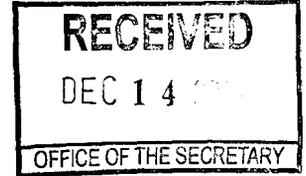




INVESTMENT COMPANY INSTITUTE

1116



December 9, 2004

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Confirmation and Point of Sale Disclosure
Requirements for Transactions in Certain Mutual
Funds and Other Securities; File No. S7-06-04

Dear Mr. Katz:

The Investment Company Institute¹ has additional comments on the Commission's confirmation and point-of-sale disclosure proposal.² We continue to strongly support the proposal and urge the Commission to adopt the new disclosure regime as soon as practicable. We recommend, however, a change to the amendments proposed to Form N-1A that would require a fund to disclose in its prospectus the "range of the actual front-end sales loads that may be paid by an investor at each sales load breakpoint." We recommend that the Commission reconsider requiring this disclosure. Unlike the other reforms in the Commission's proposal, we believe this disclosure will not be meaningful to investors and, in fact, may confuse them about the amount of their actual sales charges. As such, this disclosure is contrary to the goal of helping investors make informed investment decisions.

DISCUSSION

As discussed in the Proposing Release, the sales charge rate paid by an investor may differ from the rate disclosed in the prospectus due to the rounding that occurs in the calculation used to compute an investor's actual sales load.³ Because of this potential difference,

¹ The Investment Company Institute is the national association of the American investment company industry. More information about the Institute is included at the end of this letter.

² See SEC Release Nos. 33-8358; 34-49148; IC-26341 (Jan. 29, 2004), 69 Fed. Reg. 6438 (Feb. 10, 2004) ("Proposing Release"). We originally commented on the Commission's proposal in April of this year. See Letter from Amy B.R. Lancellotta, Acting General Counsel, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, dated April 14, 2004.

³ The Proposing Release includes the following sample calculation to demonstrate how this difference arises:

... if the net asset value per share is \$7.78 and the applicable sales load is 5.75% of the offering price, the offering price would be calculated as follows: $\$7.78 / (1.00 - 0.0575)$, which equals \$8.25 when rounded to two decimal places. If the gross amount invested is \$30,000, the number of shares purchased is 3,636.364 (rounded to three decimal places) ($\$30,000 / \8.24). The net amount invested would be the number of shares purchased, multiplied by the net asset value per share, or \$28,290.91 ($3,636.364 \times \7.78), and the remaining

the Commission proposed to add narrative disclosure to the prospectus fee and sales load tables explaining that an investor's actual sales charge may be higher or lower than that disclosed in the prospectus. We believe that it is appropriate to provide this explanation. The Commission, however, also proposed to include information of the possible ranges of the actual sales loads at each breakpoint in the sales load table. For the reasons discussed below, we oppose requiring disclosure of range information.⁴

Over the last several months, our members have been involved in the process of voluntarily implementing the recommendations of the Joint NASD/Industry Task Force on Breakpoints.⁵ These efforts have included reviewing the actual sales charge rates that are paid by investors and disclosed on their confirmations. Several members have provided us with anecdotal information on their experience with this new disclosure. Based on this information, we understand that the ranges of actual sales loads that *may* be paid by an investor are extremely broad (*e.g.*, ranging from 0% to 25%). For example, using the sample calculation set forth in the Proposing Release, the actual sales load of an investor who purchases \$0.08 of a fund⁶ with a net asset value of \$31.55 would be 25%.⁷ Even though this load does not reflect the experience of a typical investor, it would have to be included in determining the upper boundary of the range.

We do not believe that requiring disclosure of the range of all *possible* sales loads will be meaningful or help investors make informed investment decisions.

\$1,709.09 would be deducted as a sales load. This \$1,709.09 is equivalent to 5.70% of the gross amount invested of \$30,000, rather than the 5.75% sales load shown as a percentage of offering price.

See Proposing Release at fn. 155.

⁴ The Commission has also proposed to require the prospectus fee table to disclose the maximum load that may be paid by an investor as a percentage of the net amount invested. For the same reasons we oppose including the range information with the sales charge table, we oppose including the maximum amount of the sales load with the fee table.

⁵ The Joint NASD/Industry Task Force recommended that confirmations reflect the actual sales load charged on each mutual fund transaction as a percentage of the public offering price. See http://www.nasd.com/stellent/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_011237&ssSourceNodeID=648.

⁶ For example, certain funds may wave minimum investment requirements for retirement plan accounts and as such, periodic contributions may involve relatively small dollar amounts. These contributions may be allocated among several different funds, so the amount invested in any given fund is even smaller. In these circumstances, the effects of the rounding that takes place as part of the sales load calculation will be more pronounced than it would be in the case of a typical fund purchase transaction.

⁷ Assuming a sales load of 2.50%, the offering price in this example would be calculated as $\$31.55 / (1.00 - .025)$, which equals \$32.36 when rounded to two decimal places. Based on an investment amount of \$.08, the number of shares purchased is 0.002472 ($\$.08 / \32.36), which would be rounded to 0.002 shares. The net amount invested would be the number of shares purchased, multiplied by the net asset value per share ($0.002 \times \$31.55$), or \$0.0631, which would be rounded to \$0.06. The remaining \$0.02 would be deducted as a sales load. This \$0.02 is equivalent to 25% of the gross amount invested of \$0.08, rather than the 2.50% shown as a percentage of offering price.

Moreover, requiring disclosure of this range information would likely confuse investors because it will not reflect the experience of typical investors, where the impact of rounding is likely to be insignificant.⁸ Our members have reported that, on any given day, approximately fifty percent of transactions result in a sales charge rate that is the same as that disclosed in the prospectus. For the remaining fifty percent, while approximately half of these investors paid a sales charge rate that was higher and half paid a sales charge rate that was lower than that disclosed in the prospectus, the rate paid by most of these investors did not differ materially from that disclosed in the prospectus.

By contrast, the other disclosure requirements proposed by the Commission will provide investors meaningful information about the actual sales load they pay and the difference between that load and the sales load disclosed in the prospectus.⁹ In particular, the Commission has proposed that investors be provided at the point of sale and in a transaction confirmation more specific information about sales loads. In addition, as noted above, narrative disclosure would accompany the prospectus fee and sales load tables to alert investors to the existence of this difference. The Institute strongly recommends that the Commission not additionally require fund prospectuses to include range information as part of the sales load table.

* * * *

On a related matter, the Institute and its members are exploring the feasibility of developing alternative methods of calculating front-end sales loads. We will keep you informed of any developments.

Thank you for considering these additional comments regarding our concerns with the Commission's proposed disclosure of range information. If you have any questions or need additional information, please contact me at 202/326-5825.

Sincerely,



Tamara K. Salmon
Senior Associate Counsel

Attachment

⁸ Adding this information to the sales charge table would also unnecessarily complicate the table. This is because, as proposed, funds would be required to disclose in a footnote to the table, if applicable, the range of the actual front-end sales loads that may be paid by an investor at each sales load breakpoint, both as a percentage of the gross amount invested and as a percentage of the net amount invested. If a fund has five breakpoints, as is quite common, the table will contain 10 numbers (the sales charge at each breakpoint as a percentage of gross amount invested and as a percentage of the net amount invested) and the footnote will include *an additional 20 numbers* (the lower and upper boundaries of the ranges relating to each percentage number in the table).

⁹ See Proposing Release.

Mr. Jonathan G. Katz

December 9, 2004

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cc: Paul F. Roye, Director
Division of Investment Management

Catherine McGuire, Chief Counsel
Office of the Chief Counsel
Division of Market Regulation

About the Investment Company Institute

The Investment Company Institute's membership includes 8,585 open-end investment companies ("mutual funds"), 636 closed-end investment companies, 141 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about \$7.565 trillion. These assets account for more than 95% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 87.7 million as of mid 2004, representing 51.2 million households. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 228 associate members, which render investment management services exclusively to non-investment company clients. These Institute members and associate members manage a substantial portion of the total assets managed by registered investment advisers.