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SEC I: SEC Adopts Mutual Fund Breakpoint Disclosure Requirements and Investment Adviser Code of Ethics Requirement

U.S. Securities and Exchange Commission, [SEC Adopts Rules on Breakpoint Disclosure and Adviser Ethics Codes, Proposes Transfer Agent Rule](#), News Release 2004-71 (May 26, 2004).

U.S. Securities and Exchange Commission, [Speech by SEC Chairman: Opening Statement at May 26, 2004 Open Meeting](#) (May 26, 2004).

On May 26, the U.S. Securities and Exchange Commission adopted amendments regarding disclosure requirements for mutual funds concerning

discounts on front-end sales loads and a new rule (as well as amendments to rules and forms) dealing with investment adviser codes of ethics.

Mutual Fund Breakpoint Disclosure Requirements: The mutual fund breakpoint disclosure provisions come after release of the report of the Joint NASD / Industry Task Force on Breakpoints that recommended ways in which the mutual fund and broker-dealer industries could prevent breakpoint problems for investors in the future. According to the SEC's announcement, the amendments will:

Require a mutual fund to provide a brief description in its prospectus of arrangements that result in sales load breakpoints, including a summary of eligibility requirements, with more detailed information permitted in the statement of additional information;

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

Require a mutual fund to state in its prospectus whether it makes available on its Web site information regarding the breakpoints.

Funds must provide the disclosure required by the amendments beginning September 1, 2004.

Investment Adviser Codes of Ethics: The Commission voted to adopt new Rule 204A-1 under the Investment Advisers Act as well as related amendments to other rules and forms including Investment Adviser Act Rule 204-2, Investment Advisers Act Form ADV and Rule 17j-1 under the Investment Company Act. Rule 204A-1 will require registered investment advisers to "adopt and enforce codes of ethics applicable to their supervised persons." According to the SEC's

announcement, such codes must include, among other things, the following:

Standards of business conduct that are expected of the adviser's supervised persons and that reflect the adviser's fiduciary duties. Supervised persons will have to acknowledge, in writing, receipt of a copy of the code of ethics and any amendments.

Provisions requiring the adviser's supervised persons to comply with applicable federal securities laws.

Requirements that certain supervised persons called "access persons" provide reports of their personal securities holdings and transactions, including transactions in all mutual funds advised by the adviser or an affiliate.

Requirements that "access persons" must pre-clear any personal investments in initial public offerings and limited offerings.

Requirements that supervised persons must report promptly any violations of the adviser's code of ethics to the firm's chief compliance officer or other designated persons.

The compliance date for the investment adviser code of ethics requirements is January 7, 2005.

SEC II: SEC and Committee of European Securities Regulators Agree to Enhanced Cooperation and Collaboration

U.S. Securities and Exchange Commission, [Director of the SEC Office of International Affairs and the Secretary-General of the Committee of European Securities Regulators Announce Enhanced Cooperation and Collaboration](#), News Release 2004-70 (May 26, 2004).

On May 26, the Director of the SEC's Office of International Affairs and the Secretary-General of the Committee of European Securities Regulators jointly announced an initiative to enhance cooperation and collaboration between the

SEC and the CESR. According to the announcement, the objective of the enhanced cooperation is "to identify emerging risks in the US and EU securities markets, and to engage in early discussions of potential regulatory initiatives in the interest of promoting convergence where possible". The initiative is intended to complement other multilateral efforts to collaborate by such organizations as the International Organization of Securities Commissions, the Council of Securities Regulators of the Americas, the Financial Action Task Force and the US-EU Financial Markets Regulatory Dialogue.

SEC III: SEC Acts To Address Apparent Conflicts Between PCAOB Standard and Federal Regulations and Statutes

U.S. Securities and Exchange Commission, [Interpretation: Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1](#) (May 14, 2004).

On May 14, the SEC issued an interpretation intended to address apparent conflicts between the PCAOB's "Auditing and Related Professional Practice Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board" and various Federal regulations and statutes. The apparent conflict arises from the PCAOB's Standard which directs auditors to cease referring to Generally Accepted Auditing Standards (GAAS) in audit reports relating to financial statements of issuers and, instead, refer to the "standards of the Public Company Accounting Oversight Board". However, many SEC Rules and staff guidance, as well as numerous federal statutes, continue to include references to GAAS. Examples include Regulation S-X and Rule 2-02 promulgated thereunder. Similarly, Exchange Act Section 10A(a) requires audits in accordance with GAAS. In its interpretation, the Commission provides in pertinent part:

Given the possible confusion between Commission rules and staff guidance and references in the federal securities laws, on the one hand, and the PCAOB's rules, on the other hand, the Commission believes it is necessary to publish the guidance in this release. Effective immediately, references in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission. The Commission intends to codify this interpretation in the near future.

SEC IV: SEC and Other Agencies Issue Statement on Sound Practices Concerning Complex Structured Finance Activities

U.S. Securities and Exchange Commission, [Policy Statement: Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities](#) (May 13, 2004).

On May 13, the SEC, Department of the Treasury, Office of Thrift Supervision, Federal Reserve System and the Federal Deposit Insurance Corporation issued an "Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities." The Statement makes clear that the agencies involved are concerned over the possibility that "a financial institution may assume substantial reputational and legal risk if the institution enters into a complex structured finance transaction with a customer and the customer uses the transaction to circumvent regulatory or financial reporting requirements, evade tax liabilities, or further other illegal or improper behavior." Accordingly, the Statement -- regarding which the agencies seek public comment on or before June 19 -- describes the types of internal controls and risk management procedures that the Agencies "believe are particularly effective in assisting financial institutions to

identify and address the reputational, legal, and other risks associated with complex structured finance transactions." Among many other things, the Statement suggests that financial institutions should:

Have effective policies and procedures in place to identify transactions that "may involve heightened reputational and legal risk;

Take steps to ensure that such transactions receive "enhanced scrutiny" by the institution; and

Ensure that the institution does not participate in "illegal or inappropriate transactions".

SEC V: SEC Releases Staff's Outline of Comments on Proposed Amendments Requiring Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies

U.S. Securities and Exchange Commission, [Outline of Comments on Proposed Amendments Requiring Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies](#) (May 13, 2004).

On May 13, the SEC released an outline of comments received on proposed amendments requiring disclosure regarding approval of investment advisory contracts by Directors of Investment Companies. The outline, prepared by Deborah D. Skeens of the Division of Investment Management, summarizes public comments received on the following topics: (1) which fund shareholder reports should provide the subject disclosure; (2) proposed enhancements to disclosure including disclosures regarding selection of investment advisers, approval of advisory fees, specific factors to consider, comparisons of fees and services and an evaluation of each factor; (3) contracts that would be covered by

the proposal including advisory contracts approved by shareholders and unaffiliated subadvisers and non-sponsor advisers; (4) the compliance date; (5) cost/benefit analyses of the proposal; (6) Paperwork Reduction Act Analysis comments; (7) burdens on competition and promotion of efficiency, competition and capital formation; (8) a regulatory flexibility analysis; (9) impact on the economy and other comments.

SRO I: NASD Announces Formation of Mutual Fund Task Force

NASD, [NASD's Glauber Announces Mutual Fund Task Force: Goal Is To Bring Greater Transparency To Fund Costs, Distribution, News Release \(May 12, 2004\).](#)

NASD, [Robert R. Glauber's Opening Address: NASD Spring Securities Conference \(May 12, 2004\).](#)

On May 12, NASD Chairman and CEO Robert Glauber spoke before the NASD Spring Securities Conference in Baltimore. Among other things, Mr. Glauber announced the formation of a "Mutual Fund Task Force". The purpose of the Task Force will be "to identify and recommend ways to bring transparency to mutual fund costs and distribution arrangements."

The Task Force resulted from "discussions" between the SEC and NASD staffs in response to rule proposals and requests for comment by the SEC on "ways to improve disclosure of mutual fund costs and issues regarding mutual fund distribution arrangements."

The Task Force will perform its work in two phases. The first will involve analyses of mutual fund portfolio transaction costs including directed brokerage arrangements, soft dollars and disclosure. The first phase is expected to require several months of work.

The second phase will focus on distribution arrangements including 12b-1 fees and revenue sharing. This phase will take longer to complete than phase 1 and

will include "a comprehensive view of mutual fund distribution".

SRO II: NASD Proposes Amendment to NASD Rule 1022 to Establish Certain Qualifications for Research Analyst Supervisors

NASD, [Amendment to NASD Rule 1022 to Establish Qualification Requirements for Supervisors of Research Analysts](#) (May 7, 2004).

On May 7, the NASD filed with the SEC a proposed amendment to NASD Rule 1022 dealing with qualification requirements for supervisors of research analysts. The proposed amendment includes language stating that "A person registered solely as a General Securities Principal shall not be qualified to supervise the conduct of a 'research analyst' as defined in Rule 1050, or a supervisory analyst qualified pursuant to Rule 344 of the New York Stock Exchange who approves research reports on equity securities as permitted by Rule 2210(b)(1), unless such principal has passed a Qualification Examination as specified by the Board of Governors." According to the NASD, in view of recently promulgated research analyst registration requirements and the scope and importance of the comprehensive analyst conflict rules, "NASD believes it appropriate for supervisors of research analysts to have particular knowledge of this new regulatory environment. Accordingly, NASD is proposing to amend Rule 1022 to require supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or, for dual NASD-NYSE members, the NYSE Supervisory Analyst Examination (Series 16)."

OECD I: OECD Revises Principles of Corporate Governance

Organisation for Economic Co-Operation and Development, [OECD Principles of Corporate Governance](#) (2004).

In 1999, Ministers of the Organisation for Economic Co-Operation and Development endorsed the *OECD Principles of Corporate Governance*.

Beginning in 2002, in response to widely-reported corporate scandals, the OECD Ministers directed the OECD Steering Group to conduct a "comprehensive survey of how member countries addressed the different corporate governance challenges they faced" and to review the principles in their entirety. Following revisions and public comment, OECD released the revised Principles in early May.

The Principles are non-binding and do not purport to provide "detailed prescriptions" for national legislation. Rather, they are intended as a reference point to allow national legislators to identify their governance objectives and to achieve them.

The revised *Principles* is divided into two sections: "The OECD Principles of Corporate Governance" and "Annotations to the OECD Principles of Corporate Governance". Both sections of the *Principles* address the following concepts: (1) ensuring the basis for an effective corporate governance framework; (2) the rights of shareholders and key ownership functions; (3) the equitable treatment of shareholders; (4) the role of stakeholders in corporate governance; (5) disclosure and transparency; and (6) the responsibilities of the Board.

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COMINGS AND GOINGS: Who's Doing and Saying What and Where?

Former SEC Chairman **Arthur Levitt** kicked off KPMG's annual energy conference with a speech regarding restoration of investor trust and attention to integrity is key in the post-Enron corporate world. He noted that the previous year's speaker, who cautioned the same conference regarding the importance of maintaining the trust of investors, was Sir Philip Watts, former Chairman of Royal Dutch / Shell Group of Companies who resigned under fire last March in the wake of shareholder anger over the company's alleged overstatement of oil and gas reserves. *See [Former SEC Chairman Levitt Notes Irony in Keynote Speakers](#)*, Star-Telegram (May 25, 2004).

On May 18, the SEC announced the appointment of **Paul A. Belvin**, **Dennis N. Muse** and **Barry N. Summer** as Associate Directors in the Division of Corporation Finance. As Associate Directors, Messrs. Belvin, Muse and Summer will join Shelley E. Parratt and James M. Daly as senior officials in Disclosure Operations in the Division of Corporation Finance. *See U.S. Securities and Exchange Commission, [Commission Announces Associate Directors in Division of Corporation Finance](#)*, News Release 2004-68 (May 18, 2004).

Barry W. Rashkover, the SEC's Associate Regional Director and Co-Head of Enforcement for the Commission's Northeast Regional Office, announced on May 17 that he will leave the Commission in June to enter private practice. Mr. Rashkover, 43, has served as Co-Head of Enforcement of the SEC's Northeast Regional Office since June 2000. Before that, he held various other positions as part of the office's enforcement staff including Assistant Regional Director and Senior Trial Counsel. *See U.S. Securities and Exchange Commission, [Barry Rashkover, Northeast Regional Office Associate Regional Director and Co-Head of Enforcement, to Leave Commission](#)*, News Release 2004-66 (May 17, 2004).

On May 11, the Commission announced the appointment of **Eric J. Schuppenhauer** as a Senior Advisor to the Office of the Chief Accountant. According to the Commission, in this capacity, Mr. Schuppenhauer will "advise

the chief accountant on strategy and areas of risk that need to be pursued as part of the office's agenda, with a specific focus on new initiatives related to disclosure, including exploring the implementation of 'tagged' data in Commission filings. Schuppenhauer will also continue to work on the Commission's initiative to propose new rules related to asset-backed securities and to work with those government sponsored enterprises seeking to register under the Exchange Act." See U.S. Securities and Exchange Commission, [Eric Schuppenhauer Named as Senior Advisor to the Commission's Chief Accountant](#), News Release 2004-63 (May 11, 2004).

What Are the Commissioners Saying? SEC Chairman **William H. Donaldson** delivered an an opening statement on the "[Gramm-Leach-Bliley Act Bank Broker Rules](#)" at the SEC's June 2 open meeting. Chairman Donaldson also delivered the "[Baruch College Commencement Address](#)" on June 1 as well as an "[Opening Statement at May 26, 2004 Open Meeting](#)" of the Commission in which he discussed disclosure of mutual fund breakpoint discounts, investment adviser codes of ethics and issuer restrictions or prohibitions on transfers of securities to and from securities intermediaries. Chairman Donaldson also delivered "[Remarks to the National Association of Securities Dealers](#)" on May 12, during which he discussed structural reforms at the SEC, important issues faced by the various Divisions of the SEC and the role NASD members can play to enhance an ethical code governing the securities industry.

What Are the Commission Staffers Saying? On May 27, **Scott Taub** delivered "[Remarks at the University of Southern California Leventhal School of Accounting SEC and Financial Reporting Conference](#)" regarding pension issues, contingencies, segment disclosures, materiality, contingent fees and other issues. Mr. Taub also spoke on May 20 regarding "[International Convergence and Public Oversight of Accounting and Auditing Standards](#)". On May 21, **Annette L. Nazareth** delivered "[Remarks before the SIA Market Structure Conference](#)" regarding proposed Reg NMS. On May 20, **Paul F. Roye** delivered "[Remarks Before the ICI General Membership Meeting](#)" regarding issues facing

the mutual fund industry. And, finally, on May 18 Alan L. Beller delivered the "[Alan B. Levenson Memorial Lecture](#)" at the Glasser LegalWorks 6th Annual SEC Disclosure, Accounting and Enforcement Conference in New York.

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