SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 270 and 274

[Release Nos. 33–7932; 34–43786; IC–24816; File No. S7–23–99]

RIN 3235–AH75

Role of Independent Directors of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to certain exemptive rules under the Investment Company Act of 1940 to require that, for investment companies that rely on those rules: independent directors constitute a majority of their board of directors; independent directors select and nominate other independent directors; and any legal counsel for the independent directors be an independent legal counsel. We also are adopting amendments to our rules and forms to improve the disclosure that investment companies provide about their directors. These amendments are designed to enhance the independence and effectiveness of boards of directors of investment companies and to better enable investors to assess the independence of those directors.

DATES: *Effective Date:* February 15, 2001, except that the rescission of § 270.2a19–1 under the Investment Company Act will become effective May 12, 2001.

Compliance Date: Section III of this release contains information on compliance dates.

FOR FURTHER INFORMATION CONTACT: For information regarding the Investment Company Act rule amendments, contact Jaea F. Hahn, Attorney, Martha B. Peterson, Special Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 942–0690, or regarding the disclosure amendments, contact Kimberly Browning, Attorney, Peter M. Hong, Special Counsel, or Kimberly Dopkin Rasevic, Assistant Director, Office of Disclosure Regulation, (202) 942–0721, at the Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') is adopting new rules 2a19–3 [17 CFR 270.2a19–3], 10e–1 [17 CFR 270.10e–1], and 32a–4 [17 CFR 270.32a–4] and amendments to rules 0–1 [17 CFR 270.0–1], 10f–3 [17 CFR 270.10f–3], 12b–1 [17 CFR 270.12b–1], 15a–4 [17 CFR 270.15a–4], 17a–7 [17 CFR 270.17a–7], 17a–8 [17 CFR 270.17a–8], 17d–1 [17 CFR 270.17d–1], 17e–1 [17 CFR 270.17e–1], 17g–1 [17 CFR 270.17g–1], 18f–3 [17 CFR 270.18f–3], 23c–3 [17 CFR 270.23c–3], 30d–1 [17 CFR 270.30d–1], 30d–2 [17 CFR 270.30d–2], and 31a–2 [17 CFR 270.31a–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act''); amendments to Forms N–1A [17 CFR 274.11A], N–2 [17 CFR 274.11a–1], and N–3 [17 CFR 274.11b] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a–aa] (''Securities Act''); and amendments to Schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm] (''Exchange Act''). The Commission also is rescinding rule 2a19–1 under the Investment Company Act [17 CFR 270.2a19–1].

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Executive Summary

The Commission is adopting new rules and amendments to rules and forms to enhance the independence and effectiveness of independent directors of investment companies (''funds''). First, we are adopting amendments to require, for funds relying on certain exemptive rules, that:

- Independent directors constitute a majority of the fund's board of directors;
- Independent directors select and nominate other independent directors; and
- Any legal counsel for the fund's independent directors be an independent legal counsel.

Second, the rules and amendments:

- Prevent qualified individuals from being unnecessarily disqualified from serving as independent directors;
- Protect independent directors from the costs of legal disputes with fund management;
- Permit us to monitor the independence of directors by requiring funds to keep records of their assessments of director independence;
- Temporarily suspend the independent director minimum percentage requirements if a fund falls below a required percentage due to an independent director's death or resignation; and
- exempt funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

Finally, we are requiring that funds provide better information about directors, including:

- Basic information about the identity and business experience of directors;
- Fund shares owned by directors;
- Information about directors that may raise conflict of interest concerns; and
- The board's role in governing the fund.

Together, these new rules and amendments are designed to reaffirm the important role that independent directors play in protecting fund investors, strengthen their hand in dealing with fund management, reinforce their independence, and provide investors with greater information to assess the directors' independence.

I. Background

Mutual funds are organized as corporations, trusts, or limited partnerships under state laws, and thus are owned by their shareholders, beneficiaries, or partners.[1] Like other types of corporations, trusts, or

[1] For simplicity, this release focuses on mutual funds (*i.e.,* open-end funds). The amendments we are adopting, however, apply to all management investment companies, except where noted.

partnerships, a mutual fund must be operated for the benefit of its owners.[2] Unlike most business organizations, however, mutual funds are typically organized and operated by an investment adviser that is responsible for the day-to-day operations of the fund. In most cases, the investment adviser is separate and distinct from the fund it advises, with primary responsibility and loyalty to its own shareholders.[3] The ''external management'' of mutual funds presents inherent conflicts of interest and potential for abuses that the Investment Company Act and the Commission have addressed in different ways.[4]

One of the ways that the Act addresses conflicts between advisers and funds is by giving mutual fund boards of directors, and in particular the disinterested directors,[5] an important role in fund governance.[6] In relying on fund boards to represent fund investors and protect their interests, Congress avoided the more detailed regulatory provisions that characterize other regulatory schemes for collective investments.[7] The Commission has similarly relied extensively on independent directors in rules we have adopted that exempt funds from provisions of the Act.[8]

Millions of Americans are today invested in mutual funds, which have experienced a tremendous growth in popularity over the past twenty years.[9] In light of this growth, and our growing reliance on independent directors to protect fund investors, last year we undertook a review of the governance of investment companies, the role of independent directors, our rules that rely on oversight by independent directors, and the information that funds are required to provide to shareholders about their independent directors.

We held a Roundtable discussion at which independent directors, investor advocates, executives of fund advisers, academics, and experienced legal counsel offered a variety of perspectives and suggestions.[10] After evaluating the ideas and suggestions offered by Roundtable participants last year, we proposed a package of rule and form amendments that were designed to reaffirm the important role that independent directors play in protecting fund investors, strengthen their hand in dealing with fund management, reinforce their independence, and provide investors with better information to assess the independence of directors.[11]

We received 142 comment letters on our proposals, including 86 letters from independent directors.[12] Commenters generally commended our efforts to enhance the independence and effectiveness of fund directors, although many offered recommendations for improving portions of the proposals. Many of these letters were helpful to us in formulating the final rules and amendments, which we are today adopting.

We have reason to believe that our efforts to improve the governance of mutual funds on behalf of mutual fund investors have already borne fruit. Our Roundtable discussions and proposed rules have provoked a great deal of discussion among directors, advisers, counsel, and investors about governance practices and policies. After our Roundtable, an advisory group organized by the Investment Company Institute (''ICI'') made recommendations regarding fund governance in a ''best practices'' report (''ICI Advisory Group Report'').[13] Many boards, we understand, have adopted the recommendations set forth in the ICI Advisory Group Report. Some groups of independent directors have hired independent counsel for the first time. Director nomination and selection procedures have been revised.

During the last year, Commissioners and members of the staff began meeting with independent directors and sharing ideas and concerns regarding the governance of mutual funds.[14] Former Commission Chairman David Ruder established the Mutual Fund Directors Education Council, a broad-based group of persons interested in fund governance and operations,[15] whose purpose is to foster the development of educational activities designed to promote the efficiency, independence, and accountability of independent fund directors. The American Bar Association formed a task force to examine the role of counsel to independent directors, and the task force released a report offering guidance to counsel and fund directors

[2] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S. Mostoff & Olivia P. Adler, *Organizing an Investment Company—Structural Considerations, in* The Investment Company Regulation Deskbook § 2.4 (Amy L. Goodman ed., 1997).

[3] As a result of their extensive involvement, and the general absence of shareholder activism, investment advisers typically dominate the funds they advise. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)] (''Proposing Release'') at n.10 and accompanying text.

[4] An investment adviser's shareholders often have an interest in a mutual fund that is quite different from the interests of the fund's own shareholders. For example, while fund shareholders ordinarily prefer lower fees (to achieve greater returns), shareholders of the fund's investment adviser might want to maximize profits through higher fees. *See* Proposing Release, *supra* note 3, at nn.11–25 and accompanying text, for a discussion of the comprehensive regulatory scheme established by the Act to address conflicts of interest between funds and their investment advisers.

[5] We refer to directors who are not ''interested persons'' of the fund as ''independent directors'' or ''disinterested directors.'' *See* section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)](defining ''interested person'').

[6] The Investment Company Act establishes a system of ''checks and balances,'' and relies on independent directors to ''oversee the fund's operations so as to prevent abuses of investors.'' James M. Storey & Thomas M. Clyde, The Uneasy Chaperone 34 (2000). Directors also have broad responsibilities to monitor compliance with securities, corporate and other laws. Robert A. Robertson, *Board Oversight of Mutual Fund Compliance Operations,* Rev. Sec. & Comm. Reg., Oct. 24, 2000, at 1.

[7] For example, in Japan, funds may be structured only in the form of securities investment trusts, which are primarily subject to regulation under the Securities Investment Trust Law. There is no board of directors or board of trustees, and under the Securities Investment Trust Law, a ''trustor company'' manages the trust assets on behalf of the beneficiaries of the trust. The Japanese Ministry of Finance approves the terms and conditions of securities investment trusts, and plays a supervisory role in the day-to-day operations of the trusts. *See* Yoshiki Shimada et al., *Regulatory Frameworks for Pooled Investment Funds: A Comparison of Japan and the United States,* 38 Va. J. Int'l L. 191 (1998).

[8] *See* Proposing Release, *supra* note 3, at nn.24–25 and accompanying text.

[9] Approximately 82.8 million individuals in 48.4 million households in the United States invest in funds. Investment Company Institute, Mutual Fund Fact Book 41 (2000).

[10] *See* SEC, Notice of Sunshine Act Meetings (Feb. 18, 1999) [64 FR 8632 (Feb. 22, 1999)]; *see also* Transcripts from the Roundtable on the Role of Independent Investment Company Directors, Feb. 23–24, 1999 [''Roundtable Transcripts'']. The Roundtable Transcripts are available to the public in the Commission's public reference room and the Commission's Louis Loss Library. They are also available on the Commission's Internet web site <http://www.sec.gov/offices/invmgmt/rountab.htm>.

[11] *See* Proposing Release, *supra* note 3.

[12] The comment letters and a summary of the comments prepared by Commission staff are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. (File No. S7–23–99). The comment summary is also available on the Commission's Internet web site <http://www.sec.gov/rules/extra/brownin1.htm>.

[13] *See* Investment Company Institute, Report of the Advisory Group on Best Practices for Fund Directors: Enhancing a Culture of Independence and Effectiveness (June 24, 1999).

[14] *See, e.g.,* Arthur Levitt, Chairman, SEC, Remarks at the Mutual Fund Directors Education Council Conference (Feb. 17, 2000) (transcript available at <http://www.sec.gov/news/speeches/spch346.htm>); Paul Roye, Director, Division of Investment Management, SEC, What Does It Take To Be an Effective Independent Director of a Mutual Fund?, Address at the ICI Workshop for New Fund Directors (Apr. 14, 2000) (transcript available at <http://www.sec.gov/news/speeches/spch364.htm>).

[15] Members of the Council include independent directors, corporate governance experts, investor advocates, academics, industry members, and investment management attorneys.

regarding standards of independence for counsel, and guidelines for reducing potential conflicts of interest (''ABA Task Force Report'').[16] All of these initiatives have focused attention on the important role of independent directors, and their importance in promoting and protecting the interests of fund shareholders.

II. Discussion

A. Amendments to Exemptive Rules To Enhance Director Independence and Effectiveness

We are amending ten rules that exempt funds and their affiliates from certain prohibitions of the Act (the ''Exemptive Rules'').[17] As discussed further below, the amendments add conditions to the Exemptive Rules to require that, for funds that rely on the rules, (i) independent directors constitute a majority of the board, (ii) independent directors select and nominate other independent directors, and (iii) any legal counsel for the independent directors be an independent legal counsel.[18]

Most commenters supported our goal of enhancing the independence and effectiveness of independent directors of funds that choose to rely on the Exemptive Rules.[19] Some commenters questioned the need to amend the rules, because each rule already requires independent directors to separately approve some of the fund's activities under the rule. We selected these rules because they require the independent judgment and scrutiny of independent directors in overseeing activities that are beneficial to funds and investors, but involve inherent conflicts of interest between the funds and their managers.[20] The amendments are designed to increase the ability of independent directors to perform their important responsibilities under each of these rules.

1. Independent Directors as a Majority of the Board

(a) Board Composition Requirements

We are amending the Exemptive Rules to require that the boards of funds relying on the rules have a majority of independent directors.[21] A majority requirement will permit, under state law, the independent directors to control the fund's ''corporate machinery,'' *i.e.,* to elect officers of the fund, call meetings, solicit proxies, and take other actions without the consent of the adviser.[22] As a result, independent directors who comprise the majority of a board can have a more meaningful influence on fund management and represent shareholders from a position of strength.[23] In short, a board with a majority of independent directors can be more effective in representing investors than a board with a majority of ''inside'' directors.[24] Commenters were supportive of this proposal.[25]

We are allowing funds ample time to implement the new majority independence condition. The compliance date for the majority independence condition is July 1, 2002. Although most funds already have a majority of independent directors, the transition period will allow sufficient time for those that do not, to carry out the selection, nomination, and election of new independent directors in accordance with the amended rules.[26]

(b) Suspension of Board Composition Requirements

We are adopting new rule 10e–1, which temporarily suspends the board composition requirements of the Act and our rules, if a fund fails to meet those requirements because of the death, disqualification, or bona fide resignation of a director. For a fund that relies on one or more of the Exemptive Rules, rule 10e–1 will provide relief if the fund no longer has a majority of independent directors because of the sudden loss of one or more directors.[27]

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[16] ABA, Report of the Task Force on Independent Director Counsel, Subcommittee of Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, Section of Business Law: Counsel to the Independent Directors of Registered Investment Companies (Sept. 8, 2000).

[17] The Exemptive Rules are:

Rule 10f–3 (permitting funds to purchase securities in a primary offering when an affiliated broker-dealer is a member of the underwriting syndicate);

Rule 12b–1 (permitting use of fund assets to pay distribution expenses);

Rule 15a–4(b)(2) (permitting fund boards to approve interim advisory contracts without shareholder approval where the adviser or a controlling person receives a benefit in connection with the assignment of the prior contract);

Rule 17a–7 (permitting securities transactions between a fund and another client of the fund's adviser);

Rule 17a–8 (permitting mergers between certain affiliated funds);

Rule 17d–1(d)(7) (permitting funds and their affiliates to purchase joint liability insurance policies);

Rule 17e–1 (specifying conditions under which funds may pay commissions to affiliated brokers in connection with the sale of securities on an exchange);

Rule 17g–1(j) (permitting funds to maintain joint insured bonds);

Rule 18f–3 (permitting funds to issue multiple classes of voting stock); and

Rule 23c–3 (permitting the operation of interval funds by enabling closed-end funds to repurchase their shares from investors).

[18] We discuss each of these conditions below. *See infra* Sections II.A.1, II.A.2, and II.A.3.

[19] We have revised the amendments to rule 15a–4, which permits fund boards to approve interim advisory contracts without shareholder approval. Funds have relied on that rule when an advisory contract terminated in unforeseeable circumstances, such as the death of the fund's investment adviser. After we issued the Proposing Release, we amended rule 15a–4 to further permit interim advisory contracts in foreseeable circumstances, when an adviser or controlling person receives a benefit in connection with the termination of the prior advisory contract (*e.g.,* in the context of an adviser merger). *See* Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 24177 (Nov. 29, 1999) [64 FR 68019 (Dec. 6, 1999)]. Three commenters argued that the availability of the rule in *unforeseeable* circumstances should not depend on the fund's compliance with the conditions that we proposed to add to the Exemptive Rules. In addition, one commenter further argued that funds that do not comply with the new conditions could be constrained from terminating an adviser because they are unable to enter into an interim advisory contract without obtaining an exemptive order. In light of these comments, we have determined to amend only the paragraph of rule 15a–4 that permits interim advisory contracts in foreseeable circumstances. *See* rule 15a–4(b)(2).

[20] As we noted in the Proposing Release, the Exemptive Rules provide exemptive relief that affords funds increased flexibility, cost reductions, and the ability to operate for the maximum benefit of investors. At the same time, these rules involve inherent conflicts of interest between funds and their managers, and therefore rely on independent directors to monitor those conflicts. While the Exemptive Rules have greatly expanded the responsibilities of fund boards, most have not contained conditions to enhance director independence and effectiveness. *See* Proposing Release, *supra* note 3, at n.30 and accompanying text. In the future we will be reluctant to issue exemptive orders premised on the oversight of independent directors, if the fund does not meet the new conditions we are today adopting.

[21] The independent directors thus would need to comprise more than half of the membership of the board. The Investment Company Act generally requires that independent directors constitute at least 40 percent of the board. Section 10(a) of the Act (15 U.S.C. 80a–10(a)). Section 10(b)(2) of the Act (15 U.S.C. 80a–10(b)(2)) requires, in effect, that independent directors comprise a majority of a fund's board if the fund's principal underwriter is an affiliate of the fund's adviser. Section 15(f)(1) of the Act (15 U.S.C. 80a–15(f)(1)) provides a safe harbor for the sale of an advisory business if directors who are not interested persons of the adviser constitute at least 75 percent of a fund's board for at least three years following the assignment of the advisory contract.

[22] *See* Proposing Release, *supra* note 3, at text following n.44.

[23] *See* Proposing Release, *supra* note 3, at nn.36–44 and accompanying text.

[24] *See Burks* v. *Lasker,* 441 U.S. 471, 484 (1979) (discussing the ''independent watchdog'' function of independent directors).

[25] In the Proposing Release, we proposed two alternative board composition standards: (i) a simple majority and (ii) a two-thirds supermajority, as recommended by the ICI Advisory Group Report. We are adopting a simple majority independence standard, which most commenters supported.

[26] *See infra* Section II.A.2 (Selection and Nomination of Independent Directors).

[27] Without the relief provided by rule 10e–1, the consequence of losing an independent director and failing to have a majority of independent directors would be significant and immediate because funds would lose the ability to rely on the Exemptive Rules.

Rule 10e–1 suspends the board composition requirements for 90 days if the board can fill a director vacancy, or 150 days if a shareholder vote is required to fill a vacancy.[28] We have extended the time period when only board action is required (from the 60 day period we proposed) in response to comments that additional time would be needed for independent directors to select and nominate candidates, and for the board to elect new directors.[29]

2. Selection and Nomination of Independent Directors

We are adopting, as a condition of the Exemptive Rules, a requirement that the independent directors of funds relying on those rules select and nominate[30] any other independent directors.[31] Commenters supported the proposal, and many specifically agreed that the self-selection and self-nomination of independent directors fosters an independent-minded board that focuses primarily on the interests of a fund's investors rather than its adviser.[32]

Several commenters asked that we clarify the extent to which fund shareholders or a fund's adviser may participate in the selection and nomination process under the amendments. Control of the selection and nomination process at all times should rest with a fund's independent directors.[33] These amendments are not intended to supplant or limit the ability of fund shareholders under state law to nominate independent directors. The adviser may suggest independent director candidates if the independent directors invite such suggestions, and the adviser may provide administrative assistance in the selection and nomination process. Independent directors, however, should not view participation by shareholders and investment advisers in this process as precluding or excusing the independent directors from the responsibility to canvass, recruit, interview, and solicit independent director candidates.

3. Independent Legal Counsel

We are adopting amendments to each of the Exemptive Rules to require that any legal counsel for the fund's independent directors be an ''independent legal counsel.''[34] We believe that the conflicts involved in the transactions and arrangements permitted by the Exemptive Rules make it critical that independent directors, when they seek legal counsel, be represented by persons who are free of significant conflicts of interest that might affect their legal advice.[35]

The Commission received many comments on this proposal. Most fund management companies, and a number of independent directors and their lawyers, opposed the proposed amendments. Many argued that the selection of counsel was a matter that should be left to independent directors. Some argued that the bar association rules of professional conduct are adequate to assure independence of counsel. Others argued that imposing the independent counsel requirement could deny independent directors competent counsel from larger law firms with many potential conflicts.

Given the vital role of independent directors in the resolution of conflicts between the fund and its investment adviser, it is important that they have access to counsel who is free from conflicting loyalties. This is particularly true when directors are called upon to exercise judgment in certain key areas of their responsibilities such as approving the advisory contract or a distribution plan, approving a merger, monitoring the allocation of fund brokerage, or valuing fund securities.[36] Yet, as we observed in the Proposing Release, some independent directors have relied on

[28] Section 10(e) of the Act [15 U.S.C. 80a–10(e)] currently suspends the Act's board composition requirements for 30 days, if a fund's board may fill a director vacancy, or 60 days, if a shareholder vote is required to fill a vacancy. Section 10(e) also authorizes the Commission to issue rules or orders prescribing longer periods for filling board vacancies.

[29] The time periods begin to run when the fund no longer meets the applicable board composition requirement, even if the fund is not yet aware that it no longer meets the requirement. Funds and directors should be mindful of their responsibilities to maintain the required percentage of independent directors, and should monitor director independence (and other composition issues) accordingly. A fund also could avoid problems posed by the time constraints of rule 10e-1 by maintaining a greater percentage of independent directors than the simple majority required by the Exemptive Rules. *See* ICI Advisory Group Report, *supra* note 13, at 10–12 (recommending as a best practice that funds have a two-thirds majority of independent directors).

[30] Selection and nomination refers to the process by which board candidates are researched, recruited, considered, and formally named.

[31] Rules 12b–1 and 23c–3 already require funds relying on those rules to commit the selection and nomination of independent directors to the discretion of those directors. We are amending rules 12b–1 and 23c–3 to conform their language regarding self-selection and nomination to the language of the other Exemptive Rules.

[32] *See* Kenneth E. Scott, *What Role Is There for Independent Directors of Mutual Funds?,* 2 Vill. J.L. & INV. MGMT. 1, 4 (2000) (''Independence [of a director] is a reflection of how you got on the board and how you can be taken off.''). The self-selection and self-nomination condition applies prospectively, *i.e.,* to independent directors elected after the effective date of the rules. Thus, current independent directors who were not selected and nominated by other independent directors may continue to serve as independent directors until the end of their terms, but any new independent directors must be selected and nominated by the incumbent independent directors. *See* Proposing Release, *supra* note 3, at n.69 and accompanying text.

[33] *See* The Robinson Humphrey Co., Inc., SEC No-Action Letter (Sept. 4, 1976) (analyzing the term ''selected and proposed for election'' in section 16(b) of the Act (15 U.S.C. 80a–16(b)) and concluding that independent directors had not been properly selected by other independent directors).

[34] *See* amended rules 10f–3(b)(11)(ii); 12b–1(c)(2); 15a–4(b)(2)(vii)(B); 17a–7(f)(2); 17a–8(c)(2); 17d–1(d)(7)(v)(B); 17e–1(c)(2); 17g–1(j)(3)(ii); 18f–3(e)(2); and 23c–3(b)(8)(ii). We rely on the concept of ''independence'' both in this rule and in our auditor independence rule. *See* Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7919 (Nov. 21, 2000) (65 FR 76008 (Dec. 5, 2000)) (adopting release); Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7870 (June 30, 2000) (65 FR 43148 (July 12, 2000)) (proposing release). It is important to note, however, that we use the concept in distinct ways in these two rules. In adopting amendments to the auditor independence rule, our goal was to reduce the potential for conflicts of interest that impair the auditor's ability to conduct an objective and impartial audit. Under rules of professional responsibility, attorneys have an obligation zealously to represent their clients. *See* Model Code of Professional Responsibility EC 7–1; *see also* Model Rules of Professional Conduct [''ABA Model Rules''] Rules 1.2(d), 1.3 and 3.1 (1998). With respect to the independent counsel provisions in this rule, we use ''independence'' to refer to the limits on relationships with third parties that might affect counsel's capacity to provide zealous representation in advising and representing a fund's independent directors.

[35] The amendments we are today adopting do not *require* that independent directors retain an independent counsel, but only that any person who acts as legal counsel to the independent directors be an ''independent legal counsel.'' We requested comment on whether to *require* independent counsel for independent directors. Some commenters supported a requirement while others argued that independent directors should decide for themselves whether they need counsel. We have determined that not requiring independent counsel is the appropriate course at this time. We continue to believe, however, that a likely result of our rule amendments will be that many fund directors seek independent counsel. *See* ABA Task Force Report, *supra* note 16, at 3 (''The complexities of the Investment Company Act, the nature of the separate responsibilities of independent directors and the inherent conflicts of interest between a mutual fund and its managers effectively require that independent directors seek the advice of counsel in understanding and discharging their special responsibilities.'').

[36] We believe that independent directors' access to independent counsel is also of key importance when directors address questions of the appropriateness and legality (under sections 17(a) and 17(d) of the Act) of proposed transactions between the fund and its promoter, adviser, or principal underwriter (or any other affiliated person). These matters (and those described in the text above) go to the core of matters addressed by the Act and the relationship between the fund, its adviser, and shareholders and may require the directors to deny fund management's wishes. Independent counsel can assist directors in understanding management proposals, their legal implications, and the obligations of directors under the law. When a lawyer for the independent directors—however learned and well intentioned—also represents the fund's adviser, he may be reluctant to recommend courses of action to the directors that are opposed by the adviser.

counsel who has simultaneously represented the fund's adviser, or who does substantial legal work for the adviser or its affiliates.[37] We continue to be concerned by these conflicts and how they affect the ability of directors to carry out their responsibilities under the Act and the Exemptive Rules.

Funds also should be concerned when counsel to the independent directors have these types of conflicts of interest. The appearance of a conflict undermines the confidence investors have in the independence of their fund's directors to represent *investors'* interests. Directors who accept these conflicts strengthen the argument that more drastic changes are necessary in the way mutual funds are governed.[38] Fund advisers also should be concerned when independent directors engage counsel with substantial conflicts, because the adviser and the funds may be denied a significant defense in any lawsuit charging that its advisory fee or other payments or transactions are excessive or inappropriate.[39]

While we are persuaded that Commission rulemaking is necessary, we appreciate the concerns that the independent directors expressed in their comment letters on the proposed amendments. Many were concerned that the proposal did not afford them sufficient flexibility in selecting counsel. Some misunderstood our proposal as permitting counsel to have conflicts that are only extremely small or remote. That was not our intention, which we have clarified in revising the proposed amendments.

Under the final rule amendments, reliance on each of the Exemptive Rules would be conditioned on any legal counsel for a fund's independent directors being an ''independent legal counsel.'' [40] A person [41] is considered an independent legal counsel if (i) the independent directors determine that any representation of the fund's investment adviser, principal underwriter, administrator (collectively ''management organizations'') or their control persons [42] during the past two fiscal years is or was *sufficiently limited* [43] that it is unlikely to adversely affect the professional judgment of the person in providing legal representation,[44] and (ii) the independent directors have obtained an undertaking from the counsel to provide them information necessary for their determination, and to update promptly that information if the counsel begins, or materially increases, the representation of a management organization or control person.[45]

The final amendments rely on the independent directors to determine whether a person is an independent legal counsel. They must make this determination no less frequently than annually, and the basis for the determination must be recorded in the board's meeting minutes.[46] If the independent directors obtain information that their counsel has begun to represent a management organization or control person, they must determine whether this new representation—together with any other representations of management organizations and control persons—is unlikely to adversely affect the counsel's professional judgment.[47] In order to prevent the fund from losing the availability of the exemptions in these circumstances, the rule provides that counsel can still be considered ''independent legal counsel'' for up to three months, which will provide time for the independent directors to make a new determination about the counsel or to hire a new independent legal counsel.[48]

[37] *See* Proposing Release, *supra* note 3, at n.80 and accompanying text.

[38] *See* Letter from Phillip Goldstein, Independent Director, Clemente Strategic Value Fund, to Jonathan G. Katz, Secretary, SEC (Feb. 1, 2000), File No. S7–23–99 (''shareholders of open-end funds * * * derive no benefit from independent directors''); Letter from George W. Karpus, President, Karpus Investment Management, to Arthur Levitt, Chairman, SEC (Jan. 21, 2000), File No. S7–23–99 (independent directors are not really independent, they are ''house'' directors ''rubberstamping'' management decisions); Letter from Weschler, Harwood, Halebian & Feffer, to Jonathan G. Katz, Secretary, SEC, (Jan. 14, 2000), File No. S7–23–99 (''There does not appear to be any credible evidence to support the view that independent directors are cost effective from the standpoint of public investors.''). *See* also Samuel S. Kim, Note, *Mutual Funds: Solving the Shortcomings of the Independent Director Response to Advisory Self-Dealing Through Use of the Undue Influence Standard,* 98 Colum. L. Rev. 474 (1998).

[39] When deciding excessive advisory fee cases, courts have cited directors' reliance on independent counsel as a factor evidencing director independence and conscientiousness. *See Schuyt v. Rowe Price Prime Reserve Fund, Inc.,* 663 F. Supp. 962, 965, 982, 986 (S.D.N.Y.) (noting that ''[d]uring all relevant times, the independent directors * * * had their own counsel'' who was an ''important resource'' and whose advice ''the record indicates the directors made every effort to keep * * * in mind as they deliberated''), aff'd, 835 F.2d 45 (2d Cir. 1987); *Gartenberg* v. *Merrill Lynch Asset Management, Inc.,* 528 F. Supp. 1038, 1064 (S.D.N.Y. 1981) (noting that the ''non-interested Trustees were represented by their own independent counsel * * * who acted to give them conscientious and competent advice''), *aff'd,* 694 F.2d 923 (2d Cir. 1982).

[40] As noted above, the amendments as adopted do not *require* that independent directors retain legal counsel, but only that any person who acts as legal counsel to the independent directors be an ''independent legal counsel.'' *See supra* note 35 and accompanying text. An attorney ''acts as legal counsel'' if an attorney-client relationship is established between counsel and the independent directors. We do not view a counsel as representing a fund's investment adviser merely because the counsel accepts payment of fees from the adviser for legal services performed on behalf of the fund or its independent directors as permitted by relevant legal ethics rules. *See* Proposing Release, *supra* note 3, at n.87.

[41] We are adopting as proposed the definition of ''person'' as any natural person or a company (including a partnership or other association) as well as a partner, co-member, or employee of any person. Rule 0–1(a)(6)(iv)(A) [17 CFR 270.0–1(a)(6)(iv)(A)]. Thus, the independent directors should examine any conflicting representations of their individual attorney, as well as conflicting representations of that attorney's law firm, partners, and employees.

[42] We are adopting as proposed the definition of ''control person—as any person—other than a fund—directly or indirectly controlling, controlled by, or under common control with any of the fund's management organizations. Rule 0–1(a)(6)(iv)(B) [17 CFR 270.0–1(a)(6)(iv)(B)].

[43] We have used the phrase ''sufficiently limited'' instead of ''so limited,'' which we used in the proposal, to provide directors somewhat greater latitude than the proposal. It is our intent, therefore, that the scope of the rule be construed by reference to our discussion in this release and not the Proposing Release.

[44] Rule 0–1(a)(6)(i)(A) [17 CFR 270.0–1(a)(6)(i)(A)]. As we stated in the Proposing Release, because the interests of a fund, its shareholders, and its independent directors are nearly always aligned, the independent legal counsel condition does not require independent directors to assess a counsel's representation of the fund itself. *See* Proposing Release, *supra* note 3, at n.94 and accompanying text. We do not consider counsel to the fund or to the fund's adviser to be legal counsel to the independent directors by virtue of the independent directors receiving and relying on advice from such counsel. However, the independent directors should be aware that they do not have their own counsel in those circumstances.

[45] Rule 0–1(a)(6)(i)(B) [17 CFR 270.0–1(a)(6)(i)(B)]. A lawyer generally has an obligation to inform his or her client of changes in the nature of conflicts. *See* ABA Model Rules, Rule 1.7 (stating that a client may waive a conflict of interest only *after consultation*); *see also* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93–372 (1993) (a client's generic waiver of future conflicts would be invalid if the circumstances of a representation change so that the client's previous waiver was not fully informed when given); ABA Task Force Report, *supra* note 16 (providing specific guidance to independent directors of funds when selecting and using legal counsel, and to counsel who advise independent directors). However, a lawyer's obligations in this regard envision that the lawyer assess the effect of the potential conflict first before informing the client, *see* ABA Model Rules, Rule 1.7(a)(1), and in any event may vary among different jurisdictions. The provision in our final rule concerning counsel's undertaking is intended to enable the independent directors to obtain the information they need in order to make their *own* determination about the independence of their counsel.

[46] We would not expect that the board meeting minutes would include detailed information such as law firm billing records. We would, however, expect the minutes to include material information the board considered and relied on in making its determination.

[47] Rule 0–1(a)(6)(iii). This provision also would apply when conflicts arise as a result of a law firm merger, the hiring of a new partner or associate, the merger of two financial services firms, or as a result of a material increase in the scope or nature of the legal counsel's representation of a management organization.

[48] *Id.*

In determining whether a counsel is an ''independent legal counsel'' under the rule, the judgment of the directors is not unbounded; it must be reasonable.[49] The independent directors should consider all relevant factors in evaluating whether the conflicting representations are ''sufficiently limited.[50] For example, independent directors should consider (i) whether the representation is current and ongoing; (ii) whether it involves a minor or substantial matter; (iii) whether it involves the fund, the adviser, or an affiliate, and if an affiliate, the nature and the extent of the affiliation; (iv) the duration of the conflicting representation; (v) the importance of the representation to counsel and his firm (including the extent to which counsel relies on that representation economically); (vi) whether it involves work related to mutual funds;[51] and (vii) whether the individual who will serve as legal counsel was or is involved in the representation.[52] Applying these factors, we do not believe that independent directors could ordinarily conclude that a lawyer whose firm simultaneously represents the fund's adviser and independent directors in connection with matters as important to fund shareholders as the negotiation of the advisory contract[53] or distribution plan, or other key areas of conflict between the fund and its adviser, is an ''independent legal counsel.''[54]

We admonish directors to consider that your decision in selecting an independent counsel is not merely a matter of personal preference (as some commenters suggested), but an important exercise of your business judgment as an independent director.[55] The final rule makes it clear, however, that you are entitled to rely on information provided by counsel in forming your judgment.[56]

B. Limits on Coverage of Directors Under Joint Insurance Policies

We are adopting an amendment to rule 17d–1(d), which permits funds to purchase ''errors and omissions'' joint insurance policies for their officers and directors.[57] Currently, many of these policies contain exclusions when parties sue each other. As a result, independent directors of funds may not be covered against lawsuits by the adviser and consequently may be reluctant to take actions necessary to protect fund investors, out of concern for personal liability. Under the amendment, which we are adopting as proposed, rule 17d–1(d) is available only if the joint insurance policy does not exclude coverage for litigation between the adviser and the independent directors.[58] Commenters supported the proposed amendments, and agreed that they would allow independent directors to faithfully carry out responsibilities without concern for personal financial security.

C. Independent Audit Committees

We are adopting new rule 32a–4 exempting funds from the Act's requirement that shareholders vote on the selection of the fund's independent public accountant if the fund has an audit committee composed wholly of independent directors.[59] The rule will permit continuing oversight of the fund's accounting and auditing processes by an independent audit committee, in place of the shareholder vote. Commenters agreed that the shareholder ratification has become largely perfunctory, and that an independent audit committee could exercise more meaningful oversight.

Under the new rule, a fund is exempt from having to seek shareholder approval of its independent public accountant, if (i) the fund establishes an audit committee composed solely of independent directors that oversees the fund's accounting and auditing processes,[60] (ii) the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation, or sets out similar provisions in the fund's charter or bylaws,[61] and (iii) the fund maintains a copy of such an audit committee charter.[62] Some commenters questioned whether the proposed rule would require the audit committee to supervise a fund's day-to-day management and operations. The rule does not require, nor did we intend, that an audit committee perform daily management or supervision of a fund's operations.[63]

[49] Rule 0–1(a)(6)(i).

[50] By adopting these rules, we do not intend to regulate the legal profession or to suggest that the existence of a professional relationship between the independent directors' counsel and a management organization would necessarily violate applicable codes of legal ethics. Moreover, we do not intend to create a presumption that a lawyer having such a professional relationship did not provide proper, objective legal advice, or that the board's reliance on its counsel was improper, or that any determination the board made based on counsel's advice was itself improper.

[51] Whether counsel's representation of a management organization (or control person) is *unrelated* to a fund is a relevant factor for independent directors to consider when determining if the counsel may provide impartial advice to the independent directors. However, it is not a conclusive factor. Even if legal services are unrelated to a fund, those services may be so substantial, significant, or integral to the business of the management organization (or control person) that the independent directors could determine that the counsel is not an ''independent legal counsel.''

[52] We do not intend this list of factors to be an exhaustive or mandatory list of factors the directors must consider. *See, e.g.,* ABA Task Force Report, *supra* note 16, at 5–9 (providing guidance on factors that boards may wish to consider when assessing the quality and independence of their counsel).

[53] After analyzing the factors, independent directors may, however, conclude that a counsel's representation of a fund's administrator or sub-adviser does not impede that counsel's ability to serve as an ''independent counsel'' to the independent directors. In evaluating whether representation of an administrator (or its control person) is ''sufficiently limited'' for the person to be an ''independent counsel,'' we believe a board could differentiate between an administrator that merely performs ministerial tasks and one that has sponsored, organized, or promoted the fund. Independent directors could reach a similar conclusion regarding a sub-adviser. The Act does not distinguish an adviser from a sub-adviser. *See* section 2(a)(20) of the Act (15 U.S.C. 80a–2(a)(20)). However, we believe that independent directors, in evaluating a counsel's conflicts, could give consideration to the nature of a sub-advisory relationship.

[54] The ABA Task Force Report acknowledges that there are circumstances, such as litigation or other ''obvious adversarial situations,'' in which joint or multiple representations may never be appropriate. ABA Task Force Report, *supra* note 16, at 8. We agree, but believe that there are additional circumstances, due to the unique conflicts that are inherent in the structure of investment companies, in which independent directors should not accept joint and multiple representations.

[55] As discussed below, the compliance date for the legal counsel provision is July 1, 2002. *See infra* Section III.

[56] *See* rule 0–1(a)(6)(ii). The independent directors are entitled to rely on that information unless they know or have reason to believe that the information is materially false or incomplete. *Id.* As a result, if counsel begins or materially increases the representation of a fund management organization but does not inform the independent directors, the independent directors can rely on the previous representation they received so that counsel's change in representation will not trigger the requirement that the independent directors make a new determination within three months. *See* rule 0–1(a)(6)(iii).

[57] Paragraph (d) of rule 17d–1 provides an exemption from paragraph (a) of the rule, which prohibits a fund affiliate from participating in any joint enterprise, joint arrangement, or profit sharing plan without first obtaining a Commission order.

[58] *See* rule 17d–1(d)(7)(iii). The amendments would prohibit exclusions for (i) bona fide (*i.e.,* non-collusive) claims made against any independent director by another person insured under the joint insurance policy, and (ii) claims in which the fund is a co-defendant with an independent director in a claim brought by a co-insured.

[59] *See* section 32(a)(2) of the Act [15 U.S.C. 80a—31(a)(2)].

[60] Rule 32a–4(a).

[61] Rule 32a–4(b).

[62] Rule 32a–4(c). Commenters suggested that we permit the audit committee provisions to be set forth in the charter or bylaws of the fund. The final rule permits the fund either to adopt an audit committee charter or to set forth audit committee provisions in the fund's charter or bylaws. Rule 32a–4(b).

[63] *See* Audit Committee Disclosure, Exchange Act Release No. 41987 (Oct. 7, 1999) [64 FR 55648 (Oct. 14, 1999)] at text following n.26 (''We recognize how audit committees function may vary from

Continued

D. Qualification as an Independent Director

In addition to the amendments to enhance the independence of fund boards, we are adopting a new rule to prevent qualified individuals from being unnecessarily disqualified from being considered an independent director. We are also rescinding a rule that has become unnecessary.

1. Ownership of Index Fund Securities

We are adopting new rule 2a19–3, which conditionally exempts an individual from being disqualified as an independent director solely because he or she owns shares of an index fund that invests in the investment adviser or underwriter of the fund, or their controlling persons.[64] As proposed, the exemption would have been available if the value of securities issued by the adviser or underwriter (or controlling person) did not exceed five percent of the value of any index tracked by the index fund. The purpose of this condition was to assure that an independent director's indirect interest in the adviser's securities would not be substantial enough to impair his or her independence and create a conflict of interest.[65] In response to some commenters' concerns that monitoring the five percent limit would be very difficult, we revised the rule so that it provides relief if a fund's investment objective is to replicate the performance of one or more ''broad-based'' indices.[66]

2. Affiliation with a Broker-Dealer

We are rescinding rule 2a19–1, which provides relief from the section of the Act that defines when a fund director is considered to be independent.[67] We had proposed to amend that rule to permit a slightly greater percentage of fund independent directors to be affiliated with registered broker-dealers, under certain circumstances. After our proposal, however, Congress passed the Gramm-Leach-Bliley Act, which amended section 2(a)(19) of the Investment Company Act and established new standards for determining independence under the circumstances we addressed in our proposal.[68] These amendments to the Act obviate the need for the exemptive relief provided by rule 2a19–1, and therefore we are rescinding the rule.[69]

E. Disclosure of Information about Fund Directors

We believe that shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information helps a mutual fund shareholder to evaluate whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations.

In reevaluating our current disclosure requirements, we concluded that, while our fundamental approach has been sound, there are several gaps in the information that shareholders currently receive about directors. We therefore proposed amendments to close these gaps. The proposal would require funds to:

- Provide basic information about directors to shareholders annually so that shareholders will know the identity and experience of their representatives;
- Disclose to shareholders fund shares owned by directors to help shareholders evaluate whether directors' interests are aligned with their own;
- Disclose to shareholders information about directors that may raise conflict of interest concerns; and
- Provide information to shareholders on the board's role in governing the fund.

We are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors.

1. Basic Information

We are adopting the requirement to disclose basic information about directors in an easy-to-read tabular format, as proposed.[70] The table will be required in three places: the fund's annual report to shareholders, SAI, and proxy statement for the election of directors. The table will require for each director: (1) Name, address, and age; (2) current positions held with the fund; (3) term of office and length of time served; (4) principal occupations during the past five years; (5) number of portfolios overseen within the fund complex; and (6) other directorships held outside of the fund complex.[71] The table also requires for each interested director, as defined in Section 2(a)(19) of the Investment Company Act, a description of the relationship, events, or transactions by reason of which the director is an interested person.

Commenters generally supported the proposal, although several commenters

company to company, and companies need flexibility to determine all of the specific duties and functions of their audit committees.'').

[64] Section 2(a)(19) of the Act disqualifies an individual from being considered an independent director if he or she knowingly has any direct *or indirect* beneficial interest in a security issued by the fund's investment adviser or principal underwriter, or by a controlling person of the adviser or underwriter. If a fund seeks to replicate the performance of a securities market index that includes securities of the fund's adviser (or principal underwriter or a controlling person of the adviser or principal underwriter), an issue could arise whether the director knowingly has an indirect beneficial interest in the securities of the adviser (or principal underwriter or controlling person). *See* Proposing Release, *supra* note 3, at n.138 and accompanying text.

[65] The new rule does not address an independent director's ownership of securities of an *actively* managed fund that owns shares of the fund's adviser, underwriter or any of their controlling persons. As we discussed in the Proposing Release, we do not believe an independent director who owns shares of an actively managed fund would ordinarily ''knowingly'' have an indirect beneficial interest in the issuers of securities the fund holds, and thus ownership of such fund would not cause a director to be an ''interested person'' as defined by section 2(a)(19) of the Act. *See* Proposing Release, *supra* note 3, at n.140.

[66] As we stated in the context of Form N–1A, a ''broad-based index'' is an index that ''provides investors with a performance indicator of the overall applicable stock or bond markets, as appropriate. An index would not be considered to be broad-based if it is composed of securities of firms in a particular industry or group of related industries.'' *See* Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)] at n.21.

[67] Sections 2(a)(19)(A)(v) and (B)(v) of the Act provide that no person can be an independent director if he or she is, or is affiliated with, a registered broker-dealer.

[68] Section 213(a)(1) of the Gramm-Leach-Bliley Act incorporates the conditions of current rule 2a19–1(a)(1) under the Act. As amended, section 2(a)(19) now permits an independent director to be an affiliate of a broker-dealer, but not if the director or his or her affiliate has executed portfolio transactions for, engaged in principal transactions with, or distributed shares for the fund or certain related funds or accounts within the past six months. Pub. L. No. 106–102, § 213, 113 Stat. 1338, 1397–98 (1999), to be codified at 15 U.S.C. 80a–2(a)(19)(A)(v) and (B)(v).

[69] Under the Administrative Procedure Act [5 U.S.C. 553(b)], notice of proposed rulemaking is not required if the agency for good cause finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Section 213 of the Gramm-Leach-Bliley Act established new standards for determining independence under the circumstances addressed by rule 2a19–1, and the rule is no longer necessary. The Commission therefore finds that proposing the rescission of rule 2a19–1 for public comment is unnecessary.

[70] Item 22(b)(1) of Schedule 14A; Items 13(a) and 22(b)(5) of Form N–1A; Item 18.1 and Instruction 4.e. to Item 23 of Form N–2; Item 20(a) and Instruction 4(v) to Item 27 of Form N–3. For convenience in discussing the requirements, we are not specifically referring to nominees for election as directors. The requirements, however, are applicable to nominees in proxy statements for the election of directors. The disclosure requirements in Item 22 of Schedule 14A also are applicable to information statements prepared in accordance with Regulation 14C and Schedule 14C [17 CFR 240.14c–101].

[71] In response to privacy concerns raised by several commenters, we wish to clarify that a director may provide the address of the fund or the fund's adviser in the table and need not provide his personal address.

opposed as unnecessary the requirement to describe in the table the relationships, events, or transactions that make certain directors ''interested persons.'' Funds are currently required to disclose this information in the proxy statement for the election of directors, and we are adopting this requirement as proposed.[72] We believe it is important that shareholders be provided with an explanation of why certain directors are ''interested persons.''[73]

2. Ownership of Equity Securities in Fund Complex

We are adopting with modifications the requirement to disclose the amount of equity securities of funds in a fund complex owned by each director.[74] Commenters generally agreed with the Commission that disclosure of this information would be useful to shareholders in assessing whether directors' interests are aligned with those of shareholders.

(a) Disclosure of Amounts Owned by Directors

Many commenters expressed concern about the proposed requirement that funds disclose the exact dollar amount of securities directors own in a fund complex. These commenters argued that this disclosure would discourage potential directors from agreeing to serve, in order to avoid intrusions into their privacy, and might cause existing directors to reduce or sell their holdings to avoid publicity about their investments. As an alternative, many suggested that we require funds to disclose directors' equity ownership using specified dollar ranges, rather than exact dollar amounts. These commenters noted that using dollar ranges would provide shareholders with sufficient information to assess whether directors' interests were aligned with their own, making disclosure of exact dollar amounts unnecessary.

We are persuaded by these comments and have modified the proposal to require disclosure of a director's holdings of securities using dollar ranges rather than an exact dollar amount. Funds will be required to disclose directors' equity ownership using the following ranges: None; $1–$10,000; $10,001–$50,000; $50,001–$100,000; or over $100,000. We believe that disclosure of directors' holdings using these dollar ranges will provide investors with significant information to use in evaluating whether directors' interests are aligned with their own, while protecting directors' legitimate privacy interests.

(b) ''Beneficial Ownership''

We received a number of comments requesting clarification about the types of director holdings that would be disclosed under the proposal. Based on these comments, we reevaluated our proposal to require disclosure of securities owned beneficially and of record by each director. Under the proposal, ''beneficial ownership'' would have been determined in accordance with rule 13d–3 of the Exchange Act, which focuses on a person's voting and investment power.[75] In light of our objective of providing information about the alignment of directors' and shareholders' interests, we believe that disclosure of record holdings should not be required and that the focus of ''beneficial ownership'' should be on whether a director's economic interests are tied to the securities, rather than his ability to exert voting power or to dispose of the securities. Therefore, we are modifying the proposal to require disclosure of ''beneficial ownership'' in accordance with the definition contained in rule 16a–1(a)(2) under the Exchange Act.[76] This definition, consistent with our goal, emphasizes the economic incidence of ownership.

(c) Disclosure of Ownership in the Funds the Director Oversees within the Same ''Family of Investment Companies''

We proposed to require aggregate disclosure of a director's holdings in a fund complex, rather than separate disclosure of a director's holdings in a particular fund. We were concerned that fund-specific information might have limited meaning because of the many reasons that a director could have for not holding shares of any specific fund, *e.g.,* that its investment objective did not fill a need in the director's portfolio. Several commenters recommended, however, that disclosure of a director's holdings should be made on a fund-by-fund basis, rather than a complex-wide basis, arguing that it would be more relevant to disclose to shareholders a director's ownership of the specific funds on whose board the director serves. Other commenters, agreed that disclosure of a director's holdings should be on an aggregate basis as proposed, but recommended that the disclosure be limited to a director's aggregate ownership in the funds overseen by a director within a fund complex. These commenters argued that disclosure in this manner is more useful to investors than complex-wide disclosure in assessing whether a director's interests are aligned with their own.

We are persuaded by these comments and have modified the proposal to require disclosure of: (1) Each director's ownership in each fund that he oversees; and (2) each director's aggregate ownership in any funds that he oversees within a fund family. We believe that a director's ownership in a particular fund provides the most direct indication of his alignment with the interests of shareholders in that fund. We continue to believe, however, that disclosure of a director's aggregate ownership will provide shareholders with relevant information about the director's alignment with shareholders. In addition, a director could have many reasons for not holding shares of a specific fund, *e.g.,* that its investment objectives do not match the director's. Disclosure of aggregate ownership will help prevent any inappropriate negative inference about fund management that a fund shareholder could draw from the fact that a director does not hold shares of a particular fund.

For purposes of determining a director's holdings in a fund complex, the Commission proposed to define ''fund complex'' as two or more funds that (1) hold themselves out to investors as related companies for purposes of investment and investor services; or (2) have a common investment adviser or an investment adviser that is an affiliated person of the investment

[72] Instruction 4 to Item 22(b)(1) of Schedule 14A; Instruction 2 to Item 13(a) of Form N–1A; Instruction 2 to Item 18.1 of Form N–2; Instruction 2 to Item 20(a) of Form N–3.

[73] As discussed below, however, we are excluding interested directors from the new conflicts of interest disclosure requirements which we proposed in order to give shareholders better information about independent directors. *See infra* note 84 and accompanying text.

[74] Item 22(b)(5) of Schedule 14A; Item 13(b)(4) of Form N–1A; Item 18.7 of Form N–2; Item 20(f) of Form N–3.

[75] 17 CFR 240.13d—3.

[76] 17 CFR 240.16a–1(a)(2). We also have modified the proposal requiring disclosure of securities owned by an independent director and his immediate family members in an investment adviser or principal underwriter and persons controlling, controlled by, or under common control with an investment adviser or principal underwriter. This requirement is intended to illuminate potential conflicts of interest, and we therefore believe that any record or beneficial securities ownership in these entities should be disclosed, whether the beneficial ownership results from voting power, investment power, or economic interests. Therefore, we have revised the proposal to require disclosure of securities owned if covered by the definition of ''beneficial ownership'' contained in either rule 13d–3 or rule 16a–1(a)(2). Item 22(b)(6) and Instruction 2 to Item 22(b)(6) of Schedule 14A; Item 13(b)(5) and Instruction 2 to Item 13(b)(5) of Form N–1A; Item 18.8 and Instruction 2 of Item 18.8 of Form N–2; Item 20(g) and Instruction 2 of Item 20(g) of Form N–3.

adviser of any of the other funds.[77] Many commenters argued that this definition would result in disclosure of holdings in funds that are too remotely related to funds on whose board the director serves to demonstrate alignment with fund shareholders (*e.g.,* for a director serving on the board of a fund with a sub-adviser, the director's ownership in any other funds that the sub-adviser serves would be disclosed, regardless of whether the funds are otherwise related). These commenters recommended that the Commission adopt a narrower definition of ''family of investment companies,'' which includes only funds that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services.[78] We agree with commenters that the proposed ''fund complex'' definition could result in disclosure of information having little bearing on a director's alignment with shareholders, and are adopting the narrower definition of ''family of investment companies.''[79]

(d) Date of Disclosure

The equity ownership information must be included in the SAI and any proxy statement relating to the election of directors. For the proxy statement, the equity ownership information must be provided as of the most recent practicable date, as proposed, in order to ensure that shareholders receive up-to-date information when they are asked to vote to elect directors.[80] For the SAI, we have modified the proposal to require that the equity ownership information be provided as of the end of the last completed calendar year.[81] We believe that this modified time period requirement facilitates our goal that investors receive equity ownership information to evaluate whether directors' interests are aligned with their own, while imposing less of a burden on directors, especially those who serve multiple funds with staggered fiscal years.

3. Conflicts of Interest

We are adopting our proposals on conflicts of interest disclosure, with modifications that tailor the requirements more closely to our goals and address commenters' concerns that some aspects of the proposal were overbroad.[82] We proposed to require funds to disclose in the proxy statement and SAI three types of circumstances that could affect the allegiance of fund directors to their shareholders: positions, interests, and transactions and relationships of directors and their immediate family members with the fund and persons related to the fund. The rules we adopt today follow this basic approach.

A number of commenters recommended alternatives to the proposed conflicts of interest disclosure requirements, including: (i) Requiring funds to maintain records of potential conflicts of interest of directors; (ii) permitting independent directors to determine for themselves whether or not conflicts of interest exist that affect the ''independence'' of other independent directors; and (iii) limiting conflicts of interest disclosure to the proxy statement for the election of directors. After careful consideration of these alternatives, we have determined that they would not constitute an adequate substitute for disclosure to shareholders.

We continue to believe that shareholders have a significant interest in information concerning circumstances that may affect the directors' allegiance to shareholders. None of the alternatives suggested by commenters would provide this information to shareholders on a regular basis. The first two alternatives would completely exclude shareholders from the process of evaluating the independence of directors. The third alternative, limiting conflicts of interest disclosure to the proxy statement for the election of directors, ignores the fact that the proxy statement has become an ineffective vehicle for communicating information to fund shareholders on a regular basis because funds generally are no longer required to hold annual meetings.[83]

(a) Modifications to Persons Covered

(1) Interested Directors

We are modifying our proposal to exclude interested directors from the conflicts of interest disclosure requirements in both the SAI and proxy statement.[84] We are persuaded by the commenters' arguments that if the purpose of the conflicts of interest disclosure is to allow investors and the Commission staff to better evaluate the true independence of independent directors, this goal will not be achieved by requiring disclosure of interested directors' potential conflicts of interest. As previously discussed, however, funds will be required to describe the relationships, events, or transactions that make a director an interested person.[85]

(2) Immediate Family Members

We are narrowing the scope of ''immediate family members'' covered by the disclosure requirements to a director's spouse, children residing in the director's household, and dependents of the director.[86] As proposed, ''immediate family members'' also included the director's parents, siblings, children not residing with the director, and in-laws.[87]

We received many comments on this definition, with the overwhelming majority of commenters arguing that the proposed extension of conflicts of interest disclosure to include a director's immediate family members, as defined in the proposal, was overly broad and too burdensome. Commenters noted that the definition, as proposed, would require directors to seek financial information from remote family members with whom they have little or no contact, and that the requirement could impose liabilities on directors without providing the means to enable directors to obtain the required information from reluctant relatives. We are persuaded by the commenters and have addressed their concerns by limiting the definition of ''immediate family members'' along the lines suggested by many commenters. The

[77] *Cf.* redesignated Item 22(a)(1)(vi) of Schedule 14A (definition of fund complex).

[78] *Cf.* Item H of Form N–SAR [17 CFR 274.101] (definition of ''family of investment companies'').

[79] Item 22(a)(1)(iv) of Schedule 14A; Instruction 1(a) to Item 13 of Form N–1A; Instruction 1.a to Item 18 of Form N–2; Instruction 1.a to Item 20 of Form N–3.

[80] Instruction 1 to Item 22(b)(5) of Schedule 14A.

[81] Instruction 1 to Item 13(b)(4) of Form N–1A; Instruction 1 to Item 18.7 of Form N–2; Instruction 1 to Item 20(f) of Form N–3.

[82] Items 22(b)(4), 22(b)(6), 22(b)(7), 22(b)(8), 22(b)(9), and 22(b)(10) of Schedule 14A; Items 13(b)(3), 13(b)(5), 13(b)(6), 13(b)(7), 13(b)(8), and 13(b)(9) of Form N–1A; Items 18.6, 18.8, 18.9, 18.10, 18.11, and 18.12 of Form N–2; Items 20(e), 20(g), 20(h), 20(i), 20(j), and 20(k) of Form N–3.

[83] *See* Proposing Release, *supra* note 3, at n.149 and accompanying text.

[84] Items 22(b)(4), 22(b)(6), 22(b)(7), 22(b)(8), 22(b)(9), and 22(b)(10) of Schedule 14A; Items 13(b)(3), 13(b)(5), 13(b)(6), 13(b)(7), 13(b)(8), and 13(b)(9) of Form N–1A; Items 18.6, 18.8, 18.9, 18.10, 18.11, and 18.12 of Form N–2; Items 20(e), 20(g), 20(h), 20(i), 20(j), and 20(k) of Form N–3.

[85] *See supra* 73 note and accompanying text. In addition, we are retaining the existing requirement that funds disclose positions held by interested directors with affiliated persons or principal underwriters of the fund. Item 22(b)(2) of Schedule 14A; Item 13(a)(2) of Form N–1A; Item 18.2 of Form N–2; Item 20(b) of Form N–3.

[86] Item 22(a)(1)(vii) of Schedule 14A; Instruction 1(c) to Item 13 of Form N–1A; Instruction 1.c to Item 18 of Form N–2; Instruction 1.c to Item 20 of Form N–3. The term ''children'' includes step and adoptive children. We are using the term ''dependent'' as defined in section 152 of the Internal Revenue Code. I.R.C. 152.

[87] Proposed Item 22(a)(vi) of Schedule 14A; Proposed Instruction 1(b) to Item 13 of Form N–1A; Proposed Instruction 1.b. to Item 18 of Form N–2; Proposed Instruction 1.b. to Item 20 of Form N–3.

narrower definition ensures that disclosure will only be required with respect to family members from whom directors can reasonably be expected to obtain the required information.[88]

(3) Related Persons

The Commission proposed to require disclosure about circumstances involving directors, on the one hand, and the fund and persons related to the fund, on the other. We are modifying the proposal to exclude administrators from the persons related to the fund that are covered by the requirements. Several commenters expressed concern that inclusion of administrators that are not affiliated with the fund's adviser or principal underwriter would produce irrelevant and unnecessary information for shareholders because interactions between directors and unaffiliated administrators would not create conflicts of interest that could affect an independent director's judgment. We are persuaded by these commenters and note that administrators that control, are controlled by, or are under common control with the adviser or principal underwriter will be covered by the conflicts of interest disclosure.[89]

While some commenters also recommended excluding entities ''under common control'' with the adviser or principal underwriter, we believe that disclosure of interests, positions, and transactions and relationships with entities under common control is important and could highlight circumstances that potentially could affect the judgment of independent directors. We also note that the current proxy rules require disclosure with respect to commonly controlled entities.[90]

Although we are narrowing the scope of immediate family members and related persons in recognition of the overbreadth of our proposal in certain circumstances, we wish to emphasize that a fund's independent directors can vigilantly represent the interests of shareholders only when they are truly independent of those who operate and manage the fund. To that end, we encourage funds to examine any circumstances that could potentially impair the independence of independent directors, whether or not they fall within the scope of our disclosure requirements. There may, for example, be circumstances where an interest of a family member outside the ambit of our rules, or a director's interest in an administrator, impairs the director's ability to represent the interests of shareholders vigilantly.

(b) Other Modifications

(1) Threshold for Disclosure of Interests, Transactions, and Relationships

We are adopting a $60,000 threshold for disclosure of interests, transactions, and relationships.[91] Many commenters requested that the Commission establish a specific dollar threshold that would trigger the disclosure requirements to eliminate the need to make subjective ''materiality'' determinations. We are persuaded by these comments and are adopting the $60,000 threshold, a level recommended by many commenters and contained in the existing proxy rules.[92]

We have replaced a materiality test with the $60,000 threshold in order to facilitate compliance with the disclosure requirements that we adopt today. This change does not, however, reflect a determination that the $60,000 threshold may be equated with ''materiality.'' We note that the antifraud provisions of the federal securities laws may obligate funds to disclose a material conflict of interest between a director and the fund or its shareholders without regard to the $60,000 threshold. For example, a transaction between a director and a fund's adviser may constitute a material conflict of interest with the fund or its shareholders that is required to be disclosed, regardless of the amount involved, if the terms and conditions of the transaction are not comparable to those that would have been negotiated at ''arms-length'' in similar circumstances.

(2) Time Periods

We are adopting, as proposed, a five-year time period for disclosure of positions and interests of directors and immediate family members in the proxy statement for the election of directors.[93] We are, however, reducing the time period for disclosure of positions and interests in the SAI to two calendar years.[94] We believe that, when a shareholder is asked to vote to elect directors, he is entitled to information about potential conflicts covering a significant period of time.[95] We recognize, however, that providing five years of information annually in the SAI, would, as suggested by commenters, increase fund compliance burdens without commensurate benefits to shareholders.

We are adopting, as proposed, the requirement to disclose material transactions and relationships since the beginning of the last two completed fiscal years in the proxy statement for the election of directors.[96] In the SAI, however, we have modified the proposal to require disclosure of transactions and relationships during the two most recently completed calendar years, rather than the last two

[88] A number of commenters recommended that if the Commission adopted the proposed definition of ''immediate family members,'' disclosure of potential conflicts of interest should be limited to those of which the director had actual knowledge. Since we are narrowing the definition of ''immediate family member,'' incorporation of an actual knowledge standard is unnecessary.

[89] Items 22(b)(4)(iv), 22(b)(6)(ii), 22(b)(7)(ii), 22(b)(8)(vii), 22(b)(9), and 22(b)(10)(iii) of Schedule 14A; Items 13(b)(3)(iv), 13(b)(5)(ii), 13(b)(6)(ii), 13(b)(7)(vii), 13(b)(8), and 13(b)(9)(iii) of Form N–1A; Items 18.6(d), 18.8(b), 18.9(b), 18.10(g), 18.11, and 18.12(c) of Form N–2; Items 20(e)(iv), 20(g)(ii), 20(h)(ii), 20(i)(vii), 20(j), and 20(k)(iii) of Form N–3.

[90] *See* Item 22(b)(1) of Schedule 14A (requiring independent directors to disclose direct or indirect securities interests in any person *under common control* with fund's adviser); Item 22(b)(3) (requiring all directors to disclose material transactions to which the adviser, principal underwriter, administrator, any parent or subsidiary of such entities (other than another fund), or any subsidiary of the parent of such entities was or is to be a party).

[91] Items 22(b)(7), 22(b)(8), and 22(b)(9) of Schedule 14A; Items 13(b)(6), 13(b)(7), and 13(b)(8) of Form N–1A; Items 18.9, 18.10, and 18.11 of Form N–2; Items 20(h), 20(i), and 20(j) of Form N–3. In the case of transactions, the $60,000 threshold applies to the size of a transaction, and a materiality standard applies to the director's or immediate family member's interest in the transaction. Item 22(b)(8) of Schedule 14A; Item 13(b)(7) of Form N–1A; Item 18.10 of Form N–2; Item 20(i) of Form N–3. The materiality of the interest is to be determined based on the significance of the information to investors in light of all the circumstances. Instruction 8 to Item 22(b)(8) of Schedule 14A; Instruction 7 to Item 13(b)(7) of Form N–1A; Instruction 7 to Item 18.10 of Form N–2; Instruction 7 to Item 20(i) of Form N–3. This is similar to a provision of the current proxy rules. Item 404(a) of Regulation S–K.

[92] *Cf.* redesignated Item 22(b)(11) of Schedule 14A; Item 404(a) of Regulation S–K. In determining whether the $60,000 threshold is exceeded for interests and relationships, a director's interest is to be aggregated with those of his immediate family members. Instruction 2 to Item 22(b)(7) and Instruction 6 to Item 22(b)(9) of Schedule 14A; Instruction 2 to Item 13(b)(6) and Instruction 5 to Item 13(b)(8) of Form N–1A; Instruction 2 to Item 18.9 and Instruction 5 to Item 18.11 of Form N–2; Instruction 2 to Item 20(h) and Instruction 5 to Item 20(j) of Form N–3.

[93] Items 22(b)(4) and 22(b)(7) of Schedule 14A.

[94] Items 13(b)(3) and 13(b)(6) of Form N–1A; Items 18.6 and 18.9 of Form N–2; Items 20(e) and 20(h) of Form N–3.

[95] Several commenters recommended that the Commission limit all conflicts of interest disclosure to a two-year period. These commenters argued that a two-year time period is consistent with the time limit for material business or professional relationships in section 2(a)(19) of the Act. We note, however, that the five-year time period for disclosure of positions and interests is currently required in the proxy rules. In fact, when the amendments to the proxy rules were adopted in 1994, most of the commenters that addressed the issue of time periods recommended limiting the disclosure of past relationships to the preceding five-year period. *See* Investment Company Act Rel. No. 20614 (Oct. 13, 1994) [59 FR 52689 (October 19, 1994)].

[96] Items 22(b)(8) and 22(b)(9) of Schedule 14A.

fiscal years as proposed.[97] Many commenters noted that a director may serve multiple funds with staggered fiscal years and that a requirement to disclose transactions and relationships for fiscal year time periods could require funds to obtain the information from directors as frequently as monthly, which would be overly burdensome. We have revised the proposal to require two calendar years of disclosure, rather than two fiscal years, in order to reduce this burden for funds with staggered fiscal years, while maintaining the requirement to include two years of disclosure.[98]

(3) Routine, Retail Transactions and Relationships

As proposed, the conflicts of interest disclosure provisions would not have required a fund to disclose routine, retail transactions and relationships, such as a credit card or bank or brokerage account, unless the director is accorded special treatment. At the request of commenters, we are clarifying that the exception for routine, retail transactions and relationships extends to residential mortgages and insurance policies.[99] We also note that the exception for routine, retail transactions and relationships is not limited to the specific transactions and relationships enumerated (credit cards, bank or brokerage accounts, residential mortgages, and insurance policies), but extends to other routine, retail transactions and relationships where the director is not accorded special treatment.

4. Board's Role in Fund Governance

We are adopting, as proposed, disclosure requirements in the proxy rules and the SAI relating to a fund's committees of the board of directors, which commenters generally supported.[100] We are also adopting, as proposed, the requirement to disclose in the SAI the board's basis for approving an existing investment advisory contract.[101]

A number of commenters argued that information about the board's basis for approving an existing advisory contract is not relevant to an investment decision and disclosure of this information will be ''boilerplate'' in nature. After careful consideration of these comments, we continue to believe that shareholders should receive information in the SAI to help them evaluate the board's basis for approving the renewal of an existing investment advisory contract. In approving an investment advisory contract, independent directors must review the level of fees charged. Mutual funds fees and expenses, including advisory fees, are extremely important to shareholders. We note that the United States General Accounting Office (''GAO''), in a recent report to Congress on mutual fund fees, stressed the importance of heightening ''investors'' awareness and understanding of the fees they pay.[102] We believe that the rules we adopt today, which will ensure that shareholders receive specific information on how directors evaluate and approve fees on a regular basis, will help to address the GAO's concerns. In implementing this disclosure requirement, we remind funds that ''boilerplate'' disclosure is not appropriate. Funds are required to provide appropriate detail regarding the board's basis for approving an existing investment advisory contract, including the particular factors forming the basis of this determination.

5. Separate Disclosure

We are adopting, as proposed, the requirement that funds present all disclosure for independent directors separately from disclosure for interested directors in the SAI, proxy statements for the election of directors, and annual reports to shareholders.[103] While several commenters argued that this requirement would confuse shareholders by overemphasizing the differences between independent and interested directors, we believe that the new disclosure format will assist shareholders in understanding information about directors, particularly in evaluating whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations.[104]

6. Technical and Conforming Amendments

The Commission is adopting, as proposed, the technical and conforming amendments to its schedules, forms, and rules.

F. Recordkeeping Regarding Director Independence

We are adopting as proposed the amendments to rule 31a–2, to require funds to preserve for a period of at least six years any record of: (i) The initial determination that a director qualifies as an independent director, (ii) each subsequent determination of whether the director continues to qualify as an independent director, and (iii) the determination that any person who is acting as legal counsel to the independent directors is an independent legal counsel.[105] The rule amendments, which commenters supported, are designed to permit the Commission staff to monitor a fund's assessment of the independence of directors, and to ascertain whether a fund's assessment reflects diligent efforts to evaluate relevant business and personal relationships that might affect each director's independent judgment.[106]

III. Effective Date; Compliance Dates

A. Effective Date

The new rules and amendments to rules and forms that the Commission is adopting today will become effective February 15, 2001. The rescission of rule 2a19–1 will become effective on May 12, 2001, the effective date of section 213 of the Gramm-Leach-Bliley Act.

[97] Items 13(b)(7) and 13(b)(8) of Form N–1A; Items 18.10 and 18.11 of Form N–2; Items 20(i) and 20(j) of Form N–3.

[98] We also have modified the proposal to require funds to disclose in the SAI cross-directorships held by independent directors and their immediate family members during the last two most recently completed calendar years, rather than the last two fiscal years as proposed. Item 13(b)(9) of Form N–1A; Item 18.12 of Form N–2; Item 20(k) of Form N–3.

[99] Instruction 11 to Item 22(b)(8) and Instruction 9 to Item 22(b)(9) of Schedule 14A; Instruction 10 to Item 13(b)(7) and Instruction 8 to Item 13(b)(8) of Form N–1A; Instruction 10 to Item 18.10 and Instruction 8 to Item 18.11 of Form N–2; Instruction 10 to Item 20(i) and Instruction 8 to Item 20(j) of Form N–3. We also note that sales load waivers granted to fund directors generally would not be required to be disclosed as ''material'' transactions or relationships, provided that such waivers are disclosed as otherwise required. *See* Instruction 3 to Item 18(c) of Form N–1A; Instruction 3 to Item 5.2 of Form N–2; Instruction to Item 23(b) of Form N–3 (requiring funds to provide explanations for any differences in the price at which securities are offered generally to the public and the prices at which securities are offered to any class of individuals).

[100] Items 7(e) and 22(b)(14) of Schedule 14A; Item 13(b)(2) of Form N–1A; Item 18.5 of Form N–2; Item 20(d) of Form N–3.

[101] Item 13(b)(10) of Form N–1A; Item 18.13 of Form N–2; Item 20(l) of Form N–3.

[102] United States General Accounting Office, Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition (June 2000) at 97.

[103] Instruction 3 to Item 22(b) of Schedule 14A; Instruction 2 to Item 13 of Form N–1A; Instruction 2 to Item 18 of Form N–2; Instruction 2 to Item 20 of Form N–3.

[104] We reiterate that funds may present information regarding independent and interested directors in a single table or chart, so long as the information for independent and interested directors is provided in separate sections within the table or chart. *See* Proposing Release, *supra* note, at text accompanying and following n.226.

[105] *See* rule 31a–2(a)(4), (5).

[106] For a discussion of the Commission staff's views on the types of professional and business relationships that may be considered material for purposes of sections 2(a)(19)(A)(vi) and (B)(vi) of the Act, *see* Interpretive Matters Concerning Independent Directors of Investment Companies, Investment Company Act Release No. 24083 (Oct. 14, 1999) [64 FR 59877 (Nov. 3, 1999)].

B. Compliance Dates for Investment Company Act Rule Amendments

1. *February 15, 2001.* Persons may begin to rely upon new rules 2a19–3, 10e–1 and 32a–4 on February 15, 2001, the effective date of these rules.

2. *July 1, 2002.* After July 1, 2002: (i) persons may rely upon any of the Exemptive Rules (rules 10f–3, 12b–1, 15a–4(b)(2), 17a–7, 17a–8, 17d–1(d)(7), 17e–1, 17g–1(j), 18f–3, and 23c–3) only if they comply with each of the three new conditions for use of each rule; (ii) persons may rely upon rule 17d–1(d)(7) only if any joint insurance policy then in effect does not exclude coverage of litigation between the independent directors and another insured person under the amended rule;[107] and (iii) funds must begin to comply with the recordkeeping requirements of amended rule 31a–2.

C. Compliance Date for Disclosure Amendments

January 31, 2002. All new registration statements and post-effective amendments that are annual updates to effective registration statements, proxy statements for the election of directors, and reports to shareholders filed on or after January 31, 2002 must comply with the disclosure amendments. Based on the comments, we believe that this will provide funds with sufficient time to make the necessary changes to disclosure documents. We note that a post-effective amendment that is filed for any purpose other than those specifically enumerated in paragraph (b)(1) of rule 485 is required to be filed pursuant to rule 485(a).[108] We would not, however, object if existing funds file their first annual update complying with the amendments pursuant to rule 485(b), unless information is included in response to the new conflicts of interest disclosure requirements, provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.[109] Thereafter, funds must make their own determination as to whether their annual updates should be filed pursuant to rule 485(a) or may be filed pursuant to rule 485(b) under the Securities Act.[110]

[107] *See* rule 17d–1(d)(7)(iii).

[108] 17 CFR 230.485.

[109] 17 CFR 230.485(b). This also would apply to closed-end interval funds filing post-effective amendments pursuant to rule 486(b) under the Securities Act. 17 CFR 230.486(b).

[110] 17 CFR 230.485(a) and 230.485(b). Likewise, closed-end interval funds filing future post-effective amendments must determine whether they must file pursuant to rule 486(a) or may file pursuant to rule 486(b) of the Securities Act. 17 CFR 230.486(a) and 230.486(b).

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. In the Proposing Release, we requested comments and specific data regarding the costs and benefits of the proposed amendments to the Exemptive Rules [111] and the proposed new rules. Six commenters responded to our request for comments on the cost-benefit analysis. The commenters focused on a number of issues, particularly the independent counsel proposal and the disclosure proposals. These comments are addressed below.

A. Amendments to the Exemptive Rules

The Commission is adopting the proposed amendments to the Exemptive Rules and the proposed new rules, with certain changes (together, the ''Amendments''). The Amendments require that, for funds relying on those rules: (i) independent directors constitute a majority of their boards; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the fund's independent directors be an independent legal counsel. The Amendments are designed to enhance the independence and effectiveness of independent directors, who are charged with overseeing the fund's activities and transactions under the Exemptive Rules. Boards that meet these conditions should be more effective at exerting an independent influence over fund management. Their independent directors should be more likely to have their primary loyalty to the fund's shareholders rather than the adviser, and should be better able to evaluate the complex legal issues that are often faced by fund boards with an independent and critical eye. The Amendments, therefore, should provide substantial benefits to shareholders by helping to ensure that independent directors are better able to fulfill their role of representing shareholder interests and supplying an independent check on management. While these benefits are not easily quantifiable in terms of dollars, we believe that they are real, and that the Amendments will strengthen the hand of independent directors to the advantage of shareholders.

The Amendments may impose some costs on funds that choose to rely on the Exemptive Rules. These costs are discussed below. Funds that do not rely on an Exemptive Rule, however, will not be subject to the new conditions and should not incur any costs associated with those conditions.[112]

Independent directors as a majority of the board. The Amendments require funds to have independent directors constitute a simple majority of their boards in order to rely on the Exemptive Rules. Because, as noted above, most mutual funds today have boards with independent majorities,[113] it appears that the Amendments will not impose substantial costs on funds as a group.

Funds that currently do not have a majority of independent directors on their boards and that would like to rely on the Exemptive Rules may incur some costs. The Commission, however, has no reasonable basis for estimating those costs. Those funds could come into compliance with the majority requirement of the Amendments in a number of ways. For example, funds could: (i) Decrease the size of their boards and allow some inside directors to resign; (ii) maintain the current size of their boards and replace some inside directors with independent directors; or (iii) increase the size of their boards and elect new independent directors.

If new independent directors are elected in order to comply with the Amendments, the fund would incur the costs of preparing a proxy statement and holding a shareholder meeting to elect those independent directors, as well as the costs of compensating those directors.[114] The Commission, however, has no reasonable basis for determining how many funds that currently do not have independent directors as a majority of their boards will choose to comply with the Amendments by electing new independent directors.

Independent director self-selection and self-nomination. The Amendments require independent directors to select and nominate any other independent directors. This change should not impose significant new costs on funds, because many funds already have adopted this practice.[115] Although some

[111] *See* Proposing Release, *supra* note , at text following n.33.

[112] One commenter stated that the Commission's proposed amendments and rules will increase the costs of relying on the Exemptive Rules, and that the ''financial impact of the [Commission's] Proposal is underestimated.'' The commenter did not provide specific dollar figures to quantify what it believed were more accurate reflections of the possible costs of the Amendments. Moreover, whether a particular fund incurs additional costs, and the amount of those costs, will depend upon a number of factors specific to the fund.

[113] *See* Proposing Release, *supra* note , at n.39 and accompanying text.

[114] Under some circumstances a vacancy on the board may be filled by the board of directors. *See* section 16(a) of the Act. In those cases, the fund would not incur the costs of the proxy statement and shareholder meeting.

[115] *See* Proposing Release, *supra* note 3, at n.66 and accompanying text.

funds do not currently follow this practice and will need to adopt it in order to rely on the Exemptive Rules, we are not aware of any costs that would result from requiring a fund's incumbent independent directors to select and nominate other independent directors.

Independent legal counsel. Lastly, the Amendments require any legal counsel to a fund's independent directors to be an independent legal counsel.[116] The Amendments do not require independent directors to retain legal counsel, but do require any person that acts as counsel to the independent directors to qualify as an independent legal counsel. Independent directors who are represented by counsel who does not meet the new definition of ''independent legal counsel'' thus may have to retain different counsel if their fund chooses to rely on any of the Exemptive Rules. If a substitution of counsel is necessary, it may lead to an increase in costs as described below.

B. Definition of Independent Legal Counsel

Rule 0–1 defines certain terms for purposes of the rules and regulations under the Investment Company Act. The Commission is amending this rule to add a definition of the term ''independent legal counsel.'' Under the new definition, a person is an independent legal counsel if a majority of the fund's independent directors determine, in the exercise of their business judgment, based on information obtained from such person, that any representation of the fund's adviser, principal underwriter, administrator,[117] or any of their control persons [118] since the beginning of the fund's last two completed fiscal years is unlikely to adversely affect the professional judgment of the person in providing legal representation to the independent directors. The basis of the independent directors' determination is required to be recorded in the minutes of the directors' meeting.

The new definition of ''independent legal counsel'' should help to ensure that independent directors' counsel is able to provide objective legal advice concerning the complex legal issues faced by those directors. This change thus should benefit both shareholders and independent directors by helping those directors to better carry out their responsibilities as shareholder representatives. Shareholders also will benefit from the requirement that the independent directors' determinations be recorded in the minute books of the fund, because this requirement will enable the Commission staff to review independent directors' determinations that their counsel qualifies as independent legal counsel.

The new definition will impose costs on some funds that rely on the Exemptive Rules.[119] We assume that approximately 3,200 funds rely on at least one of the Exemptive Rules annually.[120] We further assume that the independent directors of approximately one-third of those funds (1,065) would be required to make the specified determination in order for their counsel to meet the definition of ''independent legal counsel.'' [121] We estimate that each of these 1,065 funds would be required to spend, on average, 0.75 hours annually to comply with the proposed requirement that this determination be recorded in the fund's minute books,[122] for a total annual burden of approximately 799 hours. Based on this estimate, the total annual cost to funds of this new definition would be approximately $70,505.[123] We estimated in the Proposing Release that the cost of the new definition would be approximately $70,505, and one commenter argued that the actual cost of the proposed definition would ''far exceed'' that amount.[124] Another commenter stated that ''there are likely to be substantial costs incurred by funds if they are forced to hire new counsel to independent directors because counsel has also represented the adviser.'' [125] We do not believe the cost will ''far exceed'' the estimated amount. The rule relies solely on the independent directors to make a good faith determination that a person is an

[116] As discussed above, we are amending rule 0–1 to include a definition of ''independent legal counsel.'' *See* Proposing Release, *supra* note 3, at n.87 and accompanying text; *see also infra* notes 120–125 and accompanying text (discussing the costs and benefits of this proposed definition).

[117] In connection with this new definition, we also are amending rule 0–1 to define an ''administrator'' as any person who provides significant administrative or business affairs management services to a fund. This definition is substantially similar to the definition of administrator that is currently contained in Item 22(a)(1)(i) of Schedule 14A and Item 15(h)(1) of Form N–1A. Adding this definition to rule 0–1 should benefit funds by helping to clarify the scope of the definition of independent legal counsel. We are not aware of any costs that would be associated with this definition of administrator.

[118] We are amending rule 0–1 to define ''control person'' as any person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with a fund's investment adviser, principal underwriter, or administrator. This definition should benefit funds by helping to clarify the scope of the definition of independent legal counsel. We are not aware of any costs that would be associated with this definition.

[119] Among other things, the Amendments require that, for funds relying on those rules, any legal counsel for the independent directors of the fund be an ''independent legal counsel.''

[120] Based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998, we estimate that there are approximately 3,560 funds that could rely on one or more of the Exemptive Rules. Of those funds, we assume that approximately 90 percent (3,200) actually rely on at least one Exemptive Rule annually.

[121] We assume that the independent directors of the remaining two-thirds of those funds (2,135) will choose not to have counsel (but instead rely in some circumstances on counsel who does not represent them), so that no determination by the independent directors would be necessary.

[122] This estimate is based on a staff assessment of the burden associated with this proposed recordkeeping requirement in light of the estimated hour burdens currently associated with other rules under the Act that impose similar collection of information requirements.

[123] To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual industry hour burden (532 hours) would be incurred by professionals with an average hourly wage rate of $125 per hour, and one-third of that annual hour burden (267 hours) would be incurred by clerical staff with an average hourly wage rate of $15 per hour ((532 × $125/hour) + (267 × $15/hour) = $70,505).

[124] The commenter argued that, using the Commission's estimate, if the 1,065 funds that make a specific determination regarding ''independent legal counsel'' retain separate new counsel to represent them, the ''total annual cost of the Commission's proposal will exceed $26 million'' (assuming the average annual retainer for each separate counsel will be $25,000). While we agree that there may be additional costs imposed by rule 0–1 if a board finds its current counsel is not independent and wishes to retain new counsel, it is also likely that the cost of new counsel would be partially offset by the lower amount of fees to be paid to prior counsel. Some boards may decide against appointing counsel. Moreover, the amended rule is different from the proposed rule, and gives the independent directors sole discretion to determine whether their counsel is independent. Thus, the overall additional costs should be far less than those suggested by the commenter.

[125] This commenter suggested that there would be additional costs associated with new counsel, which would need to familiarize itself with the fund, its charter documents, its contracts, the service providers, and other information in order to effectively represent the fund's independent directors. Similarly, the commenter stated that as mergers and acquisitions of fund advisers accelerate, many fund boards will increasingly have to look to outside counsel as one of the few, if not the only, source of continuity and institutional knowledge. We agree that costs may be incurred if the independent directors retain new counsel. However, the Commission cannot predict with any certainty how often this will occur, or the fees charged by the new counsel. Moreover, as law firms experience their own mergers, acquisitions, and turnover of attorneys, new lawyers frequently must familiarize themselves with the fund and its operations. These are costs that law firms would and might pass on to funds whether or not we adopt the new rule.

The same commenter also expressed concern that the Proposing Release did not factor the costs of law firms to initially screen and thereafter continuously monitor legal work performed to ensure continued independence. Most law firms already screen and monitor any new matters for conflicts of interest. We do not believe that our rules will affect this screening and monitoring, nor do we believe law firms will have to establish new systems for the initial screening and continued monitoring of conflicts.

independent counsel. We are unable to predict with any certainty how many independent directors will obtain new counsel because they determine that their current counsel is not ''independent.'' Each evaluation of counsel will be fact-specific, and each board will have to make its own determination with respect to its counsel. Some independent directors may choose not to hire their own legal counsel. The costs of obtaining new counsel also may be partially offset by savings generated by reductions in payment to current counsel, once they cease providing their services to the independent directors.

C. Suspension of Board Composition Requirements

New rule 10e–1 will increase the periods for which the independent director minimum percentage requirements of the Act, and of the rules under the Act, are temporarily suspended if the death, disqualification, or bona fide resignation of an independent director causes the representation of independent directors on the board to fall below that required by the Act or our rules. The new rule will benefit funds by helping to ensure that if a fund's board falls below the independent director minimum percentage requirements in these circumstances, the fund will not immediately face the severe consequences of losing the availability of the Exemptive Rules.

One commenter stated its opinion that there will be significant costs imposed on funds if the time periods suggested in the Proposing Release were not increased. We extended one of the proposed time periods for rule 10e-1 in response to concerns voiced by commenters, and we believe that the periods for which the rule would suspend the independent director minimum percentage requirements are consistent with concerns for investor protection. As amended, the new rule appears not to have any costs for investors or funds.

D. Limits on Coverage of Directors under Joint Insurance Policies

Rule 17d–1(d)(7) under the Act permits funds to purchase joint liability insurance policies without first obtaining a Commission order permitting this joint arrangement, provided that certain conditions are met. The Commission is amending this rule to make it available only for joint liability insurance policies that do not exclude coverage for independent directors' litigation expenses in the event that they are sued by the fund's adviser. This change should benefit shareholders by making it possible for independent directors to engage in the good faith performance of their responsibilities under the Act and our rules without concern for their personal financial security. For the same reasons, the rule change also should benefit independent directors.

Because obtaining this type of coverage may cause the premiums charged by some insurance providers for joint liability insurance policies to increase, this amendment may have some costs for funds.[126] The Commission, however, has no reasonable basis for estimating the possible increase in premiums that may result from this proposal.

E. Independent Audit Committees

Section 32(a)(2) of the Act requires that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection. New rule 32a–4 exempts a fund from this requirement if the fund has an audit committee consisting entirely of independent directors to oversee the fund's auditor. The new rule could provide significant benefits to shareholders. Many believe shareholder ratification of a fund's independent auditor has become a perfunctory process, with votes that are rarely contested. As a consequence, we believe that the ongoing oversight provided by an independent audit committee can provide greater protection to shareholders than shareholder ratification of the choice of auditor. In addition, funds that rely on section 32(a)(2) will no longer have to obtain shareholder ratification or rejection of their auditor on an annual basis, and this change should save some printing costs with respect to proxy materials.

New rule 32a–4 may impose certain costs on those funds that choose to rely on the exemption. It appears that these costs will likely be minimal and will be justified by the relief provided by the exemption. To rely on the exemption, among other things, a fund's board of directors must adopt an audit committee charter that sets forth the committee's structure, duties, powers, and methods of operation, or similar audit committee provisions must appear in the fund's charter or bylaws. The fund also must preserve that charter, and any modifications to the charter, permanently in an easily accessible place.[127] We estimate that there are approximately 3,490 investment companies that may rely on the proposed rule.[128] We assume that approximately 15 percent (524) of those funds are likely to rely on the exemption. For each of those funds, we estimate that the adoption of the audit committee charter would require, on average, 2 hours of director time and 2 hours of professional time,[129] for a total one-time burden of approximately 2,096 hours, and a total one-time cost of approximately $655,000.[130] We also estimate that each of the funds relying on the rule would be required to spend approximately 0.2 hours annually to comply with the proposed requirement that they preserve permanently their audit committee charters,[131] for an additional total annual hour burden of 105 hours, and an additional total annual cost of approximately $5,425.[132]

In addition, some funds pay their directors an extra fee for each committee on which they serve.[133] Those funds may incur the additional costs of audit committee fees if they establish an audit committee in order to rely on the proposed exemption. Of those funds likely to rely on the exemption, however, we have no basis for determining the number that would pay

[126] The ICI Mutual Insurance Company (''ICI Mutual''), which insures funds representing approximately 70 percent of all open-end fund assets, announced last year that it was making available to funds a standard policy endorsement that permits independent directors to recover defense costs, settlements, and judgments in ''insured vs. insured'' claims otherwise covered under the policy. *See* Proposing Release, *supra* note , at n.111. According to an ICI Mutual representative, that company is not charging funds any additional premiums for this coverage. It is possible, however, that other insurance providers might charge funds additional premiums for providing this type of coverage.

[127] These conditions are designed to enable the Commission staff to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the exemption.

[128] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[129] This estimate is based on a review of the estimated hour burdens currently associated with other rules under the Act that impose similar collection of information requirements.

[130] To calculate this one-time cost, the Commission staff used $500 per hour as the average cost of directors' time and $125 per hour as an average hourly wage for professionals ((2 hours × 524 funds × $500/hour) + (2 hours × 524 funds × $125/hour) = $655,000).

[131] This estimate is based on a review of the estimated hour burdens associated with other rules under the Act that impose similar collection of information requirements.

[132] To calculate the total annual cost of the proposed rule, the Commission staff assumed that one-third of the total annual hour burden (35 hours) would be incurred by professionals with an hourly wage rate of $125 per hour, and two-thirds of that annual hour burden (70 hours) would be incurred by clerical staff with an hourly wage rate of $15 per hour ((35 × $125/hour) + (70 × $15/hour) = $5,425).

[133] In some cases, funds pay these additional committee fees only if the committee meeting is held on a day when a board meeting is not scheduled.

their independent directors a separate fee for service on the audit committee, or the likely amount of those fees.[134]

F. Qualifications as an Independent Director

New rule 2a19–3 should benefit shareholders, funds, and independent directors by working to prevent qualified individuals from being unnecessarily disqualified from serving as independent directors. New rule 2a19–3 will benefit both funds and their independent directors by clarifying the status of independent directors who own shares of index funds.

The Commission is not aware of any costs to funds that would result from the new rule. There also should be no costs to investors because, consistent with concerns for investor protection, the new rule will not permit individuals who have affiliations or business interests that could impair their independence to serve as independent directors. The new rule applies to funds that replicate a broad-based index or indices, and does not include the five percent threshold of the proposed rule, and therefore funds will not have to monitor the percentage of an index that is made up of the securities of the fund's adviser, lead underwriter, or their controlling persons.[135]

G. Disclosure of Information about Fund Directors

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comment and data regarding the costs and benefits of the disclosure amendments. A few commenters specifically addressed the Commission's estimates, and they generally argued that the Proposing Release underestimated the costs to be incurred in connection with the proposed amendments. The commenters, however, did not provide specific cost or benefit data in response to the Proposing Release. As discussed above, after careful consideration of the comments we received in response to our Proposing Release, we have tailored the disclosure requirements to better achieve our goals and also addressed the concerns of commenters by modifying the scope of the proposed disclosure amendments.

The amendments to the proxy rules and Forms N–1A, N–2, and N–3 will provide fund investors with improved information about directors. Because independent directors are the shareholders' representatives and advocates, shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information will help a fund shareholder evaluate whether his designated representatives can, in fact, act as independent, vigorous, and effective representatives.

We believe that the amendments benefit investors in several ways. The requirement that mutual funds disclose basic information about directors in an easy-to-read tabular format in the fund's annual report to shareholders, SAI, and proxy statements for the election of directors benefits shareholders by ensuring that shareholders receive information about the identity and experience of their directors both annually and whenever they are asked to vote to elect directors. Moreover, this information benefits prospective investors who may obtain the information, without charge, upon request.

The amendments require that funds disclose: (1) Each director's ownership in each fund that he oversees; and (2) each director's aggregate ownership in any funds that he oversees within a fund family. This information benefits shareholders and prospective investors by making available in the SAI information that may show the alignment of director interests with those of shareholders. In addition, shareholders also benefit by receiving this information in the proxy statements whenever they are asked to vote to elect directors.

Our amendments regarding circumstances that may raise conflict of interest concerns for directors benefit investors by enabling investors to decide for themselves whether an independent director would be an effective advocate for shareholders. Disclosure of this type of information also results in its public dissemination, bringing these circumstances to the attention of fund shareholders, and encouraging the selection of independent directors who are independent in the spirit of the Act. Finally, this information assists the Commission in determining whether to exercise its authority under section 2(a)(19) of the Act to find that a person is an interested person of a fund by reason of having had, at any time since the beginning of the last two completed years of the fund, a material business or professional relationship with the fund and certain persons related to the fund.

The modifications to the disclosure requirements of matters related to the board's role in governing a mutual fund benefit shareholders by allowing them to determine more readily whether the directors are effectively representing shareholders' interests, independent of fund management.

The amendments impose certain costs on the fund industry. The costs associated with the proposed amendments include the resources expended by funds in collecting the information and preparing the disclosure documents.[136] Although we have tailored the proposal to better achieve our goals and to address the concerns of commenters, we do not believe that the overall cost burden of the amendments was materially affected.

Proxy Statements

The hour burden for preparing proxy statements at the time of the Proposal Release was 96.2 hours per proxy statement, and we estimated that approximately ⅓ of those hours—or 32 hours—are expended collecting and disclosing information about directors and nominees.[137] We estimated the additional burden hours that would be imposed by the proposed disclosure requirements to be 10 hours per proxy statement.[138]

We estimate the annual industry cost of the proposed amendments to the proxy statements to be 10,000 hours, or $1.25 million, based on an estimated 1,000 proxy statements that are filed annually.[139]

[134] We also have no basis for determining how many funds would choose to avoid those fees by scheduling audit committee meetings for the same day as a board meeting.

[135] *See supra* Section I.E.2.

[136] One commenter argued that the Commission failed to account for the costs to funds when potential and existing directors are discouraged from serving on fund boards due to the burdens of the proposed disclosure amendments. The commenter, however, failed to provide any quantifiable data to support the commenter's argument. Moreover, in tailoring the disclosure amendments to better achieve our goals, we have addressed the concerns of commenters regarding the scope of the disclosure requirements.

Another commenter noted that the Commission failed to account for the legal costs associated with increased litigation that would arise from the new disclosure requirements. Again, the commenter failed to provide any data for us to consider.

[137] This estimate was based on a staff assessment of the different types of information required in proxy statements.

[138] This estimate was based upon a staff assessment of the proposed amendments in light of the hour burden and reporting requirements at the time of the Proposal Release.

As stated above, the additional hours were based on the additional time funds would devote to determining what information needs to be disclosed, formulating queries for directors, and preparing the disclosure documents.

[139] The estimated number of proxy statements was based on the approximate number of proxy

Registration Statements

Because the information to be disclosed in the registration statements is the same as in the proxy statements, we believe that the hour burden for the amendments per registration statement will be approximately the current hour burden for collecting and disclosing director information under the current proxy rules plus the hour burden for the proposed amendments to the proxy rules. As stated above, we estimated the current hour burden for collecting and disclosing information about directors and nominees in proxy statements to be 32 hours per proxy statement and the burden hours for collecting and disclosing the enhanced information about directors and nominees to be 10 hours per proxy statement, for a total of 42 hours.

Form N–1A

The hour burden for Form N–1A is on a per portfolio basis and not per registration statement filed with the Commission. Based on the staff's experience with Form N–1A, we estimate that there are approximately 1.75 portfolios per registration statement filed on Form N–1A. The average hour burden per portfolio for disclosing the information about directors will be the hour burden per registration statement (42) divided by the average number of portfolios per registrant (1.75), or 24 hours per portfolio.[140] Because mutual funds only have to update information in post-effective amendments, we expect the hour burden to be ⅙ of the hours expended for the initial registration statement, or 4 hours per portfolio for post-effective amendments.[141]

In the Proposing Release, we estimated that 280 portfolios file initial registration statements and 7,875 portfolios file post-effective amendments annually on Form N–1A.[142] Thus, we estimate the annual industry cost of the amendments to Form N–1A to be 38,220 hours, or $4.78 million.[143]

Form N–2

The hour burden for Form N–2 is on a per registration statement basis because funds registering on Form N–2 register one portfolio per registration statement. Because the disclosure will be the same for Form N–2 as for Form N–1A, except that it would be for one portfolio per registration statement, we estimated the additional hour burden for the proposed amendments to be 42 hours for each initial registration statement. Because funds only have to update information in post-effective amendments, we expect that the hour burden to be approximately ⅙ of the hours expended for the initial registration statement, or 7 hours per post-effective amendment.[144]

In the Proposing Release, we estimated that 110 funds file initial registration statements and 20 file post-effective amendments annually on Form N–2.[145] Thus, we estimate the annual industry cost of the amendments to Form N–2 to be 4,760 hours, or $595,000.[146]

Form N–3

The hour burden for Form N–3 is on a per portfolio basis and not per registration statement filed with the Commission. Based on the Commission staff's experience with Form N–3, we estimate that there are approximately 4 portfolios per investment company registering on Form N–3. The average hour burden per portfolio for disclosing the information about directors will be the hour burden per registration statement (42) divided by the approximate number of portfolios per registrant (4), or 10.5 hours per portfolio. Because funds only have to update information in post-effective amendments, we expect that the hour burden would be ⅙ of the hours expended for the initial registration statement, or 1.75 hours per portfolio for post-effective amendments.[147]

In the Proposing Release, we estimated that 20 portfolios file initial registration statements and 40 portfolios file post-effective amendments annually on Form N–3.[148] Thus, we estimate the annual industry cost of the amendments to Form N–3 to be 280 hours, or $35,000.[149]

Shareholder Reports

Because the disclosure of basic tabular information, which is required in annual shareholder reports, is a subset of the information that would be required in the initial registration statement of a fund and any post-effective amendments, we expect that the annual burden for complying with the proposed amendments to the shareholder report requirements would be minimal. Based upon the amount of information to be disclosed, we estimate that the hour burden would be one-half hour per investment company for each annual shareholder report. In the Proposing Release, we estimated that there were 3,490 management investment companies that are subject to the annual report requirements.[150] Thus, we estimate the annual industry cost of the proposed amendments for annual shareholder reports to be 1,745 hours, or $218,125.[151]

H. Recordkeeping Regarding Director Independence

The Commission also is amending rule 31a–2 under the Act, which requires funds to preserve certain records for specified periods of time. The amendments to rule 31a–2 require funds to preserve for a period of at least six years any record of: (i) The initial determination that a director qualifies as

statements filed with the Commission in calendar year 1998. The total industry cost of the proposed amendments to the proxy statement is calculated by multiplying the annual number of proxy statements (1,000) by the additional hour burden imposed by the proposed amendments (10 hours) by the hourly wage rate ($125). The hourly wage rate is based upon consultations with a sample of filers and represents the Commission's estimate for an appropriate wage rate for the legal, financial, and accounting skills commonly used in preparation of registration statements, shareholder reports, and proxy statements.

[140] Our estimated hour burden would be high for those portfolios that are part of a fund complex in which multiple registered investment companies have the same board of directors because the burden of collecting and disclosing information about the common board would be spread over a larger number of portfolios.

[141] Although funds only have to update the information about current directors and add information about new directors, we anticipate that funds will incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure information.

[142] These estimates were based on filings received in calendar year 1998.

[143] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((280 portfolios x 24 hours) + (7,875 portfolios x 4 hours)) by the hourly wage rate of $125.

[144] Although funds only have to update the information about current directors and add information about new directors, we anticipate that funds will incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure information.

[145] These estimates were based on filings received in calendar year 1998.

[146] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((110 funds x 42 hours) + (20 funds x 7 hours)) by the hourly wage rate of $125.

[147] Although funds would only have to update the information about current directors and add information about new directors, we anticipate that funds would incur some burden hours in regularly collecting information from directors, determining what information needs to be disclosed, and preparing the updated disclosure information.

[148] These estimates were based on filings received in calendar year 1998.

[149] The total annual industry cost is calculated by multiplying the total annual industry hour burden ((20 portfolios x 10.5 hours) + (40 portfolios x 1.75 hours)) by the hourly wage rate of $125.

[150] This estimate was based on statistics compiled by Division staff from January 1, 1997 through December 31, 1998.

[151] The industry cost of the proposed annual shareholder reporting requirements is calculated by multiplying the total annual hour burden for the industry (0.5 hours x 3,490 registered management investment companies) by the hourly wage rate of $125.

an independent director; (ii) each subsequent determination of whether the director continues to qualify as an independent director; and (iii) the determination that any person who is acting as legal counsel to the independent directors is an independent legal counsel. These amendments should benefit both shareholders and the Commission by enabling the Commission's staff to monitor the independent directors' determination of whether their counsel is independent.

The amendments will impose certain minimal costs on funds. The Commission staff estimates that each fund currently spends about 27.8 hours per year complying with the record preservation requirements of rule 31a–2.[152] Approximately 3,490 funds would be affected by the proposal to amend the rule to require funds to preserve records regarding the independence of their directors.[153] The Commission staff estimates that each of those funds would be required to spend an additional 0.2 hours annually to comply with the proposed amendment,[154] for a total additional burden for all funds of approximately 698 hours. Based on this estimate, the total annual cost for all funds of the proposed amendment to rule 31a–2 would be $36,100.[155] The estimated costs related to the determination of counsel's independence are discussed above in section IV.B. The Commission is not aware of any other costs that would result from the proposed amendments to rule 31a–2.

V. Effects on Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[156] The Commission has considered these factors.

Independent directors have significant responsibilities under the Investment Company Act and the Exemptive Rules. The new rules and amendments are intended to enhance the independence and effectiveness of independent directors so that they can perform these responsibilities capably and well. The new rules and rule amendments should promote capital formation by bolstering investors' confidence in the ability of independent directors to represent their interests effectively. When investors are confident that their interests are duly considered by those responsible for the operation of the mutual funds in which they invest, they are more likely to continue to rely on mutual funds as a vehicle for savings and investment. The new rules and rule amendments should promote efficiency and competition by enhancing the ability of fund independent directors to scrutinize fund operations and protect funds from inefficiencies inherent when a fund is operated to promote the interests of persons other than those who have invested in the fund.

As discussed above, shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund. This information helps a fund shareholder to evaluate whether the independent directors can, in fact, act as an independent, vigorous, and effective force in overseeing fund operations. The disclosure amendments were designed to ensure that shareholders have the information necessary to make such evaluations.

It is unclear whether the disclosure amendments will promote the efficiency of funds since the disclosure amendments do not change the operation of funds. The disclosure amendments, however, may promote competition among funds since shareholders will now be better equipped to evaluate the effectiveness of fund boards among various funds before making their investment decisions. The disclosure amendments also may promote capital formation as the disclosure amendments may provide potential investors greater confidence to invest in funds knowing that the interests of the independent directors overseeing the funds are aligned with their own.

VI. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of Forms N–1A, N–2, and N–3, and rules 0–1, 20a–1, 30e–1, 31a–2, and 32a–4 under the Investment Company Act, and Schedule 14A under the Exchange Act contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520.]. We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

As discussed above, we are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors. Specifically, we are adopting disclosure amendments that will require funds to disclose: (1) Basic information about directors in an easy-to-read tabular format; (2) fund shares owned by directors; (3) conflicts of interest information regarding independent directors; and (4) information on the board's role in governing the fund.

A few commenters specifically addressed the burden hours the Commission estimated funds would incur to satisfy the proposed disclosure requirements, generally stating that these estimates were too low. These commenters, however, did not provide the Commission with any specific quantitative data regarding burden hours.[157] As discussed in the Proposing Release, the Commission staff estimated the burden hours that would be necessary under the proposed disclosure amendments by assessing a variety of factors.[158] After careful

[152] Commission staff surveyed representatives of several funds to determine the current burden hour estimate for rule 31a–2.

[153] This estimate is based on statistics compiled by Commission staff from January 1, 1997 through December 31, 1998.

[154] This estimate is based on a Commission staff assessment of the hour burden that would be imposed by the proposed amendment in light of the estimated hour burden currently imposed by the requirements of the rule.

[155] In calculating the total annual industry cost of the proposed amendment, the Commission staff assumed that one-third of the total annual industry hour burden (233 hours) would be incurred by professionals with an average hourly wage rate of $125 per hour, and two-thirds of that annual hour burden (465 hours) would be incurred by clerical staff with an average hourly wage rate of $15 per hour ((233 x $125/hour) + (465 x $15/hour) = $36,100).

[156] 15 U.S.C. 80a–2(c), 77b(b), and 78c(f).

[157] One commenter did assert that an additional 250 hours would be required to convert the new disclosure requirements into ''plain English'' in order for funds to obtain accurate information from directors. In light of the modifications to the disclosure requirements discussed above, which simplified the disclosure requirements, we believe that our estimates remain appropriate.

[158] For example, in determining the burden hour for preparing proxy statements, we explained that the then current hour burden for preparing proxy statements was 96.2 hours per proxy statement, and we estimated that approximately ⅓ of those hours—or 32 hours—were expended collecting and disclosing information about directors and nominees. We estimated that an additional 10 burden hours per proxy statement would be imposed by the proposed disclosure requirements.

consideration of these comments, as well as the modifications made to the amendments as proposed, we continue to believe that our estimates are appropriate.[159]

The rule amendments we are adopting in this Release include amendments to the Exemptive Rules that are designed to enhance the independence and effectiveness of fund independent directors.[160] The changes also include new rules and rule amendments that will prevent qualified individuals from being unnecessarily disqualified from serving as independent directors, protect independent directors from the costs of legal disputes with fund management, permit the Commission to monitor the independence of directors by requiring funds to preserve records of their assessments of director independence, and temporarily suspend the independent director minimum percentage requirements if a fund falls below the required percentage due to an independent director's death or resignation. In addition, the Commission is exempting funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

In the Proposing Release, the Commission estimated the burden hours that would be necessary for the collection of information requirements under the proposed amendments to the rules under the Act. Although no commenters specifically addressed the burden estimates for the collection of information requirements, a few commenters responding to the cost-benefit analysis in the Proposing Release generally stated that we had underestimated the burden hours. These commenters, however, did not provide an estimate of the burden hours associated with the proposed rule changes. We continue to believe that the estimates of the burden hours contained in the Proposing Release are appropriate.[161]

OMB approved the collection requirements contained in the forms and rules. Forms N–1A (OMB Control No. 3235–0307), N–2 (OMB Control No. 3235–0026), and N–3 (OMB Control No. 3235–0316) were adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e]. Rule 0–1 was adopted pursuant to section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)]. Rule 20a–1 (OMB Control No. 3235–0158) and rule 30e–1 (OMB Control No. 3235–0025) were promulgated under sections 20(a) and 30(e) [15 U.S.C. 80a–20 and 80a–29], respectively, of the Investment Company Act. Rule 31a–2 (OMB Control No. 3235–0179) was adopted under sections 31 [15 U.S.C. 80a–30] and 38(a) of the Investment Company Act. Rule 32a–4 (Control No. 3235–0530) was adopted under sections 6(c) [15 U.S.C. 80a–6(c)] and 38(a) of the Investment Company Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the disclosure requirements is mandatory. Responses to the disclosure requirements will not be kept confidential.

VII. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604. The Commission proposed new rules 2a19–3, 10e–1 and 32a–4, and amendments to rules 0–1, 2a19–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, 23c–3, 30d–1, 30d–2, and 31a–2, and requested comments on the new rules and amendments in the Proposing Release. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release summarized the IRFA and solicited comments on it. No comments specifically addressed the IRFA.

A. Need for the Rules and Rule Amendments

1. Amendments to Exemptive Rules

Fund boards of directors have significant responsibilities to protect investors under state law, the Investment Company Act, and many of our rules. Independent directors, in particular, represent the interests of fund shareholders. They serve as ''independent watchdogs,'' guarding investor interests. We are amending certain Exemptive Rules to require that, for funds relying on those rules:

- Independent directors constitute a majority of the fund's board of directors;
- Independent directors select and nominate other independent directors; and
- Any legal counsel for the fund's independent directors be an ''independent legal counsel.''[162]

We also are adopting rules and rule amendments that will prevent qualified individuals from being unnecessarily disqualified from serving as independent directors, protect independent directors from the costs of legal disputes with fund management, permit us to monitor the independence of directors by requiring funds to keep records of their assessments of director independence, and temporarily suspend the independent director minimum percentage requirements if a fund falls below the required percentage due to an independent director's death or resignation. In addition, we are exempting funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund

This estimate was based upon a Commission staff assessment of the proposed amendments in light of the then current hour burden and current reporting requirements. We explained that the additional hours were based on the additional time funds would devote to determining what information needs to be disclosed and preparing the disclosure documents.

[159] We note that since issuing the Proposing Release, the Commission issued a proposal on Disclosure of Mutual Fund After-Tax Returns, Investment Company Act Release No. 24339 (March 15, 2000) [65 FR 15500 (March 22, 2000)]. The proposal would result in an increase in burden hours of 109,591 for Form N–1A and 17,100 burden hours for rule 30e–1 due to the proposed amendments relating to after-tax disclosure.

[160] These amendments require that, for funds relying on any of the Exemptive Rules, (i) independent directors constitute a majority of the fund's board of directors; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the independent directors be an independent legal counsel. In connection with these amendments, we also are amending rule 0–1 under the Act to add definitions of the terms ''independent legal counsel'' and ''administrator.''

[161] The Commission continues to estimate that the addition of the definition of the term ''independent legal counsel'' to rule 0–1 will require the independent directors of approximately 1,065 funds to spend, on average, 0.75 hours annually to determine whether their counsel meets the definition of ''independent legal counsel,'' for a total annual burden of approximately 799 hours. *See* Proposing Release, *supra* note 3, at nn.287–290 and accompanying text.

In addition, the Commission estimates that the amendments to rule 31a–2, which require funds to preserve records regarding the independence of their directors and counsel, will require approximately 3,490 investment companies to spend an additional 0.2 hours annually to comply with the collection of information requirements of rule 31a–2, for a total additional burden for all funds of approximately 698 hours. *See* Proposing Release, *supra* note 3, at nn.310–312 and accompanying text.

The Commission also estimates that new rule 32a–4, which provides an exemption from the requirement in section 32(a)(2) of the Act that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection, will be relied upon by approximately 524 funds, for a total one-time burden of 2,096 hours and an additional annual hour burden of 105 hours. *See* Proposing Release, *supra* note 3, at nn.313–314 and accompanying text.

[162] In connection with the adoption of this requirement, we also are defining the term ''independent legal counsel.''

establishes an audit committee composed entirely of independent directors.

2. Disclosure Requirements

In reevaluating our current disclosure requirements about fund directors, we concluded that, while our fundamental approach has been sound, there are several gaps in the information that shareholders currently receive about directors. We are, therefore, requiring that funds provide better information about directors, including:

- Basic information about the identity and business experience of directors;
- Fund shares owned by directors;
- Information about directors that may raise conflict of interest concerns; and
- The board's role in governing the fund.

We are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors.

B. Significant Issues Raised by Public Comment

The Commission requested comment on the IRFA, but we received no comments specifically addressing the analysis. Several commenters, however, asserted that the financial costs of the amendments to the rules under the Act would have a greater impact on funds that are small entities. Those commenters did not, however, provide an estimate of the costs to small entities. A few commenters stated that the disclosure amendments, as proposed, would disadvantage smaller funds.

Two commenters argued that the proposed fund ownership disclosure would disadvantage directors of smaller funds as these funds are more likely to be stand-alone funds or part of a fund complex with fewer funds, thereby reducing the likelihood that such funds would meet directors' particular investment objectives. We have addressed this concern by modifying the proposal to require that funds disclose each director's ownership in each fund that he oversees and each director's aggregate ownership in any funds that he oversees within a his fund family. Although we understand that directors of smaller funds will still have fewer funds from which to choose, limiting fund ownership disclosure to those funds that a director oversees within the same complex should help reduces the disadvantage to directors of smaller funds and still provide investors with information to assess whether a director's interests are aligned with their own..

We also narrowed the scope of immediate family members and related persons in recognition of the overbreadth of our proposal in certain circumstances, which should alleviate concerns that the conflicts of interest disclosure requirements would discourage directors from serving on fund boards.

C. Small Entities Subject to the Rules

As of December 1999, approximately 299 funds met the Commission's definition of small entity for purposes of the Investment Company Act.[163]

The amendments to the Exemptive Rules will affect funds, including any small entities that rely on the Exemptive Rules and do not already meet the new conditions to those rules. Although it appears that funds may incur certain costs in complying with those conditions, the Commission does not have a reasonable basis for estimating those costs. Other rule amendments are not expected to have a significant economic impact on funds, including those that are small entities.

As discussed above, we are adopting the disclosure amendments with several modifications designed to tailor the amendments more closely to our goal of providing shareholders with better information to evaluate the independent directors. In doing so, we have narrowed the scope of the disclosure requirements that were proposed and that would have applied to small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Investment Company Act Rule Amendments

The amendment to rule 17d–1(d)(7), and new rules 10e–1 and 2a19–3, will not impose any new reporting, recordkeeping or compliance requirements. The amendments to the Exemptive Rules also will not impose any new reporting or recordkeeping requirements, but will impose three new compliance requirements. For funds relying on the Exemptive Rules, the amendments require that: (i) Independent directors constitute a majority of the fund's board of directors; (ii) independent directors select and nominate other independent directors; and (iii) any legal counsel for the fund's independent directors be an independent legal counsel. Although it appears that there may be certain costs to funds, including those that are small entities, associated with complying with these requirements, the Commission does not have a reasonable basis for estimating those costs.

2. Disclosure Amendments

As noted in our Paperwork Reduction Act Analysis, a few commenters argued that we had underestimated the costs of complying with the proposed rules and amendments.[164] In addition, several commenters stated that compliance with the proposed rules and amendments would have a greater impact on small entities. However, none of the commenters provided an estimate of the impact on small entities, and how it would differ from the impact on larger entities.

E. Agency Action to Minimize Effects on Small Entities

1. Investment Company Act Rule Amendments

With respect to the amendments to the rules under the Act, we believe that establishing different requirements that are applicable specifically to small entities is inconsistent with the protection of investors. We also believe that adjusting the new rules and rule amendments to establish different compliance requirements for small entities could undercut the purpose of the changes: to enhance the effectiveness of independent directors of all funds, and thus better enable those directors to fulfill their role of protecting shareholder interests.

2. Disclosure Amendments

With respect to the disclosure requirements, the Commission believes that special compliance or reporting requirements for small entities would not be appropriate or consistent with investor protection. The disclosure amendments give shareholders and the public greater access to information about directors. Different disclosure requirements for small entities, such as reducing the level of disclosure that small entities would have to provide shareholders, would create the risk that shareholders would not receive adequate information about their independent directors. The Commission believes it is important for shareholders and the public to receive this information about directors for all funds, not just for funds that are not considered small entities. Shareholders in small funds should have information about their directors and would benefit

[163] We note that few, if any, insurance company separate accounts registered on Form N–3 have assets of less than $50 million when separate account assets are aggregated with the assets of the sponsoring insurance company.

[164] *See supra* note and accompanying text.

from this information as much as shareholders in larger funds.

Consolidating or simplifying compliance requirements for small entities or exempting small entities from any or all of the disclosure requirements would be inconsistent with the Securities Act, the Exchange Act, the Investment Company Act, and investor protection. If we do not require certain information for small entities, this could create the risk that investors in small funds might not receive important information about their directors. The Commission also notes that current disclosure requirements in the proxy statements and registration statements do not distinguish between small entities and other funds. In addition, the Commission believes it would be inappropriate to impose a different timetable on small entities for complying with the requirements.

The Commission believes that the amendments will not adversely affect small entities. The new disclosure requirements modify the existing disclosure requirements in proxy statements and registrations statements. In addition, the Commission believes that any additional impact on small entities will be outweighed by the benefits to shareholders and the public of having greater access to the information. Further consolidation or simplification of disclosure requirements for small entities, or use of performance standards to specify different requirements for small entities would not be consistent with the objectives of the Investment Company Act.

The FRFA is available for public inspection in File No. S7–23–99, and a copy may be obtained by contacting Peter M. Hong, Special Counsel, at (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

VIII. Statutory Authority

The Commission is adopting rules 2a19–3, 10e–1, and 32a–4, and amendments to rules 0–1, 2a19–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, 23c–3, 30d–1, 30d–2, and 31a–2 pursuant to authority set forth in sections 6(c), 10(e), 30(e), 31, and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–10(e), 80a–29(e), 80a–30, 80a–37(a)]. The Commission is adopting amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [15 U.S.C. 78n, 78w(a)(1)] and sections 20(a) and 38 of the Investment Company Act [15 U.S.C. 80a–20(a), 80a–37]. The Commission is adopting amendments to Forms N–1A, N–2, and N–3 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, 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, 80a–37].

List of Subjects

17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Final Rules and Forms

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.14a–101 is amended as follows:

a. Redesignating paragraphs (e) and (d) of Item 7 as paragraphs (d) and (e) of Item 7;

b. In newly redesignated paragraph (d)(1) of Item 7, removing the third and fourth sentence;

c. In newly redesignated paragraph (d)(3)(iv)(A)(*2*) of Item 7, revise the phrase ''paragraph (e)(3)(iv)(A)(2)'' to read ''paragraph (d)(3)(iv)(A)(*2*)'';

d. In newly redesignated paragraphs (d)(3)(v), (d)(3)(vi) and (d)(3)(vii) of Item 7, revise the phrase ''paragraph (e)(3)'' to read ''paragraph (d)(3)'';

e. Revising newly redesignated paragraph (e) of Item 7;

f. Revising Item 8(d), before the Instruction, revising ''Item 22(b)(6)'' to read ''Item 22(b)(13)'';

g. In the Instruction following Item 10(a)(2)(ii)(A), revising ''Item 22(b)(6)'' to read ''Item 22(b)(13)'';

h. In the Instruction following Item 10(b)(1)(ii), revising ''Item 22(b)(6)(ii)'' to read ''Item 22(b)(13)'';

i. Revising paragraph (a)(1)(i) of Item 22;

j. In Item 22, redesignating paragraphs (a)(1)(iv), (v), (vi), (vii), and (viii) as paragraphs (a)(1)(v), (vi), (ix), (x), and (xii);

k. In Item 22, adding new paragraphs (a)(1)(iv), (vii), (viii), and (xi);

l. In Item 22, revising newly designated paragraph (a)(1)(x); and

m. Revising paragraph (b) of Item 22.

These additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers

* * * * *

(e) In lieu of paragraphs (a) through (d)(2) of this Item, investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a) must furnish the information required by Item 22(b) of this Schedule 14A.

* * * * *

Item 22. Information required in investment company proxy statement.

(a) * * *

(1) * * *

(i) *Administrator.* The term ''Administrator'' shall mean any person who provides significant administrative or business affairs management services to a Fund.

* * * * *

(iv) *Family of Investment Companies.* The term ''Family of Investment Companies'' shall mean any two or more registered investment companies that:

(A) Share the same investment adviser or principal underwriter; and

(B) Hold themselves out to investors as related companies for purposes of investment and investor services.

* * * * *

(vii) *Immediate Family Member.* The term ''Immediate Family Member'' shall mean a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(viii) *Officer.* The term ''Officer'' shall mean the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

* * * * *

(x) *Registrant.* The term ''Registrant'' shall mean an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)).

(xi) *Sponsoring Insurance Company.* The term ''Sponsoring Insurance Company'' of a Fund that is a separate account shall mean the insurance company that establishes and maintains the separate account and that owns the assets of the separate account.

* * * * *

(b) *Election of Directors.* If action is to be taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to the information (and in the format) required by

paragraphs (f) and (g) of Item 7 of Schedule 14A.

Instructions to introductory text of paragraph (b). 1. Furnish information with respect to a prospective investment adviser to the extent applicable.

2. If the solicitation is made by or on behalf of a person other than the Fund or an investment adviser of the Fund, provide information only as to nominees of the person making the solicitation.

3. When providing information about directors and nominees for election as directors in response to this Item 22(b), furnish information for directors or nominees who are or would be ''interested persons'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) separately from the information for directors or nominees who are not or would not be interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors and nominees who are or would be interested persons and for directors or nominees who are not or would not be interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors or nominees who are or would be interested persons and the directors or nominees who are not or would not be interested persons.

4. No information need be given about any director whose term of office as a director will not continue after the meeting to which the proxy statement relates.

(1) Provide the information required by the following table for each director, nominee for election as director, Officer of the Fund, person chosen to become an Officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age.	Position(s) Held with Fund.	Term of Office and Length of Time Served.	Principal Occupation(s) During Past 5 Years.	Number of Portfolios in Fund Complex Overseen by Director or Nominee for Director.	Other Directorships Held by Director or Nominee for Director

Instructions to paragraph (b)(1). 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. No nominee or person chosen to become a director or Officer who has not consented to act as such may be named in response to this Item. In this regard, see Rule 14a–4(d) under the Exchange Act (§ 240.14a–4(d)).

3. If fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

4. For each director or nominee for election as director who is or would be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director or nominee is or would be an interested person.

5. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

6. Include in column (5) the total number of separate portfolios that a nominee for election as director would oversee if he were elected.

7. Indicate in column (6) directorships not included in column (5) that are held by a director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*), or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), or any company registered as an investment company under the Investment Company Act of 1940, (15 U.S.C. 80a), as amended, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same Fund Complex, identify the Fund Complex and provide the number of portfolios overseen as a director in the Fund Complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (b)(1) of this Item, except for any director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction to paragraph (b)(2). When an individual holds the same position(s) with two or more registered investment companies that are part of the same Fund Complex, identify the Fund Complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director, nominee for election as director, Officer, or person chosen to become an Officer, and any other person(s) (naming the person(s)) pursuant to which he was or is to be selected as a director, nominee, or Officer.

Instruction to paragraph (b)(3). Do not include arrangements or understandings with directors or Officers acting solely in their capacities as such.

(4) Unless disclosed in the table required by paragraph (b)(1) of this Item, describe any positions, including as an officer, employee, director, or general partner, held by any director or nominee for election as director, who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, during the past five years, with:

(i) The Fund;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(iii) An investment adviser, principal underwriter, Sponsoring Insurance Company, or affiliated person of the Fund; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

Instruction to paragraph (b)(4). When an individual holds the same position(s) with two or more portfolios that are part of the same Fund Complex, identify the Fund Complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(5) For each director or nominee for election as director, state the dollar range of equity securities beneficially owned by the director or nominee as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen or to be overseen by the director or nominee within the same Family of Investment Companies as the Fund.

(1)	(2)	(3)
Name of Director or Nominee.	Dollar Range of Equity Securities in the Fund.	Aggregate Dollar Range of Equity Securities in All Funds Overseen or to be Overseen by Director or Nominee in Family of Investment Companies

Instructions to paragraph (b)(5). 1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (§ 240.16a–1(a)(2)).

3. If action is to be taken with respect to more than one Fund, disclose in column (2) the dollar range of equity securities beneficially owned by a director or nominee in each such Fund overseen or to be overseen by the director or nominee.

4. In disclosing the dollar range of equity securities beneficially owned by a director or nominee in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(6) For each director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19), and his Immediate Family Members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director or Nominee.	Name of Owners and Relationships to Director or Nominee.	Company	Title of Class	Value of Securities	Percent of Class

Instructions to paragraph (b)(6). 1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (§§ 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director, nominee, or Immediate Family Member of the director or nominee owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company, describe the company's relationship with the investment adviser, principal underwriter, or Sponsoring Insurance Company.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director (or nominee) and his Immediate Family Members.

(7) Unless disclosed in response to paragraph (b)(6) of this Item, describe any direct or indirect interest, the value of which exceeds $60,000, of each director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, during the past five years, in:

(i) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

Instructions to paragraph (b)(7). 1. A director, nominee, or Immediate Family Member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director (or nominee) and the interests of his Immediate Family Members should be aggregated in determining whether the value exceeds $60,000.

(8) Describe briefly any material interest, direct or indirect, of any director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, in any transaction, or series of similar transactions, since the beginning of the last two completed fiscal years of the Fund, or in any currently proposed transaction, or series of similar transactions, in which the amount involved exceeds $60,000 and to which any of the following persons was or is to be a party:

(i) The Fund;

(ii) An Officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(iv) An Officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(v) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(vi) An Officer of an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(viii) An Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

Instructions to paragraph (b)(8). 1. Include the name of each director, nominee, or Immediate Family Member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director, nominee, or Immediate Family Member of the director or nominee without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the

earliest date of any series covered by the proxy statement.

7. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (b)(8) of this Item where the interest of the director, nominee, or Immediate Family Member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item, and the transaction is not material to the company.

8. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

9. No information need be given as to any transaction where the interest of the director, nominee, or Immediate Family Member arises solely from the ownership of securities of a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item and the director, nominee, or Immediate Family Member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

10. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

11. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item unless the director is accorded special treatment.

(9) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Fund, or is currently proposed, with any of the persons specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item;

(ii) Provision of legal services to any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(9)(i) through (b)(9)(iii) of this Item.

Instructions to paragraph (b)(9). 1. Include the name of each director, nominee, or Immediate Family Member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director, nominee, or Immediate Family Member and the person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item as a result of the relationship since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

5. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item may have an indirect relationship by reason of the position, relationship, or interest.

6. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director (or nominee) should be aggregated with those of his Immediate Family Members.

7. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item has a relationship; the name of the director, nominee, or Immediate Family Member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

8. In calculating payments for property and services for purposes of paragraph (b)(9)(i) of this Item, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

9. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item unless the director is accorded special treatment.

(10) If an Officer of an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund, or an Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund, serves, or has served since the beginning of the last two completed fiscal years of the Fund, on the board of directors of a company where a director of the Fund or nominee for election as director who is not or would not be an ''interested person'' of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)), or Immediate Family Member of the director or nominee, is, or was since the beginning of the last two completed fiscal years of the Fund, an Officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii)The investment adviser, principal underwriter, or Sponsoring Insurance Company or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or Sponsoring Insurance Company where the individual named in paragraph (b)(10)(ii) of this Item holds or held office and the office held; and

(iv) The director of the Fund, nominee for election as director, or Immediate Family Member who is or was an Officer of the company; the office held; and the period of holding the office.

Instruction to paragraph (b)(10). If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a) and (c), and 405 of Regulation S–K (§§ 229.401(f) and (g), 229.404(a) and (c), and 229.405 of this chapter).

Instruction to paragraph (b)(11). Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Items 404(a) and (c) of Regulation S–K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

(12) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the Fund's business, to which any director or nominee for director or affiliated person of such director or nominee is a party adverse to the Fund or any of its affiliated persons or has a material interest adverse to the Fund or any of its affiliated persons. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(13) For all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 (''Compensated Persons''):

(i) Furnish the information required by the following table for the last fiscal year:

COMPENSATION TABLE

(1)	(2)	(3)	(4)	(5)
Name of Person, Position.	Aggregate Compensation From Fund.	Pension or Retirement Benefits Accrued as Part of Fund Expenses.	Estimated Annual Benefits Upon Retirement.	Total Compensation From Fund and Complex Paid to Directors

Instructions to paragraph (b)(13)(i). 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)) or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund or any of its Subsidiaries, or by other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (b)(13)(i) of this Item pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under any plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

(iii) With respect to each Compensated Person, business development companies must include the information required by Items 402(b)(2)(iv) and 402(c) of Regulation S–K (§§ 229.402(b)(2)(iv) and 229.402(c) of this chapter).

(14) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 270 is amended by adding the following citations to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

Section 270.10e–1 is also issued under 15 U.S.C. 80a–10(e);

Section 270.17a–8 is also issued under 15 U.S.C. 80a–6(c) and 80a–37(a);

Section 270.17d–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), and 80a–37(a);

Section 270.17e–1 is also issued under 15 U.S.C. 80a–6(c), 80a–30(a), and 80a–37(a);

Section 270.17g–1 is also issued under 15 U.S.C. 80a–6(c), 80a–17(d), 80a–17(g), and 80a–37(a);

Section 270.30e–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78*l*, 78m, 78n, 78o(d), 78w(a), 80a–8, 80a–29, and 80a–37;

Section 270.31a–2 is also issued under 15 U.S.C. 80a–30.

* * * * *

§§ 270.17a–8, 270.17d–1, 270.17e–1 [Amended]

4. The authority citations following §§ 270.17a–8, 270.17d–1, 270.17e–1, 270.17g–1, 270.30d–1, and 270.31a–2 are removed.

5. Section 270.0–1 is amended by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 270.0–1 Definition of terms used in this part.

(a) * * *

(5) The term *administrator* means any person who provides significant administrative or business affairs management services to an investment company.

(6)(i) A person is an *independent legal counsel* with respect to the directors who are not interested persons of an investment company (''disinterested directors'') if:

(A) A majority of the disinterested directors reasonably determine in the exercise of their judgment (and record the basis for that determination in the minutes of their meeting) that any representation by the person of the company's investment adviser, principal underwriter, administrator (''management organizations''), or any of their control persons, since the beginning of the fund's last two completed fiscal years, is or was sufficiently limited that it is unlikely to adversely affect the professional judgment of the person in providing legal representation to the disinterested directors; and

(B) The disinterested directors have obtained an undertaking from such person to provide them with information necessary to make their determination and to update promptly that information when the person begins to represent, or materially increases his representation of, a management organization or control person.

(ii) The disinterested directors are entitled to rely on the information obtained from the person, unless they know or have reason to believe that the information is materially false or incomplete. The disinterested directors must re-evaluate their determination no less frequently than annually (and record the basis accordingly), except as provided in paragraph (iii) of this section.

(iii)After the disinterested directors obtain information that the person has begun to represent, or has materially increased his representation of, a management organization (or any of its control persons), the person may continue to be an independent legal counsel, for purposes of paragraph (a)(6)(i) of this section, for no longer than three months unless during that period the disinterested directors make a new determination under that paragraph.

(iv) For purposes of paragraphs (a)(6)(i)–(iii) of this section:

(A) The term *person* has the same meaning as in section 2(a)(28) of the Act (15 U.S.C. 80a–2(a)(28)) and, in addition, includes a partner, co-member, or employee of any person; and

(B) The term *control person* means any person (other than an investment company) directly or indirectly controlling, controlled by, or under common control with any of the investment company's management organizations.

* * * * *

§ 270.2a19–1 [Removed and reserved]

6. Section 270.2a19–1 is removed and reserved.

7. Section 270.2a19–3 is added to read as follows:

§ 270.2a19–3 Certain investment company directors not considered interested persons because of ownership of index fund securities.

If a director of a registered investment company (''Fund'') owns shares of a registered investment company (including the Fund) with an investment objective to replicate the performance of one or more broad-based securities indices (''Index Fund''), ownership of the Index Fund shares will not cause the director to be considered an ''interested person'' of the Fund or of the Fund's investment adviser or principal underwriter (as defined by section 2(a)(19)(A)(iii) and (B)(iii) of the Act (15 U.S.C. 80a–2(a)(19)(A)(iii) and (B)(iii)).

8. Section 270.10e–1 is added to read as follows:

§ 270.10e–1 Death, disqualification, or bona fide resignation of directors.

If a registered investment company, by reason of the death, disqualification, or bona fide resignation of any director, does not meet any requirement of the Act or any rule or regulation thereunder regarding the composition of the company's board of directors, the operation of the relevant subsection of the Act, rule, or regulation will be suspended as to the company:

(a) For 90 days if the vacancy may be filled by action of the board of directors; or

(b) For 150 days if a vote of stockholders is required to fill the vacancy.

9. Section 270.10f–3 is amended by redesignating paragraph (b)(11) as paragraph (b)(12), and adding new paragraph (b)(11) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) * * *

(11) *Board Composition, Selection, and Representation:*

(i) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

10. Section 270.12b–1 is amended by revising paragraph (c) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if:

(1) A majority of the directors of the company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel;

* * * * *

11. Section 270.15a–4 is amended by:

a. Removing the word ''and'' at the end of paragraph (b)(2)(v);

b. Removing the period at the end of paragraph (b)(2)(vi)(C)(2) and adding in its place ''; and''; and

c. Adding paragraph (b)(2)(vii) to read as follows:

§ 270.15a–4 Temporary exemption for certain investment advisers.

* * * * *

(b) * * *

(2) * * *

(vii)(A) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(B) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

12. Section 270.17a–7 is amended by:

a. Removing the ''and'' at the end of paragraph (e)(3);

b. Redesignating paragraph (f) as paragraph (g); and

c. Adding new paragraph (f) to read as follows:

§ 270.17a–7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

* * * * *

(f)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

* * * * *

13. Section 270.17a–8 is amended by:

a. Removing the '', and'' at the end of paragraph (a)(2) and in its place adding a semi-colon;

b. Removing the period at the end of paragraph (b) and adding in its place ''; and''; and

c. Adding new paragraph (c) to read as follows:

§ 270.17a–8 Mergers of certain affiliated investment companies.

* * * * *

(c)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

14. Section 270.17d–1 is amended by:

a. Removing the word ''and'' at the end of paragraph (d)(7)(ii);

b. Redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(iv);

c. Removing the period at the end of newly designated paragraph (d)(7)(iv) and adding in its place ''; and''; and

d. Adding new paragraphs (d)(7)(iii) and (d)(7)(v) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(7) * * *

(iii) The joint liability insurance policy does not exclude coverage for bona fide claims made against any director who is not an interested person of the investment company, or against the investment company if it is a co-defendant in the claim with the disinterested director, by another person insured under the joint liability insurance policy;

* * * * *

(v)(A) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(B) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

15. Section 270.17e–1 is amended by:

a. Removing the word ''and'' at the end of paragraph (b)(3);

b. Redesignating paragraph (c) as paragraph (d); and

c. Adding new paragraph (c) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(c)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

* * * * *

16. Section 270.17g–1 is amended by revising paragraph (j) to read as follows:

§ 270.17g–1 Bonding of officers and employees of registered management investment companies.

* * * * *

(j) Any joint insured bond provided and maintained by a registered management investment company and one or more other parties shall be a transaction exempt from the provisions of section 17(d) of the Act (15 U.S.C. 80a–17(d)) and the rules thereunder, if:

(1) The terms and provisions of the bond comply with the provisions of this section;

(2) The terms and provisions of any agreement required by paragraph (f) of this section comply with the provisions of that paragraph; and

(3)(i) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

17. Section 270.18f–3 is amended by redesignating paragraph (e) as paragraph (f), and adding new paragraph (e) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(e)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

18. Section 270.23c–3 is amended by revising paragraph (b)(8) to read as follows:

§ 270.23c–3 Repurchase offers by closed-end companies.

* * * * *

(b) * * *

(8)(i) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(ii) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

* * * * *

§ 270.30d–1 [Redesignated as § 270.30e–1]

19. a. Redesignate § 270.30d–1 as § 270.30e–1;

b. In newly designated § 270.30e–1, in paragraph (a), revise ''financial statements'' to read ''information''; and

c. Revise paragraph (d) to read as follows:

§ 270.30e–1 Reports to stockholders of management companies.

* * * * *

(d) An open-end company may transmit a copy of its currently effective prospectus or Statement of Additional Information, or both, under the Securities Act, in place of any report required to be transmitted to shareholders by this section, provided that the prospectus or Statement of Additional Information, or both, include all the information that would otherwise be required to be contained in the report by this section. Such prospectus or Statement of Additional Information, or both, shall be transmitted within 60 days after the close of the period for which the report is being made.

* * * * *

§ 270.30d–2 [Redesignated as § 270.30e–2]

20. Redesignate § 270.30d–2 as § 270.30e–2, and in newly designated § 270.30e–2:

a. Revise ''§ 270.30d–1'' in the first and second sentences of paragraph (a) to read ''§ 270.30e–1''; and

b. Revise ''§ 270.30d–1(f)'' in paragraph (b) to read ''§ 270.30e-1(f)''.

21. Section 270.31a–2 is amended by removing the period at end of paragraph (a)(3) and in its place adding a semi-colon, and adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(4) Preserve for a period not less than six years, the first two years in an easily accessible place, any record of the initial determination that a director is not an interested person of the investment company, and each subsequent determination that the director is not an interested person of the investment company. These records must include any questionnaire and any other document used to determine that a director is not an interested person of the company; and

(5) Preserve for a period not less than six years, the first two years in an easily accessible place, any materials used by the disinterested directors of an investment company to determine that a person who is acting as legal counsel to those directors is an independent legal counsel.

* * * * *

22. Section 270.32a–4 is added to read as follows:

§ 270.32a–4 Independent audit committees.

A registered management investment company or a registered face-amount certificate company is exempt from the requirement of section 32(a)(2) of the Act (15 U.S.C. 80a–32(a)(2)) that the selection of the company's independent public accountant be submitted for

ratification or rejection at the next succeeding annual meeting of shareholders, if:

(a) The company's board of directors has established a committee, composed solely of directors who are not interested persons of the company, that has responsibility for overseeing the fund's accounting and auditing processes (''audit committee'');

(b) The company's board of directors has adopted a charter for the audit committee setting forth the committee's structure, duties, powers, and methods of operation or set forth such provisions in the fund's charter or bylaws; and

(c) The company maintains and preserves permanently in an easily accessible place a copy of the audit committee's charter and any modification to the charter.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

23. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

24. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: The text of Form N–1A does not and these amendments will not appear in the *Code of Federal Regulations.*

25. Form N–1A (referenced in §§ 239.15A and 274.11A), is amended by:

a. In Item 13 by adding Instructions 1 and 2 before paragraph (a).

b. In Item 13 by removing paragraphs (a), (b), and (c) and adding paragraphs (a) and (b) in their place.

c. In Item 13 by redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

d. In Item 13 by removing ''executive'' from the first sentence of newly redesignated paragraph (c).

e. In Item 22 by adding paragraphs (b)(5) and (b)(6).

These additions and revisions read as follows:

Form N–1A

* * * * *

Item 13. Management of the Fund

Instructions

1. For purposes of this Item 13, the terms below have the following meanings:

(a) The term ''family of investment companies'' means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

(b) The term ''fund complex'' means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

(c) The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(d) The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) *Management Information.*

(1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, address, and age.	Position(s) held with fund.	Term of office and length of time served.	Principal occupation(s) during past 5 years.	Number of portfolios in fund complex overseen by director.	Other directorships held by director.

Instructions. 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (a)(1) of this Item 13, except for any director who is not an interested person of the Fund, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

Instruction. When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction. Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(b) *Board of Directors.*

(1) Briefly describe the responsibilities of the board of directors with respect to the Fund's management.

Instruction. A Fund may respond to this paragraph by providing a general statement as to the responsibilities of the board of directors with respect to the Fund's management under the applicable laws of the state or other jurisdiction in which the Fund is organized.

(2) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii)The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(3) Unless disclosed in the table required by paragraph (a)(1) of this Item 13, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years with:

(i) The Fund;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iii) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instruction. When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

(1)	(2)	(3)
Name of director	Dollar range of equity securities in the fund	Aggregate dollar range of equity securities in all registered investment companies overseen by director in family of investment companies.

Instructions. 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (17 C.F.R. 240.16a–1(a)(2)).

3. If the SAI covers more than one Fund or Series, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each Fund or Series overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(5) For each director who is not an interested person of the Fund, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director.	Company	Title of Class	Value of Securities	Percent of Class

Instructions. 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 C.F.R. 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item 13, describe any direct or indirect interest, the value of which exceeds $60,000, of each director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions. 1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $60,000.

(7) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $60,000 and to which any of the following persons was a party:

(i) The Fund;

(ii) An officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(v) An investment adviser or principal underwriter of the Fund;

(vi) An officer of an investment adviser or principal underwriter of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

Instructions. 1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (b)(7) of this Item 13 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 unless the director is accorded special treatment.

(8) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director who is not an interested person of the Fund, or immediate family member of the director, that existed at any time during the two most recently completed calendar years with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item 13.

Instructions. 1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item 13, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 13 unless the director is accorded special treatment.

(9) If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person of the Fund, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph (b)(9)(ii) of this Item 13 holds or held office and the office held; and

(iv) The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(10) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Fund and the investment advisory contract.

* * * * *

Item 22. Financial Statements

* * * * *

(b) * * *

(5) The management information required by Item 13(a)(1).

(6) A statement that the SAI includes additional information about Fund directors

and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

* * * * *

Note: The text of Form N–2 does not and these amendments will not appear in the *Code of Federal Regulations*.

26. Form N–2 (referenced in §§ 239.14 and 274.11a-1) is amended by:

a. In Item 18 by adding Instructions 1 and 2 before paragraph 1.

b. In Item 18 by revising paragraphs 1 and 2.

c. In Item 18 by redesignating paragraphs 3 and 4 as paragraphs 4 and 14.

d. In Item 18 by adding paragraphs 3 and 5 through 13.

e. In Item 18, in newly designated paragraph 14, removing ''executive'' from the first sentence.

f. In Instruction 4 to Item 23 by removing ''and'' from the end of paragraph c.

g. In Instruction 4 to Item 23 by removing the period at the end of paragraph d. and in its place adding a semi-colon.

h. In Instruction 4 to Item 23 by adding paragraphs e. and f.

These additions and revisions read as follows:

Form N–2

* * * * *

Item 18. Management

Instructions: 1. For purposes of this Item 18, the terms below have the following meanings:

a. The term ''family of investment companies'' means any two or more registered investment companies that:

(i) Share the same investment adviser or principal underwriter; and

(ii) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term ''fund complex'' means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

d. The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, Address, and Age.	Position(s) Held with Registrant.	Term of Office and Length of Time Served.	Principal Occupation(s) During Past 5 years.	Number of Portfolios in Fund Complex Overseen by Director.	Other Directorships Held by Director.

Instructions: 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act (15 U.S.C. 80a), and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 of this Item 18, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction: When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction: Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Registrant listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5. Identify the standing committees of the Registrant's board of directors, and provide the following information about each committee:

(a) A concise statement of the functions of the committee;

(b) The members of the committee;

(c) The number of committee meetings held during the last fiscal year; and

(d) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6. Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(a) The Registrant;

(b) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3 (c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(c) An investment adviser, principal underwriter, or affiliated person of the Registrant; or

(d) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instruction: When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Registrant; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Registrant.	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.16a–1(a)(2)).

3. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

8. For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(a) An investment adviser or principal underwriter of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director.	Company	Title of Class	Value of Securities	Percent of Class

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any direct or indirect interest, the value of which exceeds $60,000, of each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

(a) An investment adviser or principal underwriter of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instructions: 1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $60,000.

10. Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $60,000 and to which any of the following persons was a party:

(a) The Registrant;

(b) An officer of the Registrant;

(c) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(d) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(e) An investment adviser or principal underwriter of the Registrant;

(f) An officer of an investment adviser or principal underwriter of the Registrant;

(g) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant; or

(h) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

Instructions: 1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10(a) through (h) of this Item 18, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs 10(a) through (h) of this Item 18. Relationships include:

(a) Payments for property or services to or from any person specified in paragraphs 10(a) through (h) of this Item 18;

(b) Provision of legal services to any person specified in paragraphs 10(a) through (h) of this Item 18;

(c) Provision of investment banking services to any person specified in paragraphs 10(a) through (h) of this Item 18, other than as a participating underwriter in a syndicate; and

(d) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11(a) through (c) of this Item 18.

Instructions: 1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10(a) through (h) of this Item 18 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10(a) through (h) of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs 10(a) through (h) of this Item 18 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph 11(a) of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

12. If an officer of an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(a) The company;

(b) The individual who serves or has served as a director of the company and the period of service as director;

(c) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph 12(b) of this Item 18 holds or held office and the office held; and

(d) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of directors approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating fund brokerage.

Instruction: Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract.

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Item 23. Financial Statements

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Instructions

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4. * * *

e. the management information required by paragraph 1 of Item 18; and

f. a statement that the SAI includes additional information about directors of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

* * * * *

Note: The text of Form N–3 does not and these amendments will not appear in the *Code of Federal Regulations*.

27. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 20 adding instructions 1 and 2 before paragraph (a).

b. In Item 20 by revising paragraphs (a) and (b).

c. In Item 20 by redesignating paragraph (c) as paragraph (m).

d. In Item 20 by adding paragraphs (c) through (l).

e. In Item 20 by removing ''executive'' from the first sentence of newly designated paragraph (m).

f. In Instruction 4 to Item 27 by removing ''and'' from the end of paragraph (iii).

g. In Instruction 4 to Item 27 by removing the period at the end of paragraph (iv) and in its place adding a semi-colon.

h. In Instruction 4 to Item 27 by adding paragraphs (v) and (vi).

These additions, and revisions read as follows:

Form N–3

* * * * *

Item 20. Management

Instructions: 1. For purposes of this Item 20, the terms below have the following meanings:

a. The term ''family of investment companies'' means any two or more registered investment companies that:

(i) Share the same investment adviser or principal underwriter; and

(ii) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term ''fund complex'' means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term ''immediate family member'' means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

d. The term ''officer'' means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) Provide the information required by the following table for each member of the board of managers (''director'') and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

(1)	(2)	(3)	(4)	(5)	(6)
Name, address, and age.	Position(s) held with registrant.	Term of office and length of time served.	Principal occupation(s) during past 5 years.	Number of portfolios in fund complex overseen by director.	Other directorships held by director.

Instructions: 1. For purposes of this paragraph, the term ''family relationship'' means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act (15 U.S.C. 80a–2(a)(19)), and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(b) For each individual listed in column (1) of the table required by paragraph (a) of this Item 20, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

Instruction: When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(c) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

Instruction: Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(d) Identify the standing committees of the Registrant's board of managers, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(e) Unless disclosed in the table required by paragraph (a) of this Item 20, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(i) The Registrant;

(ii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(iii) The Insurance Company or an investment adviser, principal underwriter, or affiliated person of the Registrant; or

(iv) Any person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

Instruction: When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(f) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Registrant; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

(1)	(2)	(3)
Name of Director	Dollar Range of Equity Securities in the Registrant.	Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies.

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine ''beneficial ownership'' in accordance with rule 16a–1(a)(2) under the Exchange Act (17 CFR 240.16a–1(a)(2)).

3. If the SAI covers more than one sub-account, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each sub-account overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1–$10,000, $10,001–$50,000, $50,001–$100,000, or over $100,000.

(g) For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) The Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant:

(1)	(2)	(3)	(4)	(5)	(6)
Name of Director	Name of Owners and Relationships to Director.	Company	Title of Class	Value of Securities	Percent of Class.

Instructions: 1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a ''beneficial owner'' of a security if he is a ''beneficial owner'' under either rule 13d–3 or rule 16a–1(a)(2) under the Exchange Act (17 C.F.R. 240.13d–3 or 240.16a–1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter, describe the company's relationship with the Insurance Company, investment adviser, or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(h) Unless disclosed in response to paragraph (g) of this Item 20, describe any direct or indirect interest, the value of which exceeds $60,000, of each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) The Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

Instructions: 1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $60,000.

(i) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $60,000 and to which any of the following persons was a party:

(i) The Registrant;

(ii) An officer of the Registrant;

(iii)An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(v) The Insurance Company or an investment adviser or principal underwriter of the Registrant;

(vi) An officer of the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(vii) A person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

Instructions: 1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a

transaction with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed ''material'' within the meaning of paragraph (i) of this Item 20 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(j) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $60,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(ii) Provision of legal services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(iii) Provision of investment banking services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (j)(i) through (j)(iii) of this Item 20.

Instructions: 1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $60,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (j)(i) of this Item 20, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(k) If an officer of the Insurance Company or an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The Insurance Company, investment adviser, or principal underwriter or person controlling, controlled by, or under common control with the Insurance Company, investment adviser, or principal underwriter where the individual named in paragraph (k)(ii) of this Item 20 holds or held office and the office held; and

(iv) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(l) Discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board of managers approving the existing investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating fund brokerage.

Instruction: Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the Registrant and the investment advisory contract.

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Item 27. Financial Statements

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Instructions

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4. * * *

(v) the management information required by paragraph (a) of Item 20; and

(vi) a statement that the SAI includes additional information about members of the board of managers of the Registrant and is available, without charge, upon request, and a toll-free (or collect) telephone number for contract owners to call to request the SAI.

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By the Commission.

Dated: January 2, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–536 Filed 1–12–01; 8:45 am]

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