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## SEC Adopts Rules on Breakpoint Disclosure and Adviser Ethics Codes, Proposes Transfer Agent Rule

**FOR IMMEDIATE RELEASE  
2004-71**

**Washington, D.C.**, May 26, 2004 - The Securities and Exchange Commission today voted to adopt form amendments regarding disclosure requirements for mutual funds concerning discounts on front-end sales loads and a new rule as well as amendments to rules and forms dealing with investment adviser codes of ethics. The Commission also voted to propose for comment a new rule regarding transfer agent operations.

### **1. Enhanced Disclosure of Mutual Fund Breakpoint Discounts**

The Commission voted to adopt amendments that will require a mutual fund to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them.

Some mutual funds with a front-end sales load provide discounts for larger investments. The investment levels required to obtain a reduced sales load are commonly referred to as "breakpoints." In late 2002, the staffs of the Commission and NASD identified concerns regarding the extent to which mutual fund investors were receiving breakpoint discounts. As a result, the Commission and NASD launched a multifaceted action plan to address these concerns, including an examination sweep with the New York Stock Exchange of 43 broker dealers that sell front end sales load mutual funds and the formation of the Joint NASD/Industry Task Force on Breakpoints to recommend ways in which the mutual fund and broker dealer industries could prevent breakpoint problems in the future.

As a result of the examination sweep and a report by the Task Force, the Commission is aggressively attacking industry failures to deliver breakpoint discounts through both enforcement actions and regulatory initiatives. 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. The firms agreed to compensate customers for the overcharges, pay fines that total over \$21.5 million, and undertake other corrective measures.

The amendments will require enhanced disclosure by mutual funds regarding breakpoints, as recommended by the Task Force. The amendments will

- require a mutual fund to provide a brief description in its prospectus of arrangements that result in sales load breakpoints, including a summary of eligibility requirements, with more detailed information permitted to be in the statement of additional information;
- 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;
- require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary; and

- require a mutual fund to state in its prospectus whether it makes available on its Web site information regarding its breakpoints.

Investors can learn more about reduced front-end sales loads by going to

<http://www.sec.gov/answers/breakpt.htm> and [http://www.nasd.com/Investor/Choices/breakpoints\\_brochure.htm](http://www.nasd.com/Investor/Choices/breakpoints_brochure.htm). Investors can access fund expense calculators at <http://www.sec.gov/investor/tools/mfcc/mfcc-int.htm> and [http://www.nasdr.com/fundcalc/expense\\_analyzers.asp](http://www.nasdr.com/fundcalc/expense_analyzers.asp).

Investors who believe that they have not received breakpoint discounts to which they were entitled should first contact their brokers and ask that the discount be applied. If a broker does not correct the account or provide a satisfactory explanation, the investor should write a letter to the firm's compliance department and ask for a written response. If that response is not satisfactory, the investor can file a complaint with the SEC online at <http://www.sec.gov/complaint.shtml> or with NASD at [http://www.nasdr.com/complaints\\_file.asp](http://www.nasdr.com/complaints_file.asp).

Information about recent enforcement and disciplinary actions by the SEC and NASD against brokerage firms for failure to deliver mutual fund breakpoint discounts is available at <http://www.sec.gov/news/press/2004-17.htm>. The examination sweep report "Joint SEC/NASD/NYSE Report of Examinations of Broker Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds" is available at <http://www.sec.gov/news/studies/breakpointrep.htm>. A copy of the Joint NASD/Industry Task Force on Breakpoints report can be found at [http://www.nasdr.com/breakpoints\\_report.asp](http://www.nasdr.com/breakpoints_report.asp). An NASD status report regarding the Task Force's recommendations is available at [http://www.nasdr.com/breakpoints\\_status.asp](http://www.nasdr.com/breakpoints_status.asp).

Funds must provide the disclosure required by the amendments starting Sept. 1, 2004.

## 2. Investment Adviser Codes of Ethics

The Commission also voted to adopt a new Rule 204A-1 under the Investment Advisers Act and related amendments to Advisers Act Rule 204-2, Advisers Act Form ADV, and Rule 17j-1 under the Investment Company Act. New Rule 204A-1 would require registered investment advisers to adopt and enforce codes of ethics applicable to their supervised persons. The new rule is designed to prevent fraud by reinforcing the fiduciary principles that must govern the conduct of advisory firms and their personnel. An adviser's code of ethics will have to include certain minimum provisions.

- Standards of Business Conduct. The code will be required to establish standards of conduct that are expected of the adviser's supervised persons and that reflect the adviser's fiduciary duties. Supervised persons will have to acknowledge, in writing, receipt of a copy of the code of ethics and any amendments.
- Compliance with Federal Securities Laws. An adviser's code of ethics will have to require the adviser's supervised persons to comply with applicable federal securities laws.
- Personal Securities Reporting. An adviser's code of ethics will have to require certain supervised persons called access persons to report their personal securities holdings and transactions, including transactions in mutual funds advised by the adviser or an affiliate.
- Pre-Approval of Certain Transactions. The code of ethics will have to require access

persons to pre-clear any personal investments in initial public offerings and limited offerings.

- **Reporting of Code Violations.** The code of ethics will have to require supervised persons to report, promptly, any violations of the adviser's code of ethics to the firm's chief compliance officer or to other designated persons.

The compliance date for these provisions is Jan. 7, 2005.

### **3. Transfer Agent Rule Proposal**

The Commission approved publication for comment of proposed new Rule 17Ad-20 that would prohibit registered transfer agents from transferring any equity security registered under Section 12 of the Securities Exchange Act of 1934 or any equity security of an issuer reporting under Section 15(d) of the Securities Exchange Act of 1934 where the transfer of such security to or from a securities intermediary is limited or prohibited. A securities intermediary is an entity that in the ordinary course of its business maintains securities accounts for others. They include entities such as registered clearing agencies acting as securities depositories (for example, The Depository Trust Company), broker-dealers, and banks. The Commission also decided to propose that the rule take effect 90 days after the date of Commission adoption in order to allow issuers whose securities are restricted in a manner prohibited by the rule sufficient time to obtain any necessary changes to their bylaws or charters to remove the restrictions.

Comments concerning the rule proposal should be submitted to the Commission within 30 days of its publication in the Federal Register.

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