about the other funds not offered through the prospectus but available through the same financial intermediary. The commenter also recommended that the prospectus should contain prominent disclosure recommending that the investor contact his or her broker or financial adviser for further information about suitable classes or feeder funds offered by the intermediary.⁶⁸

Commenters suggested the above approach as an alternative to the proposed cross-disclosure requirements, which commenters strongly criticized and which the Commission is not adopting. The proposal would have required a prospectus for one class or feeder fund to provide full crossdisclosure 69 about all other classes or all other feeder funds investing in the same master fund that were not offered in the prospectus and that met two conditions. First, the classes or feeder funds had to be offered through the same financial intermediary.70 Second, they had to permit investors to choose among alternative arrangements for sales and related charges.71

Many commenters argued that crossdisclosure would not achieve the Commission's goal of promoting investor understanding of multiple class and master-feeder funds because of the volume of disclosure that the proposal might require, arguing that "the disclosure requirements of the Proposal run counter to the staff's professed desire for prospectus simplification and the desire to avoid 'prospectus creep.' "72 Several commenters cautioned that if the Commission adopted the proposed disclosure requirements, sponsors would not use the master-feeder form and would create "less efficient and more expensive clone

⁷¹ Although the Commission is not adopting the proposed cross-disclosure requirement, it believes that disclosure about more than one class or feeder fund in the same prospectus can be consistent with clear, simple, and effective disclosure and prospectus simplification. Similarly, Guide 34 expressly contemplates that more than one class or feeder fund may be offered in the same prospectus. *See* discussion of Guide 34, *infra* at section II.C.2.

⁷² Chicago Bar Comment Letter, *supra* note 36, at 2; *see also* ICI Comment Letter, *supra* note 11, at 5–7; Signature Group Comment Letter, *supra* note 59, at 6–8 (disputing the proposal's assumption that investor confusion about these instruments "is a serious and widespread problem").

funds." ⁷³ One commenter representing a fund family that offers both no-load and broker-sold products objected to requiring brokers to disclose that the same fund is available without a sales charge, arguing that if a client receives advice from a broker, the broker deserves to be paid for those services.⁷⁴

Some commenters strongly criticized the proposal for requiring an issuer to provide prospectus disclosure about securities it does not intend to offer through that prospectus. Several expressed concern that feeder funds would have to assume liability for disclosure about unrelated feeder funds even though they are distinct entities and may have different advisers, underwriters, and boards of directors.⁷⁵

Commenters also criticized the financial intermediary test-one of the proposal's two triggers for cross disclosure.76 One commenter stated, for example, that "[t]he Proposal erroneously assumes that all financial intermediaries are homogeneous organizations, serving only a single market or customer base." 77 Much of the commenters' concern centered on the effect of the proposed requirement on independent sponsors of feeder funds and on financial intermediaries with more than one distribution network. One commenter noted that "feeder funds, unlike different classes of shares, often are organized to serve customers of unaffiliated third party banks, insurance companies or brokerage firms who are competitors of each other and, in many cases, of the master fund." 78

⁷⁵ E.g., ICI Comment Letter, *supra* note 11, at 7. See also ABA Comment Letter, *supra* note 17, at 8– 9; Signature Group Comment Letter, *supra* note 59, at 5 and 9 (''[s]uch a requirement of disclosure about products offered by competitors and the assumption of liability for such disclosures would be entirely unprecedented in the securities industry'') (emphasis deleted).

⁷⁶ The proposal would have required crossdisclosure only about classes or feeder funds both offered through the same financial intermediary and with alternative arrangements for sales and related charges, and made clear that not all cases would involve alternative arrangements. *See* text accompanying notes 70–72 of the Proposing Release, 58 FR at 68083. Most commenters, however, appeared to assume that there would be alternative sales charges in all cases.

⁷⁷ Signature Group Comment Letter, *supra* note59, at 5.

⁷⁸ Id. at 8.

One independent sponsor of mutual funds argued that the proposal would create unique problems for independent mutual fund groups, and would discourage brokers from offering funds if prospectuses must describe funds offered by unaffiliated brokers.⁷⁹ This commenter asserted that fund sponsors would have to create a different prospectus for each possible combination of the different classes or feeder funds that in theory a broker might offer; therefore, the preparation of numerous prospectuses would create increased costs for these funds and an "administrative nightmare" for their sponsors, while in-house master-feeder or multiple class funds and their sponsors would not face comparable burdens.

The disclosure requirement as adopted addresses the commenters' concerns. The disclosure that investors may ask their sales representatives about other classes or feeder funds should alleviate the concern that the disclosure would encourage investors to deal directly with issuers, rather than their intermediaries. This dialogue should further investor understanding of the different fee arrangements or distribution possibilities associated with the fund without imposing a burden on issuers. Retaining a telephone number requirement, but not requiring the other disclosure or obligations should provide investors with a source for obtaining more information about other classes or feeder funds available through their sales representative without raising the practical concerns voiced by many commenters. Not requiring crossdisclosure about other classes or feeder funds not offered through the prospectus removes the logistical and competitive concerns voiced by many commenters. This approach is also consistent with the Commission's goals of promoting prospectus simplification.

2. Discussion of Classes or Feeder Funds Offered in Prospectus

New staff Guide 34 to Form N–1A requires a discussion of the differences between classes or feeder funds whenever two or more classes or feeder funds are offered through the same prospectus. In addition, new Guide 34 advises that if a single prospectus is used to offer more than one class or feeder fund, and the classes or feeder funds have different expense and/or sales load arrangements, the prospectus should clearly explain the differences in the features, and should provide a separate response to Item 2(a)(i) for each class or feeder. These requirements are

⁶⁸ Id. at 9.

 $^{^{69}\}mbox{Disclosure responding to Items 2 through 9 of Form N–1A.$

⁷⁰ The Proposing Release listed as examples of "financial intermediaries" brokers, dealers, banks and any other entities that act as agents or principals in the sale of a fund's shares, or that, like some banks, provide shareholder services under an agreement with a fund. *See* 58 FR 68083, n.69.

⁷³ *E.g.*, Signature Group Comment Letter, *supra* note 59 at 5; *see also* letter from Fidelity Investments to Barry Barbash, Director, Division of Investment Management, SEC 1–2 (July 22, 1994).

⁷⁴ See Letter and memorandum from Robert Pozen, General Counsel and Managing Director, FMR Corp. to Arthur Levitt, Chairman, SEC 2 (Nov. 18, 1994) ("This would be the equivalent of requiring Filenes to tell all of its customers that the same goods may be purchased at a discount in the basement or from a competitor.").

⁷⁹ Eaton Vance Comment Letter, *supra* note 66.