., and Lipper.

approximately \$84 per affected mutual fund portfolio annually.⁴⁶

We expect that the external costs of providing the new prospectus disclosure will be limited, because some funds currently provide some of this information in their registration statements, and we do not expect that the disclosure will add significant length to the prospectus.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency of breakpoint discounts on front-end sales loads. Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to assess the terms upon which breakpoint discounts in sales loads are offered. We believe it is important for the disclosure that will be required by the amendments to be provided to shareholders by all mutual funds, not just funds that are not considered small entities.

We have endeavored through these amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the

amendments for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Based on our past experience, we believe that the disclosure required by the amendments will be more useful to investors if there are enumerated informational requirements.

VII. Statutory Authority

The Commission is adopting amendments to Form N-1A pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and Sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-24(a), 80a-29, and 80a-37].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Form Amendments

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

- 1. The general authority citation for part 239 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78l(l)(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

- 2. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-29, and 80a-29, unless otherwise noted.

* * * * *

- 3. Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by:

- a. Removing the final sentence of General Instruction C.3.(a) and adding two new sentences;

- b. Revising the reference “7(a)(2)” to read “7(a)(2)–(5)” in General Instruction C.3.(d)(i);
- c. Revising the introductory text of Item 6(g);
- d. Revising Item 7(a)(2);
- e. Adding Instructions to Items 7(a)(1) and (2);
- f. Adding Items 7(a)(3), (4), and (5);
- g. Adding an Instruction to Item 7(a); and
- h. Revising Item 17(a).

These additions and revisions read as follows:

Note: The text of Form N-1A does not, and these amendments will not, appear in the *Code of Federal Regulations*.

Form N-1A

* * * * *

General Instructions

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. Additional Matters:

(a) * * * Disclose the information required by Item 7 (Distribution Arrangements) in one place in the prospectus, except that the information required by paragraphs 7(a)(2), (3), (4), and (5) may be disclosed in a separate purchase and redemption document pursuant to Item 6(g), provided that all the information required by paragraphs 7(a)(2), (3), (4), and (5) is included in the separate document. If the information required by paragraphs 7(a)(2), (3), (4), and (5) is disclosed in a separate purchase and redemption document, the table required by paragraph 7(a)(1) must be included in the separate purchase and redemption document, as well as the prospectus, in order to comply with the Instruction to Item 7(a), which states that all information required by paragraph 7(a) must be adjacent to the table required by paragraph 7(a)(1).

* * * * *

Item 6. Shareholder Information

* * * * *

(g) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 6(b)–(d) and 7(a)(2)–(5), other than information that is also required by Item 6(e), and provide it in a separate document if the Fund:

* * * * *

Item 7. Distribution Arrangements

(a) * * *

(2) Unless disclosed in response to paragraph (a)(1), briefly describe any

⁴⁶ These figures are based on an estimated hourly wage rate of \$83.77. See *supra* note 43.

arrangements that result in breakpoints in, or elimination of, sales loads (e.g., letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of investors). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested. If applicable, state that additional information concerning sales load breakpoints is available in the Fund's SAI.

Instructions

1. The description, pursuant to paragraph (a)(1) or (a)(2) of this Item 7, of arrangements that result in breakpoints in, or elimination of, sales loads must include a brief summary of shareholder eligibility requirements, including a description or list of the types of accounts (e.g., retirement accounts, accounts held at other financial intermediaries), account holders (e.g., immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (e.g., funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

2. The description pursuant to paragraph (a)(2) of this Item 7 need not contain any information required by Items 12(d) and 17(b).

(3) Describe, if applicable, the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies. Methods that should be described, if applicable, include

historical cost, net amount invested, and offering price.

(4)(i) State, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the Fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints. Describe any information or records, such as account statements, that it may be necessary for a shareholder to provide to the Fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. This description must include, if applicable:

(A) Information or records regarding shares of the Fund or other funds held in all accounts (e.g., retirement accounts) of the shareholder at the financial intermediary;

(B) Information or records regarding shares of the Fund or other funds held in any account of the shareholder at another financial intermediary; and

(C) Information or records regarding shares of the Fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.

(ii) If the Fund permits eligibility for breakpoints to be determined based on historical cost, state that a shareholder should retain any records necessary to substantiate historical costs because the Fund, its transfer agent, and financial intermediaries may not maintain this information.

(5) State whether the Fund makes available free of charge, on or through the Fund's Web site at a specified Internet address, and in a clear and prominent format, the information required by paragraphs (a)(1) through

(a)(4) and Item 17(a), including whether the Web site includes hyperlinks that facilitate access to the information. If the Fund does not make the information required by paragraphs (a)(1) through (a)(4) and Item 17(a) available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet Web site).

Instruction. All information required by paragraph (a) of this Item 7 must be adjacent to the table required by paragraph (a)(1) of this Item 7; must be presented in a clear, concise, and understandable manner; and must include tables, schedules, and charts as expressly required by paragraph (a)(1) of this Item 7 or where doing so would facilitate understanding.

* * * * *

Item 17. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* To the extent that the prospectus does not do so, describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of shareholders.

* * * * *

By the Commission.

Dated: June 7, 2004.

Jill M. Peterson,

Assistant Secretary.

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