

aggregated to meet sales load breakpoints. As the Task Force report noted, in order to deliver breakpoint discounts where investor eligibility is based on rights of accumulation, financial intermediaries must obtain the necessary information from investors regarding accounts that may be linked (and, if applicable, historical costs).²⁵ In addition, our proposed disclosure may heighten investors' awareness of the importance of maintaining records when breakpoints are determined using the historical cost method. The Task Force reported that broker-dealers would not generally have historical cost information for customer positions transferred into their firm or for positions held at another firm that a customer may be able to link in order to receive a breakpoint discount.²⁶ In addition, the fund and its transfer agent may not have historical cost information for shareholders, for example, in the many cases where a financial intermediary places an omnibus order to purchase and sell fund shares on behalf of all its customers without identifying individual customer transactions.

We request comment generally on the proposed disclosure requirement regarding information or records that may be necessary for a shareholder to provide and specifically on the following issues:

- Should we require a mutual fund to state in its prospectus that it may be necessary for a shareholder to inform the fund or a financial intermediary of the existence of accounts that are eligible to be aggregated to meet sales load breakpoints? Should we require a mutual fund to describe the information and records that it may be necessary for a shareholder to provide in order to verify his or her eligibility for breakpoint discounts? Is there any additional information that we should require in this description?

- Do the proposed disclosure requirements reflect the appropriate allocation of responsibility among the mutual fund, the financial intermediary, and the shareholder for ensuring that the shareholder obtains a breakpoint discount to which he or she is entitled? Will the proposed disclosures be adequate to enable shareholders to obtain the breakpoint discounts for which they are eligible, or would this proposed approach place too great a burden on shareholders?

- Is the prospectus the most appropriate location for the proposed disclosure regarding the need for a shareholder to inform the fund or his or

her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated, and the information and records necessary to aggregate holdings? Should we require or permit any, or all, of this disclosure to be included in the SAI? Should this disclosure be required in shareholder reports, confirmations, account statements, or a document delivered by a financial intermediary prior to a purchase of mutual fund shares? Should shareholders be notified periodically, e.g., in shareholder reports or account statements, that it is their responsibility to monitor whether they have qualified for breakpoint discounts?

D. Disclosure of Availability of Sales Load and Breakpoint Information on Fund's Web Site

We are proposing to require that a mutual fund state in its prospectus whether it makes available free of charge, on or through its Web site at a specified Internet address, and in a clear and prominent format, the information that would be required regarding the fund's sales loads and breakpoints in the prospectus and SAI pursuant to Items 8(a) and 18(a), including whether the Web site includes hyperlinks that facilitate access to the information.²⁷ A mutual fund that does not make the sales load and breakpoint information available in this manner would be required to disclose the reasons why it does not do so (including, where applicable, that the fund does not have an Internet Web site).

This proposal is intended to encourage mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts to complement the prospectus disclosure regarding breakpoints that we are proposing. Modernizing the disclosure system under the Federal securities laws involves recognizing the importance of the Internet in fostering prompt and more widespread dissemination of information.²⁸ We believe that mutual fund disclosure should be more readily available to investors in a variety of locations to facilitate investor access to that information. We also believe that it is important for funds to make investors aware of the different sources that provide access to information about a

fund. In addition, we believe that encouraging website disclosure of information regarding breakpoint discounts may assist broker-dealers and other financial intermediaries to more easily access and understand the terms upon which mutual funds allow investors to aggregate their holdings and the holdings of related parties.

Our proposal would require that the disclosure about website availability of sales load and breakpoint information indicate whether the information is in a clear and prominent format, including whether the website includes hyperlinks that facilitate access to the information. We believe that it is important for website disclosure regarding sales loads and breakpoint discounts to be clear and prominent, in order to help investors and financial intermediaries to find this information easily. Hyperlinks that facilitate access to the information may contribute to a clear and prominent presentation. Thus, websites could provide sales load and breakpoint information in a clear and prominent format by, for example, using clear and prominent hyperlinks that provide direct linkage to the relevant portions of the fund's prospectus and SAI or the specific pages on a third-party website containing the information.²⁹

We request comment on the proposed requirement to disclose whether sales load and breakpoint information is available on or through a fund's website and specifically on the following issues:

- Is the proposed requirement for a mutual fund to state in its prospectus whether the required information regarding its sales loads and breakpoints is available on or through its Web site necessary or appropriate? Should a mutual fund that does not maintain a Web site be required to state that it does not make this information available because it does not have a Web site? What other disclosures in this area, if any, should funds be required to make?

- Is the prospectus the appropriate location for a mutual fund to provide the proposed disclosure regarding Web site availability? Would this disclosure be more appropriately located in the SAI, Form N-CSR, shareholder reports, account statements, confirmations, a document provided by a financial intermediary prior to share purchase, or another location?

- Should we require mutual funds with Web sites to include sales load and

²⁷ Proposed Item 8(a)(5) of Form N-1A.

²⁸ See Securities Act Release No. 8128 (Sept. 5, 2002) (67 FR 58480 (Sept. 16, 2002)) (adopting requirement for an operating company to disclose in its annual report on Form 10-K whether it makes available free of charge on or through its Web site its annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments).

²⁵ Task Force Report, *supra* note 12, at 5.

²⁶ *Id.* at 5 n.7.

²⁹ See Securities Act Release No. 8128 (Sept. 5, 2002) (67 FR 58480, 58493 (Sept. 16, 2002)). We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking to a third-party Web site.