

December 4, 2003

Via Electronic and Federal Express

George Walz
Associate Vice President,
Member Regulation
NASD, Inc.
1735 K St., N.W.
Washington, DC, 20006-1500

Dear Mr. Walz:

The Securities Industry Association (“SIA”)¹ supports the recent initiatives of the Securities and Exchange Commission and NASD to ensure that investors who purchased Class A shares of front-end load mutual funds receive appropriate breakpoint discounts. SIA urged its membership to review their breakpoint procedures and promptly take any necessary corrective action. SIA wishes to continue to work together with the regulators and the industry to explore ways in which breakpoint policies can be made easier to apply, so that the risk of any further operational problems regarding customers receiving the correct breakpoint is further reduced.

Recently, NASD directed firms to make appropriate refunds to customers who did not receive breakpoint discounts. The directive required firms to take the following corrective measures:

1. Provide written notification to each customer who purchased Class A mutual fund shares through the firm from January 1, 1999 through November 3, 2003 that the firm experienced a problem delivering breakpoint discounts and that as a result, the customer may be entitled to a breakpoint. The written notification and breakpoint claim form must be delivered to each individual customer by January 15, 2004.

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Bankers Association, brings together the shared interests of more than 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 nearly 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 \$356 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

2. Some firms are also required to conduct a trade-by trade analysis of Class A mutual fund purchases of \$2,500 or more (including paper application transactions) from January 1, 2001 through the present. The review must be completed, and all overcharges identified refunded by March 31, 2004.
3. By April 16, 2004, firms also must provide to the NASD a report on the firm's refund program.

SIA member firms report that these deadlines coincide with the busiest times for the departments that would be involved in this project (e.g., information technology, operations, legal, and compliance). For example, year-end is when firms receive the most questions from customers regarding their IRAs (e.g., required minimum distributions), 1099s, and account fees. In order to fully provide investor protections, fulfill normal customer service functions, and comply with the NASD directive during these critical months, SIA respectfully requests that each deadline outlined above be extended by 60 days.

Additionally, SIA appreciates NASD's recent FAQ regarding the breakpoint refund process. The FAQ addresses many of the questions upon which our members had asked us to seek clarification from the NASD. There are, however, a few remaining questions which either have not been addressed, or have arisen as the result of responses contained in the FAQ. These are enumerated below:

1. Are firms permitted to send the Written Notification and Claim Form to customers electronically?
2. In lieu of a refund, are firms permitted to credit customer accounts the amount of overcharge, plus interest?
3. Would NASD consider setting a minimum account value, transaction size, or breakpoint entitlement that would be exempt from the Written Notification or Claim Form requirements? It is believed that this would eliminate from the process accounts that are unlikely to qualify for discounts, or where such discounts would be *de minimus*, and allow firms to more expeditiously focus on customers who are likely to be eligible for discounts.
4. What is the definition of "Entity Holding Account" on the Claim Form?
5. Should firms use the NASD Refund Calculation Guidelines in NASD NTM 03-47 to calculate the reserve for breakpoint refunds?
6. Letters of Caution state "refunds must be made promptly and, in no event, no later than 90 days after any inquiry made by a customer." Does the 90-day time frame re-start each time a customer makes an additional inquiry?

7. Similarly, does the 90-day time frame re-start each time a firm requests additional information from a customer in order to properly determine if a breakpoint entitlement is warranted?
8. If a customer has not provided the necessary information in order to properly determine if a breakpoint entitlement is warranted by the expiration of the 90-day deadline, what additional obligation, if any, does a firm have to determine if a refund is warranted?
9. Can firms impose a deadline for customers to respond to the Written Notification and requests for additional information?

We trust that NASD will provide guidance to the industry on these questions and consider our request for an extension of the directive's deadlines. SIA and our member firms will work with regulators to ensure that mutual fund investors once again can have justifiable faith in these products and our markets.

If you have any questions, please contact Robert Gannon, Vice President, Management Services at (212) 618-0587, or Michael Udoff, Vice President, Associate General Counsel and Secretary at (212) 618-0509.

Sincerely,

George R. Kramer
Vice President and Acting General Counsel