



September 17, 2004

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

Re: File No. SR-NASD 2004-043 Proposed NASD Rule  
Change Relating to Disclosure of Fees and Expenses in  
Mutual Fund Performance Sales Material.

Dear Mr. Katz:

The Investment Company Committee of the Securities Industry Association (SIA)<sup>1</sup> appreciates the opportunity to comment on the above referenced NASD rule proposal, which the Commission published for comment on August 20, 2004 in accordance with Sections 19(b)(1) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder.

Prior to filing the rule proposal with the Commission, NASD published the rule for public comment, and pursuant to the NASD request for comment, SIA filed a comment letter with the NASD on January 22, 2004.<sup>2</sup> A copy of that letter is enclosed. The January 22<sup>nd</sup> letter raised a number of concerns with the NASD proposal, including, but not limited to, the possibility that it would engender requirements that were at best duplicative of, and at worst, inconsistent with, existing or proposed SEC rules. While

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<sup>1</sup> The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 790,600 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available on its home page: [www.sia.com](http://www.sia.com)).

<sup>2</sup> Letter from Stuart R. Strachan, Chair, SIA Investment Company Committee to Barbara Z. Sweeney, NASD Office of the Corporate Secretary, January 22, 2004.

some of the concerns raised by SIA and other commentators are addressed in modifications to the rule proposal filed with the Commission, SIA's principal concerns, including the possible lack of regulatory uniformity, remain unaddressed. Therefore, we strongly urge the Commission not to take any final action with respect to the NASD filing until the issues set forth in the enclosure have been fully addressed, and the Commission has taken final action on its pending point of sale/confirmation proposal.<sup>3</sup>

In closing, we would also note that the Commission published the NASD proposal for comment during one of the busiest vacation periods of the year, and only provided a 21 business-day comment period. Therefore, we would hope that the Commission would not construe any shortage of comment letters submitted as an indication of broad based support for the NASD rule proposal.

Any questions regarding this letter or enclosure should be directed to Michael Udoff of SIA staff.

Sincerely,

Stuart R. Strachan  
Chairman,  
Investment Company Committee

enclosure

cc: Robert L. Colby, Esq.  
Angela Goelzer, Esq.

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<sup>3</sup> File No. S7-06-04.



Via Federal Express

January 22, 2004

Barbara Z. Sweeney  
NASD  
Office of the Corporate Secretary  
1735 K Street N.W.  
Washington, D.C. 20006-1500

Re: Proposal Regarding Disclosure of Mutual Fund Expense Ratios and Sales Charges in Performance Advertising (Notice to Members 03-77)

Dear Ms. Sweeney:

The Investment Company Committee of the Securities Industry Association (SIA)<sup>1</sup> welcomes the opportunity to comment on the above-referenced rule proposal (the “proposal”). As you know, the proposal would amend Conduct Rules 2210 and 2211 to require that all mutual fund performance advertising utilized by members include a prominent text box containing standardized performance information, the fund’s maximum sales charge and annual expense ratio. The proposing notice to members acknowledges that standardized mutual fund performance information already reflects a fund’s sales load and expenses, and appears to require that the required disclosure also acknowledge this fact.<sup>2</sup>

## DISCUSSION

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<sup>1</sup> The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 800,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2002, the industry generated \$222 billion in domestic revenue and \$304 billion in global revenues. (More information about SIA is available on its home page: [www.sia.com](http://www.sia.com))

<sup>2</sup> While Attachment B to the notice to members contains a sample disclosure including such language, the proposed rule amendment does not contain a provision requiring such language.

While SIA supports the goal of improved disclosure of fund expenses, we do not believe that the proposal will contribute to enhanced investor awareness of fund expenses.. We are also concerned that it is not entirely consistent with the approach taken by the Securities and Exchange Commission (“SEC”) in the October 2003 amendments to the investment company advertising rules, which will be fully implemented in March 2004.<sup>3</sup> Additionally, it would appear that the proposal would be redundant of, and possibly inconsistent with, the SEC’s proposed rule to require a new “point of sale” disclosure document containing similar disclosures.<sup>4</sup>

SIA has consistently taken the position that the value of additional disclosure must be evaluated in the context in which it is presented. In that regard, while we thoroughly appreciate the worthy goal of providing investors with comprehensive information on fund sales charges, fees and expenses, doing so in a manner which separates this information (both in terms of location and degree of prominence) from other critical information, particularly with respect to fund investment objectives or risk factors, may well detract from, rather than contribute to, the investment decision-making process. Furthermore, the likelihood that the disclosure of this information will lead to investor confusion is supported by the requirement that a statement be included within the disclosure that the expense information is already reflected in the performance information.

We also note that the SEC amendments to the investment company advertising rules, including the modifications to Rule 482, and the elimination of Rule 134, are principally designed to allow more flexibility in fund advertising, rather than utilize a formulaic approach, and to apply a general anti-fraud standard to the content of such advertising. The proposal would seem to be taking NASD and its member firms in a different direction.

Finally, it would appear that the proposed SEC point of sale disclosure document<sup>5</sup> would require disclosures similar to that contained in the proposal. Additionally, an investor would have the right to terminate orders made prior to receipt of the disclosure document. Thus, if adopted, the SEC proposal would seem to obviate the need for the proposal. While we are not necessarily convinced that the SEC proposal would eliminate concerns similar to what we have expressed herein, we believe it would be prudent for NASD to await its outcome before making a determination on whether to proceed with its own proposal.

## CONCLUSION

SIA believes that the proposal has the potential to deflect investor attention away from critical information contained in the prospectus, and thus have the unintended consequence of detracting from, rather than enhancing, the investment decision-making

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<sup>3</sup> SEC Release No. IC-26195 (Federal Register, October 6, 2003)

<sup>4</sup> SEC Press Release 2004-5. The full text of the proposing release is not yet publicly available.

<sup>5</sup> Proposed Rule 15c2-3. The disclosure document would be included in a new Schedule 15D which would be furnished to the investor prior to his being committed to the fund purchase.

process. Additionally the proposal appears to be inconsistent with the SEC approach of applying a more general anti-fraud standard to fund advertising, and also redundant of, and possibly inconsistent with, current SEC proposals with regard to point of sale disclosure. Therefore, we urge NASD to either withdraw the proposal or at least await the outcome of the pending SEC disclosure proposal before considering further action.

Thank you again for the opportunity to comment. Please direct any questions you may have regarding this letter to Michael D. Udoff of SIA staff at (212) 618-0509.

Very truly yours,

Stuart R. Strachan  
Chairman  
SIA Investment Company Committee

cc: Angela Goelzer, Esq.  
Paul F. Roye, Esq.