

annual burden of completing Form N-1A.⁴⁰ We estimate that this additional burden would equal total internal costs of \$101,903 annually, or approximately \$48 per fund portfolio.⁴¹

We expect the external costs of providing the new prospectus disclosure will be limited, because the amendments relating to disclosure of arrangements that result in breakpoints in sales loads require the description of the arrangements to be brief. We expect that the proposed disclosure would not add significant length to the prospectus. We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act (15 U.S.C. 80a-2(c)) and section 2(b) of the Securities Act (15 U.S.C. 77(b)) require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will

promote efficiency, competition, and capital formation.

The proposed amendments are intended to provide greater transparency for mutual fund shareholders regarding breakpoint discounts on front-end sales loads. These changes may improve efficiency. The enhanced disclosure requirements are intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts, which could promote more efficient allocation of investments among mutual funds. The proposed amendments may also improve competition, as enhanced disclosure regarding the ways in which investors can aggregate holdings to meet sales load breakpoints may prompt investors to seek out mutual funds that offer the most favorable breakpoint schedules and aggregation rules for their particular circumstances, and may prompt funds to compete for the business of these better informed investors. Finally, the effects of the proposed amendments on capital formation are unclear.

Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation, and the extent to which they would be offset by the costs of the proposals, are difficult to quantify. We note that, with respect to our proposals, in many cases mutual funds currently provide disclosure in their registration statements regarding breakpoint discounts on front-end sales loads.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed form amendments under the Securities Act and the Investment Company Act to require mutual funds to provide enhanced disclosure about breakpoint discounts on front-end sales loads. Specifically, the proposals would:

- Require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints

in sales loads, including a summary of shareholder eligibility requirements;

- 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 discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary;

- Require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints; and

- Require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

A. Reasons for, and Objectives of, Proposed Amendments

The Commission is proposing rules to address the concerns that have been identified regarding the extent to which mutual fund investors receive breakpoint discounts. An examination sweep by the Commission, the NASD, and the NYSE between November 2002 and January 2003 found that in 32% of the transactions reviewed that appeared to be eligible for a reduced sales charge, investors did not receive a breakpoint discount or appeared to have incurred other unnecessary sales charges.⁴² The enhanced disclosure that would be required by the Commission's proposed rules is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and broker-dealers to take full advantage of all available breakpoint discounts.

B. Legal Basis

The Commission is proposing amendments to Form N-1A pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)), and sections 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a-8, 80a-24(a), 80a-29, and 80a-37).

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same

⁴⁰ This estimate is based on the following calculation: (2 hours per initial registration statement \times 483 portfolios \times 30% of portfolios) + (1 hour per post-effective amendment \times 6,542 portfolios \times 30% of portfolios) = 2,252 hours.

⁴¹ These figures are based on a Commission estimate that approximately 781 registered investment companies, with 2,108 portfolios, would file initial registration statements or post-effective amendments annually that would be subject to the proposed disclosure requirements, and an estimated hourly wage rate of \$45.25. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage figure is based on published compensation for compliance attorneys outside New York City (\$37.60) and programmers (\$29.44), and the estimate that attorneys and programmers would divide time equally on compliance with the proposed disclosure requirements, yielding a weighted wage rate of \$33.52 $((\$37.60 \times .50) + (29.44 \times .50)) = \33.52 . See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (Sept. 2002). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of \$45.25 $(\$33.52 \times 1.35) = \45.25 .

⁴² Joint Report, *supra* note 8, at 14-15.