



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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February 27, 2004

Jonathan Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Via e-mail to rule-comments@sec.gov

Re: File No. S7-28-03; Release Nos. 33-8347; 34-48939; IC 26298
Proposed Rule: Disclosure of Breakpoint Discounts by Mutual Funds

Dear Mr. Katz:

The North American Securities Administrators Association, Inc. (NASAA)¹ is pleased to submit comments regarding the above-referenced rulemaking. We appreciate the opportunity to provide input regarding the Commission's proposals to provide enhanced mutual fund disclosure regarding breakpoint discounts available to investors.

NASAA commends the Commission for proposing rules that would implement the recommendations of the Joint NASD/Industry Task Force as a first step in moving toward providing investors with clearer indications about how they can obtain discounts on the sales charges they pay when purchasing mutual funds. Such steps will work toward restoring investor confidence in the mutual fund industry as the public is presented with improved explanations about the opportunities for discount pricing when purchasing successive quantities.

Few investors and financial representatives read the contents of a prospectus as thoroughly as the disclosure rules intend because these prospectuses tend to be lengthy documents with fine print. In recognition of this fact, the Commission has requested comment as to whether providing the prospectus alone is satisfactory. Because the main thrust of the disclosure proposals lie in placement of information in the prospectus which is not read by the average investor, NASAA strongly urges the Commission to consider requiring an additional one or two-page document to be given to investors for discussion at the point of sale. This document would disclose the sales loads, breakpoint levels and shareholder qualifications, as well as provide a simplified discussion of the valuation method and the records that the customer would need to retain in order to ensure that the discount is applied each time the customer is eligible. If this document also includes a worksheet that investors or their financial representatives could use to

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

calculate estimated fees and discounts, we believe that the benefits of requiring additional documentation would outweigh the costs of providing it.

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

The proposal to require disclosure in the prospectus of arrangements that may result in breakpoints in sales loads, including a summary of shareholder eligibility requirements, is essential to ensuring that investors and their broker-dealers or financial intermediaries can make informed decisions. The Commission's position that placement of this information in the prospectus rather than in the Statement of Additional Information ("SAI") would help to ensure that the information is provided to all investors, not only those requesting the additional information. Placing this information in the prospectus would provide a common format that investors and their financial representatives could access in order to compare opportunities for discounts across a wide variety of funds they might consider purchasing, allowing them to compare sales loads and discount opportunities in order to assist in the selection of the most suitable fund for a given situation. This information should be provided in the aforementioned summary document to the investor at the point of sale.

The Commission's proposes to divide disclosure regarding breakpoints between the prospectus and the SAI, as well as to allow a mutual fund to choose the document in which the disclosure would be provided. These approaches are inappropriate because it is essential that disclosure be provided in a consistent manner across the mutual fund industry.

B. Disclosure of Methods Used to Value Accounts

NASAA supports the Commission's proposal to require that mutual funds describe in the prospectus the methods they use to value accounts in order to determine when customers are eligible for breakpoint discounts. It is important for the valuation information to be provided in plain English so that investors can make good use of it. Providing an example demonstrating the valuation method also would be helpful to investors and their financial representatives in applying the methodology to the investors' accounts. This information also should be provided in the summary document to the investor at the point of sale.

The prospectus is the most appropriate location for a description of the valuation methodology. If practicable, disclosures should also be made in the documents listed in the release including: the confirmations, account statements, shareholder reports, and documents provided by an intermediary prior to share purchase. While providing the valuation methodology on confirmations may be difficult, including a "calculated valuation" on both the confirmation and investor account statements, with a footnote directing the investor to an explanation of the methodology, would be very helpful to both investors and their financial representatives.

C. Disclosure Regarding Information and Records Necessary to Aggregate Holdings

The proposal to require disclosure of the information and records that a shareholder must retain and be prepared to provide in order to ensure receipt of the appropriate breakpoint discount for ongoing purchases of mutual funds is a key element in assisting the industry in its endeavor to provide investors with breakpoints as they become eligible. The proposal to place this information in the prospectus will help to ensure that all investors do their parts in protecting

their rights to obtain breakpoint discounts. However, providing this information in the prospectus alone is not sufficient. The financial representative should be required to provide the investor with a description of the information and records that an investor must retain and submit in order to demonstrate eligibility for a breakpoint discount. This information should be described in plain English and provided at the point of sale. In response to the Commission's request regarding how this information should be delivered, the Commission may wish direct that funds provide them in a notebook format – with dividers and space to keep the prospectus, confirmations, copies of account statements and other related documents – consisting of pages describing the information and including a sample of each document needed.

The proposed disclosure requirements regarding information or records that the shareholder should provide or maintain places too great a burden on the investor and ignores the role and responsibility of the financial intermediary in this sales process. The proposal should be amended to include the role of the financial intermediary in ensuring that the investor understands and can provide the appropriate documentation to prove eligibility for breakpoint discounts. It is incumbent upon the financial intermediary to explain the breakpoint issues and requirements to the investor and to ensure that the customer understands the eligibility criteria and the responsibility to provide any required documentation.

D. Disclosure of Availability of Sales Load and Breakpoint

We agree with the proposal that if information is provided on the fund's website, the URL must be provided in the two-page summary document. These disclosures can include sales loads and breakpoints on or through a fund's website, if done in plain English and in addition to paper delivery requirements in the prospectus and through the simple point of sale summary document. Providing this type of disclosure on mutual fund web sites will enhance investor access to information across funds and will provide greater comparison of fees and discounts to use in selecting the most appropriate investments.

If disclosure is done on the web, it ought to be complete disclosure and include the full prospectus, with hyper-links to the simplified explanations of sales loads, breakpoint levels, valuation methodology and the list of documents and information required to prove eligibility for a breakpoint discount.

Disclosing web site availability in the prospectus is one of the appropriate places for such information, but should not be the only site for such information. Providing disclosure about web site availability would be most helpful to investors if it were also included on confirmations and account statements.

E. Presentation Requirements

NASAA supports the proposal that information on the disclosure of sales loads and breakpoints be presented in a clear, concise and understandable manner, including charts and tables. Investor understanding would be improved under this proposal if the format in which this information is presented is consistent among all mutual funds, facilitating ease in comparison and ensuring that similar information is understood in a similar manner for all mutual funds.

NASAA believes that the format for the presentation of the information is sufficient if in “close proximity,” as long as it is presented in a clear and concise manner and in text that stands out clearly enough to ensure that investors are directed to the proper comparison.

Thank you for your consideration of these views. For further information regarding these matters, please do not hesitate to contact Rex Staples, Chief of Examinations and Compliance for the Washington Department of Financial Institutions. John Veator and Mark Davis of NASAA’s Legal Department also stand ready to provide assistance.

Sincerely,

A handwritten signature in black ink that reads "Ralph A. Lambiase". The signature is written in a cursive style with a large, prominent initial "R".

Ralph A. Lambiase
NASAA President and
Director, Connecticut Division of Securities