

MEMO# 16909

December 19, 2003

SEC PROPOSED REVISIONS TO FORM N-1A TO ENHANCE SALES CHARGE BREAKPOINT DISCLOSURE

[16909] December 19, 2003 TO: SEC RULES COMMITTEE No. 106-03 RE: SEC PROPOSED REVISIONS TO FORM N-1A TO ENHANCE SALES CHARGE BREAKPOINT DISCLOSURE In order to assist investors in understanding and taking advantage of the sales charge breakpoint discount opportunities available to them, the Securities and Exchange Commission has proposed amendments to Form N-1A to require enhanced prospectus disclosure of specified information relating to breakpoints.¹ The Commission's proposal, which is largely consistent with revisions to Form N-1A that the Institute recommended to the Commission last month, is summarized below.² If adopted, all registration statements and all post-effective amendments that are either annual updates to effective registration statements or that add a new series, that are filed on or after the effective date of the amendments would be subject to the new disclosure requirements. Comments on the Commission's proposal are due no later than Friday, February 13, 2004. Please provide any comments you have on the proposal no later than Friday, January 9th to the undersigned by phone (202-326-5825), fax (202-326-5839) or e-mail (tamara@ici.org).

I. PROPOSED REVISIONS TO ITEM 8(a)(2) OF FORM N-1A Item 8(a)(2) of Form N-1A currently requires disclosure of arrangements that result in sales load breakpoints or in elimination of sales loads, including letters of intent and rights of accumulation. Such information may be provided in the fund's prospectus or its statement of additional information (SAI). The Commission has proposed to revise the disclosure that currently appears in a fund's prospectus to include a brief description of any arrangements that

¹ See SEC Release Nos. 33-8347 and IC-26298 (Dec. 17, 2003) (the "Proposing Release"). A copy of the Proposing Release is available on the SEC's website at: <http://www.sec.gov/rules/proposed/33-8347.htm>. ² See Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Mr. Paul F. Roye, Director, SEC Division of Investment Management, dated November 20, 2003. In addition to recommending revisions to Form N-1A to the Commission, the Institute published a memorandum recommending that mutual funds voluntarily enhance their prospectus disclosure of breakpoint opportunities in a manner that would be consistent with the Institute's recommendation to the Commission. See Institute Memorandum to SEC Rules Members No. 163-03, [No.16806], dated Nov. 21, 2003. ³ result in breakpoints in, or elimination of, sales loads "adjacent to" the table currently required by Item 8(a) of the Form. ³ Such description must 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, the prospectus must also state that additional information concerning sales load breakpoints is available in the fund's statement of additional information.

II. REVISED INSTRUCTIONS TO ITEM 8(a) OF FORM N-1A To implement this

change to Item 8, new instructions have been added to this item in the form. According to these instructions, the description of sales loads and breakpoints required by Item 8 should:

- Include a brief summary of the shareholder eligibility requirements, including a description or list of the types of accounts, account holders, and fund holdings, that may be aggregated for purposes of determining eligibility for sales load breakpoints;⁴
- Describe 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 to whom each method applies;
- Include, if applicable, a statement that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for the shareholder to inform the fund or the shareholder's financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints. If this disclosure is applicable, a fund should describe any information or records the investor may be required to produce to verify eligibility for a breakpoint discount, including information or records regarding shares of the fund or other funds: (i) held in all of the shareholder's accounts at the financial intermediary; (ii) held by the shareholder elsewhere; and (iii) held at any financial intermediary by a related party of the shareholder. Also, if eligibility is based on historical cost, the prospectus should state that a shareholder should retain any records necessary to substantiate historical costs.
- State whether the fund makes available free of charge, on or through the fund's website at a specified Internet address, and in a clear and conspicuous and prominent format, the above information as well as the information required by Item 18(a) of Form N-1A, discussed below. This disclosure should include whether the website includes hyperlinks that facilitate access to the information. If the fund does not make the above information available in this manner, the prospectus must disclose the reasons why it does not do so (e.g., the fund does not have a website).

3 According to the Proposing Release, such disclosure should be brief in order to avoid overwhelming investors with excessively detailed information. Also, the instructions to the form would require that it be presented in a clear, concise, and understandable manner, and "include tables, schedules, and charts as expressly required by [Item 8(a)(1)] or where doing so would facilitate understanding. " 4 The summary is not required to contain any information required by Items 13(d) (breakpoints for directors and other affiliated persons of the fund) or 18(b) (fund reorganizations) of Form N-1A.

3 III. ADDITIONAL FORM N-1A AMENDMENTS

A. Item 7(f): Separate Purchase and Redemption Document

The Commission has also proposed to amend Item 7(f) of Form N-1A, relating to shareholder information, to permit a fund to omit from the prospectus, information required by amended Item 8(a)(2)-(5) and provide it in a separate document so long as the conditions of Item 7(f) are satisfied.⁵

B. Item 18: Purchase, Redemption, and Pricing of Shares

Item 18 would be revised to provide that, to the extent a fund's prospectus includes information regarding how a fund's shares are offered to the public, such information is not required to be repeated in the SAI.

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5 These conditions include that the prospectus incorporates the separate document by reference and the separate document is filed with Part A of Form N-1A and includes specified information on the front cover page and outside back page. Also, the separate document must be delivered with the prospectus. The Commission has also proposed to revise Section C.3. of the General Instructions to Form N-1A to accommodate the disclosure of Item 8(a) information pursuant to Item 7(f). If the information required by Item 8(a)(2)-(5) of Form N-1A is disclosed in a separate purchase and redemption document pursuant to Item 7(f), the table of sales loads and breakpoints required by Item 8(a)(1) must be included in the separate purchase and redemption document, as well as in the prospectus, in order to comply with the proposed requirement that all disclosure required by Item 8(a) be adjacent to the table of sales loads and breakpoints.

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