



**INVESTMENT COMPANY ACT OF 1940 AND
INVESTMENT ADVISERS ACT OF 1940**

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INVESTMENT COMPANY ACT AND INVESTMENT ADVISERS ACT OF 1940, AS AMENDED

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**INVESTMENT ADVISERS ACT OF 1940
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INTRODUCTION

Stradley Ronon is proud to co-produce this important reference work with Donnelley Financial Solutions (DFIN). We represent retail and institutional investment companies marketing shares through every distribution channel, as well as investment advisers, hedge fund sponsors, managers, administrators and underwriters/distributors. In addition, Stradley Ronon serves as independent legal counsel to investment company independent directors/trustees, and as special counsel to other law firms with regard to complex issues arising under the Investment Company Act of 1940.

This Book contains the Investment Company Act of 1940 (referred to in the text as the “Act” or “this title”), the Investment Advisers Act of 1940 and their rules. We have also included the Department of the Treasury’s regulations: “Anti-Money Laundering Programs for Mutual Funds,” the SEC’s Regulation S-P “Privacy of Consumer Financial Information,” the SEC’s “Professional Conduct Rules for Attorneys”, the Treasury Regulations for “Customer Identification Programs for Mutual Funds” and certain forms related to investment companies.

The Book includes indexes to defined terms under the Investment Company Act and separately under the Investment Advisers Act. The indexes are at the ends of the Act and the Investment Advisers Act. In the text of the acts and rules, defined terms are indicated by *bold italics*.

All new rules and changes to the Investment Company Act and Investment Advisers Act and rules made since the last printing of this Book through January 2023 are included in this Edition.

A word of caution: In using any reference, care must be taken to keep up with changes in applicable regulations. Additionally, in certain instances statutory (code) changes are made without accompanying changes made in the underlying rules and regulations.

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February 2024

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CORY O. HIPPLER (B.S. 1998, University of Richmond; J.D. 2006 Rutgers University School of Law) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Hippler focuses his practice on counseling registered investment companies, investment advisers and independent directors on various regulatory, compliance and transactional matters. He advises clients on matters such as the organization, registration and ongoing operations and compliance of open-end and closed-end funds (including multi-manager funds, master-feeder funds and interval funds); the preparation and review of regulatory filings, board materials and compliance policies and procedures; fiduciary oversight and fund governance issues; shareholder meetings and proxy solicitation materials; and various transactional matters, including reorganizations, mergers and acquisitions involving funds and investment advisers.

PETER M. HONG (B.A. 1989, Dickinson College; J.D. 1993, American University) advises clients in matters pertaining to the registration and regulation of registered and private investment companies, investment advisers, broker-dealers, commodity trading advisors and commodity pool operators under federal and state laws. His practice includes providing advice regarding compliance with regulations of federal and state securities and commodities regulatory authorities and self-regulatory organizations such as the Financial Industry Regulatory Authority (FINRA) and the National Futures Association (NFA). In addition, Mr. Hong also advises clients in the formation of domestic and offshore hedge funds, including preparation of private placement memoranda, operating agreements and subscription documents; preparation and negotiation of related service provider contracts; and compliance with state blue sky filing requirements. Prior to joining the firm, Mr. Hong served as special and senior counsel at the U.S. Securities and Exchange Commission (SEC). During his tenure as special counsel in the Division of Investment Management, he actively participated in and influenced positions taken with respect to legislation or rulemaking regarding investment company disclosure regulation. Mr. Hong also served as senior counsel in the Office of Chief Counsel for the SEC's Division of Enforcement. He also investigated and prosecuted violations of the Commodity Exchange Act and its related rules as a trial attorney for the U.S. Commodity Futures Trading Commission (CFTC), Division of Enforcement in Washington, D.C.

KRISTIN H. IVES (B.A. 1982, Kenyon College; J.D. 1985, Ohio State University) is a partner in Stradley Ronon's Investment Management Practice Group. Ms. Ives advises clients on all aspects

of the Investment Company Act of 1940 and the Investment Advisers Act of 1940. She counsels investment companies and their boards of directors/trustees and investment advisers on securities, transactional and corporate matters relating to pooled investment products, including registered open-end and closed-end investment companies. Some of the matters on which Ms. Ives has assisted clients include: advising investment companies on structuring and ongoing operations of multi-manager funds employing alternative investment strategies; drafting and implementing complex compliance programs and procedures to bring clients into compliance with the SEC's recent regulatory initiatives; advising investment companies regarding all aspects of a wide array of derivative instruments under the Investment Company Act of 1940, including managing complex-wide revisions to disclosure and preparation of related compliance policies and procedures; managing complex-wide proxy solicitation projects, including one involving more than 120 mutual funds and four proxy statements in which an entire complex moved its funds to the Delaware business trust format, adopted updated charter documents and modernized all of the funds' investment restrictions; advising and assisting money market funds in connection with recent regulatory initiatives and market events; and managing multiple reorganizations of open-end funds into both affiliated and unaffiliated open-end funds. Prior to joining Stradley Ronon, Ms. Ives was a partner in the Columbus, Ohio law office of a national law firm.

JONATHAN M. KOPCSIK (B.A. 1992, Lafayette College; J.D. 1998, Temple University) is a partner in Stradley Ronon's Investment Management Group. Mr. Kopcsik's practice involves advising clients in matters relating to the registration and regulation of investment companies and investment advisers under federal and state securities laws. He has helped a number of investment firms launch their first registered and unregistered investment company products. Mr. Kopcsik has counseled proprietary, multi-series, multi-class and multi-manager funds on various regulatory and compliance matters, as well as restructurings, acquisitions and other corporate transactions. He has experience advising fund boards and their independent directors on issues relating to fiduciary duties, compliance and fund governance. Mr. Kopcsik also has experience counseling investment advisers on investment, regulatory and compliance matters such as SEC inspections, compliance policies and procedures, soft dollars and valuation of securities. He has assisted investment company and investment adviser clients in responding to SEC inquiries. Prior to joining Stradley Ronon, Mr. Kopcsik was an associate with another Philadelphia law firm.

FREDERIC M. KRIEGER (B.A. 1972, University of Pennsylvania; J.D. 1975, Emory University School of Law) is senior counsel in Stradley Ronon's Investment Management Practice Group. Mr. Krieger's practice focuses on broker-dealer, banking, investment advisers, and related issues, including those international and domestic regulatory issues in capital markets, both retail and institutional. He advises clients on regulatory issues related to firm supervision and control, institutional and retail capital markets, corporate governance, and also conducts internal investigations, and handles related regulatory inquiries and investigations involving the Securities and Exchange Commission, FINRA, and banking regulators, and related litigation. Prior to joining

Stradley Ronon, Mr. Krieger held senior positions in the legal and compliance departments of investment banks and broker-dealers (including Salomon Brothers, Citigroup, and Charles Schwab), securities regulators and self-regulatory organizations (including the SEC, CBOE and NYSE-Regulation), and several major law firms.

MENA LARMOUR (B.S. 2003, Colgate University; J.D. 2007, Temple University) is a partner in Stradley Ronon's Investment Management Practice Group. Ms. Larmour focuses her practice on counseling registered investment companies, independent trustees and investment advisers on a wide range of regulatory, corporate and transactional matters. In addition to work associated with the registration, regulation and operation of investment companies and investment advisers under federal and state securities laws, Ms. Larmour advises clients on specific board issues, new product offerings, novel and alternative investment strategies and structures, fund restructurings and reorganizations, among other matters. She has significant experience with large acquisitions of fund complexes and advisers. Ms. Larmour's representations include multi-manager funds, exchange listed closed-end funds, interval funds, alternatives funds, money market funds, exchange-traded funds, and funds underlying variable insurance products. Ms. Larmour is also a member of Stradley Ronon's Board of Directors.

BRUCE G. LETO (B.A. 1983, Haverford College; J.D. 1986, Villanova University) is co-chair of Stradley Ronon's Investment Management Practice Group and former chair of the group from 1994 through 2017. Mr. Leto counsels investment companies, investment advisers, independent trustees and broker-dealers on securities and corporate matters relating to pooled investment products, including registered and unregistered, open-and closed-end investment companies. He advises such clients on registration, transactional and compliance matters. Among many other projects, Mr. Leto recently supervised one of the firm's largest investment fund clients (and one of the top 20 fund groups in the U.S.) on two transformational acquisitions. These included the acquisition of an exchange-traded funds business, involving the reorganization of 67 ETFs onto the client's platform, and the acquisition of an asset management business with 104 mutual funds and ETFs, as well as collective trusts, UCITS, separate accounts and private accounts totaling approximately \$250 billion. Mr. Leto has been included in the annual editions of The Best Lawyers in America consecutively since 2007, and was named as a leader nationally (ranked in "Band One" beginning in 2014) in "investment funds: registered funds" in the 2009 through 2021 editions of Chambers USA: America's Leading lawyers for Business. Mr. Leto has also been given special mention in the Legal 500 from 2010 to 2021, and is a current member of its Hall of Fame. Notably, in July 2018, Mr. Leto was named as an Influencer of the Law by the Philadelphia Inquirer. He was also named to the Philadelphia Business Journal's "Best of the Bar; Philadelphia's Top Lawyers" list in 2018 and 2020. Mr. Leto's peers named him a Pennsylvania Super Lawyer® consecutively since 2004, and he was also named to SmartCEO magazine's 2010, 2011 and 2012 (last year published) Legal Elite List. Mr. Leto was appointed to the Advisory Board of Board IQ in 2007 and has served in that capacity since then. Mr. Leto lectures extensively at seminars sponsored by the Investment Company Institute, Independent Directors Council, and other organizations. He is a member of Stradley Ronon's Management Committee and Board of Directors.

CILLIAN LYNCH (B.A. 2001, Georgetown University; J.D. 2006, Georgetown University Law Center) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Lynch advises investment companies, investment advisers and independent directors in connection with regulatory, compliance and transactional issues. He also counsels clients on fund restructurings, compliance policies and procedures, questions related to custody of client assets, and exemptive applications to the SEC. Mr. Lynch also has experience advising fund boards and their independent directors on issues relating to fiduciary duties, audit matter, compliance, and fund governance. Prior to pursuing his J.D. at Georgetown University Law Center, Mr. Lynch worked in the legal advisory department of Merrill Lynch Investment Managers. While there, his responsibilities included researching issues arising under federal securities laws and preparing documents in connection with the organization and registration of investment companies.

MICHAEL D. MABRY (B.G.S. 1984, University of Michigan; M.A. 1985, Bowling Green State University; J.D. 1991, University of Virginia) is a partner in Stradley Ronan's Investment Management Practice Group. Mr. Mabry counsels investment companies, investment advisers, broker-dealers and other financial service providers on a variety of securities and corporate matters. He regularly works with mutual funds, listed closed-end funds, interval funds, and exchange-traded funds. He has counseled boards of directors and investment advisers on regulatory, investigatory, enforcement, and litigation matters, including SEC examinations, closed-end fund proxy fights, rescissions, and private litigation. He frequently helps clients develop, register and launch new and innovative investment products, and assists investment advisers and funds in complex transactions and instruments, including derivatives, credit arrangements, alternative investments, mergers, offshore investments, and proxy solicitations. He also assists investment adviser clients with registration and disclosure requirements, self-custody, compliance, and marketing. From 2007-2012, Mr. Mabry served as co-chair of the Investment Companies Committee of the Philadelphia Bar Association. He holds a Master's Degree in Economics and was a research assistant with the Division of International Finance of the Board of Governors of the Federal Reserve System from 1985 to 1988.

JONATHAN B. MILLER (A.B. 1981, Princeton University; J.D. 1987, Columbia Law School) is a senior counsel in Stradley Ronon's Investment Management Practice Group. Mr. Miller advises investment funds and other clients on sophisticated matters in the areas of corporate finance and securities regulation, including issues related to the Investment Company Act of 1940 and the Investment Advisers Act. Mr. Miller has worked on a diverse range of financing transactions, such as securities offerings for investment funds, asset managers, hedge funds and mortgage REITs. He also has represented clients in public and private equity and debt offerings involving other industries, including financial services, energy, manufacturing, technology and telecommunications. Prior to joining Stradley Ronon, Mr. Miller was senior counsel in the New York office of a leading multinational law firm, where he gained international experience working in their Tokyo office.

PRUFESH R. MODHERA (B.A. 1986, Rutgers University; M.B.A. 1990, Georgetown University; J.D. 1999, American University) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Modhera's practice involves counseling investment companies,

investment advisers and independent directors on federal securities law matters. More specifically, Mr. Modhera advises clients on various issues under the Investment Company Act of 1940 including the formation, registration, regulation and reorganization of investment companies, assists investment company and investment adviser clients in responding to SEC inquiries, and advises boards of directors on governance issues. In addition, he counsels investment advisers on various compliance issues under the Investment Advisers Act of 1940, including Form ADV disclosure, personal securities trading, trade allocation practices, best execution, soft dollars, proxy voting and performance advertising. Mr. Modhera also advises clients on the formation of domestic and offshore private-equity funds, hedge funds and fund of hedge funds, including preparing private placement memoranda, operating agreements and subscription documents, preparing and/or reviewing contracts with service providers, and complying with state blue sky filing requirements.

MICHAEL W. MUNDT (B.A. 1986, M.A. 1989 Louisiana State University; J.D. 1993, Georgetown University) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Mundt counsels investment companies and investment advisers on matters relating to legal issues under federal securities laws, with a particular focus on exchange-traded funds. As part of his ETF legal work, Mr. Mundt has assisted in the launch and operation of several ETF groups and also has obtained novel exemptive relief to permit next generation ETF structures. Mr. Mundt has been nationally recognized by Chambers USA and Legal 500. Prior to joining Stradley Ronon, Mr. Mundt served for 13 years in various capacities at the U.S. Securities and Exchange Commission, including as Assistant Director of the Office of Investment Company Regulation in the Division of Investment Management. In that capacity, Mr. Mundt supervised the review of applications for a wide range of orders under the Investment Company Act of 1940, including complex matters relating to funds of funds and affiliated transactions. Most notably, Mr. Mundt was responsible for the regulatory review of all major ETF product innovations from 1999 until 2011. Among other SEC awards, Mr. Mundt received the SEC's prestigious Paul R. Carey Award, in recognition of his ETF work. Before working at the SEC, Mr. Mundt served as assistant counsel at ICI Mutual Insurance Company, the captive insurance company for the mutual fund industry, where he worked on insurance and risk management issues for funds and their investment advisers.

MICHAEL P. O'HARE (B.S. 1990, LaSalle University; J.D. 1994, Temple University) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. O'Hare focuses his practice on advising investment companies (including mutual funds, closed-end funds, exchange traded funds, business development companies and private funds), independent directors, investment advisers, broker dealers and financial services organizations with regard to securities and corporate laws and regulations, compliance and transactional matters. In addition to work associated with the registration, regulation and operation of investment companies and investment advisers under federal and state securities laws, Mr. O'Hare has helped a number of established investment firms launch their first registered and unregistered investment company products. He counsels clients with regard to regulatory and compliance matters such as SEC

exemptive and interpretive relief, SEC inspections and investigations, compliance policies and procedures, special investments and valuation of securities. Mr. O'Hare also has particular experience advising fund boards and their independent directors on issues relating to fiduciary duties, fund governance and transactional matters. He assists clients with fund creation and operation; business transactions such as fund and adviser restructurings, acquisitions and other corporate transactions; and negotiation of various service provider and intermediary agreements. Mr. O'Hare's fund clients include multi-manager funds, business development companies, closed-end interval or tender offer funds, liquid alternatives funds, money market funds, exchange traded funds, broker-sold funds, bank-sponsored funds and funds underlying variable annuity products.

ERIC S. PURPLE (B.A. 1990, Vanderbilt University; J.D. 1993, University of Alabama School of Law; LL.M. (Securities and Financial Regulation) 1996, Georgetown University Law Center) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Purple represents a broad range of exchange-traded funds, mutual funds, closed-end investment companies, business development companies, and other pooled investment vehicles (as well as their investment advisers) on matters arising under the U.S. federal securities laws. He also serves as a trusted counselor to the independent directors or trustees of a number of investment companies. Prior to entering private practice, Mr. Purple served for eight years in the U.S. Securities and Exchange Commission's Division of Investment Management in both the Office of Chief Counsel and the Office of Disclosure and Review. Prior to his government service, Mr. Purple served as the Chief Compliance Officer of a mutual fund complex, and was the lead in-house counsel for, and part of the original management team of, an internet financial services start-up that was subsequently acquired by a major on-line brokerage house. Mr. Purple has been nationally recognized by Chambers USA in the category of Investment Funds: Registered Funds, and by the Legal 500 in the category of Mutual/Registered/Exchange-Traded Funds. Mr. Purple also sits on the editorial board of the Investment Lawyer, and has been included in Best Lawyers in America for his work in mutual funds law and in Washington, DC Super Lawyers in the category of Securities and Corporate Finance.

DAVID F. ROEBER (B.S. 2005, Taylor University; B.A. 2005, Taylor University; J.D. 2009, Rutgers Law School) is a partner in Stradley Ronon's Investment Management Group. Mr. Roeber primarily focuses his practice on counseling registered investment companies, their independent trustees/directors, and investment advisers in connection with various regulatory and disclosure, compliance, transactional, and corporate governance matters. Among other areas, his practice involves assisting open-and closed-end investment company clients with formation and ongoing operations, regulatory filings, board and audit committee meeting matters, and compliance with the SEC's regulatory initiatives. Mr. Roeber has extensive experience with multi-manager mutual funds and investment company audit committee governance matters. He has served as a member of Stradley Ronon's Pro Bono Committee since 2018. Mr. Roeber helped launch the Volunteer UP Legal Clinic (formerly, the UrbanPromise Legal Clinic) in Camden, New Jersey in 2015. He volunteered as the lead attorney for the Legal Clinic from 2015 to

2018, and has served on the Legal Clinic advisory board since 2018. While in law school, Mr. Roeber worked as a law clerk for the Investment Management Group at Stradley Ronon and served as a judicial intern to the Hon. Noel L. Hillman in the U.S. District Court for the District of New Jersey.

MICHAEL E. SCHAPIRO (B.A. 2010, American University, J.D. 2014, William & Mary Law School) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Schapiro advises investment companies, investment advisers, and independent directors in connection with regulatory, compliance, and transactional issues. He advises clients on a variety of investment management and securities law matters, including the formation, registration, and ongoing operations of investment companies; the preparation of regulatory filings; the applicability and interpretation of federal and state securities laws; the drafting of compliance procedures and corporate policies; and various transactional matters, such as fund mergers. Mr. Schapiro also has experience advising fund boards and their independent directors on issues relating to fiduciary duties, audit matters, compliance and fund governance. Prior to Stradley Ronon, Mr. Schapiro was an associate with another Washington, DC law firm.

MARK A. SHEEHAN (B.A. 1984, University of Virginia; J.D. 1989, University of Pittsburgh) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Sheehan focuses his practice on issues arising under the Investment Company Act of 1940, and the 1933 and 1934 Acts. Mr. Sheehan represents investment company and investment adviser clients in all facets of their operations and advises them on their legal requirements. Mr. Sheehan works closely with open- and closed-end investment companies, unregistered investment vehicles (such as hedge funds), and investment advisers. He also works extensively with master-feeder and multiple class structures in the context of investment companies. Prior to joining Stradley Ronon in 1995, Mr. Sheehan worked as an associate corporate counsel at Federated Investors in Pittsburgh, Pa. He was also an associate with a Washington, D.C., law firm practicing in the 1940 Act area.

NICOLE SIMON (B.A. 2007, Pennsylvania State University; J.D. 2010, Harvard Law School) is a partner in Stradley Ronon's Investment Management Practice Group. Ms. Simon counsels a diverse group of clients in the asset management industry, including registered investment companies, private funds, investment advisers, commodity pool operators (CPOs) and commodity trading advisors (CTAs) on a full range of both traditional and novel regulatory issues. She frequently advises U.S. and foreign investment managers on the applicability and interpretation of federal securities and commodities laws, including in the context of derivatives and alternative investments. Ms. Simon's practice also involves helping new investment companies and investment advisers subject to multiple regulatory regimes navigate the operational and regulatory aspects of their formation and launch. Ms. Simon has been recognized as a "Rising Star" by Fund Action and Fund Directions at their annual Mutual Fund Industry Awards. Prior to joining Stradley Ronon, Ms. Simon completed a clinical externship in the Division of Enforcement of the Securities and Exchange Commission in its Boston Regional Office.

LAWRENCE P. STADULIS (B.A. 1986, Boston College; J.D. 1989, Boston College) is a partner in the Washington, D.C. office of Stradley Ronon Stevens & Young, LLP. Mr. Stadulis advises

clients in matters pertaining to the registration and regulation of investment advisers and investment companies under federal and state securities laws. He also manages related issues pertaining to investment advisers and investment companies including matters involving ERISA, broker-dealer regulation and banking laws. Mr. Stadulis is a frequent lecturer and author on legal matters pertaining to the investment management industry. He prepares a monthly column on recent SEC developments for *The Investment Lawyer*, a legal publication that focuses on the investment management industry. Before joining Stradley Ronon, Mr. Stadulis was a partner with another law firm. Prior to that, he was special counsel in the Office of Chief Counsel, Division of Investment Management, U.S. Securities and Exchange Commission. As special counsel, Mr. Stadulis was principally responsible for responding to no-action and interpretive requests under the Investment Company Act of 1940 and Investment Advisers Act of 1940. Mr. Stadulis was recommended as a national leader in “investment funds: registered funds” in the 2011, 2010, 2009 and 2008 editions of Chambers USA: America’s Leading Lawyers for Business.

MIRANDA L. STURGIS (B.A. 2011, University of Pennsylvania; J.D. 2014, Villanova University) is a partner in Stradley Ronon’s Investment Management Practice Group. Ms. Sturgis focuses her practice on counseling investment companies and investment advisers in connection with various securities law matters, including regulatory, compliance and transactional issues. Her experience includes advising clients in matters such as the formation, registration and ongoing regulation of investment companies, including index-based and actively managed exchange-traded products (ETPs) and obtaining exchange listing approvals for ETPs. Ms. Sturgis also assists in the representation of clients in transactional matters, such as fund mergers and acquisitions. She is also a member of the Leadership Board of the Philadelphia Chapter of Women in ETFs, a nonprofit organization that seeks to bring together women and men in financial centers across the globe to advance the careers of women in the ETF industry and to champion equality, diversity and inclusion.

PAMELA V. WADE (B.S. 1993, Haverford College; J.D. 2007, Temple University) is counsel in Stradley Ronon’s Investment Management Practice Group. Ms. Wade focuses her practice on counseling investment companies and investment advisers in connection with various regulatory, compliance and transactional issues. She provides analysis for investment management clients in all aspects of legal representation, including preparing regulatory filings, drafting and reviewing registration statements and proxy solicitation materials, researching various securities and corporate law issues, drafting corporate policies and compliance procedures and drafting materials related to fund mergers and acquisitions, new fund launches and fund restructurings. Prior to joining Stradley Ronon, Ms. Wade served as the senior product manager and assistant secretary of the Aberdeen Funds and Aberdeen Investment Funds at Aberdeen Asset Management Inc. Prior to Aberdeen Asset Management Inc., Ms. Wade served as vice president and assistant counsel at BNY Mellon Asset Servicing (and predecessor firms) and has also served as an investment management paralegal at another Philadelphia law firm.

CHRISTOPHER J. ZIMMERMAN (B.A. 1998, University of Maryland—College Park; J.D. 2003, American University) is a partner in Stradley Ronon’s Investment Management Group/

Mutual Funds Practice Group. He focuses his practice on assisting investment companies, investment advisers, and independent directors/trustees on federal and state securities law matters. Mr. Zimmerman provides advice and counsel for investment management clients on various issues arising under these securities laws. Among other things, he advises investment companies and investment advisers with respect to their organization, registration and regulation. In addition, he counsels investment advisers on issues under the Investment Adviser Act of 1940, including with respect to best execution and soft dollars. He counsels investment companies on issues under the Investment Company Act of 1940, including with respect to changes in control, securities lending, and derivatives, and further counsels boards of directors/trustees on governance and other issues.

**INVESTMENT COMPANY ACT OF 1940
AND RULES THEREUNDER**

Section 1. Findings and declaration of policy. [15 U.S.C. 80a-1]

(a) Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 30 of the Public Utility Holding Company Act of 1935, and facts otherwise disclosed and ascertained, it is hereby found that *investment companies* are affected with a national public interest in that, among other things—

(1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and *means and instrumentalities of interstate commerce*, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and *means and instrumentalities of interstate commerce*, including the facilities of *national securities exchanges*, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 30 of the Public Utility Holding Company Act of 1935, and facts otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors are adversely affected—

(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by *investment companies* without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2) when *investment companies* are organized, operated, managed, or their portfolio securities are selected, in the interest of *directors*, officers, *investment advisers*, depositors, or other *affiliated persons* thereof, in the interest of underwriters, *brokers*, or

dealers, in the interest of special classes of their security holders, or in the interest of other *investment companies* or *persons* engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;

(3) when *investment companies* issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4) when the control of *investment companies* is unduly concentrated through pyramiding or inequitable methods of *control*, or is inequitably distributed, or when *investment companies* are managed by irresponsible *persons*;

(5) when *investment companies*, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;

(6) when *investment companies* are reorganized, become inactive, or change the character of their business, or when the *control* or management thereof is transferred, without the consent of their security holders;

(7) when *investment companies* by excessive borrowing and the issuance of excessive amounts of *senior securities* increase unduly the speculative character of their junior securities; or

(8) when *investment companies* operate without adequate assets or reserves.

It is hereby declared that the policy and purposes of this title, in accordance with which the provisions of this title shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

Section 2. General definitions. [15 U.S.C. 80a-2]

(a) When used in this title, unless the context otherwise requires—

(1) “*Advisory board*” means a board, whether elected or appointed, which is distinct from the board of *directors* or board of trustees, of an *investment company*, and which is composed solely of *persons* who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members “*directors*” within the definition of that term, which board has advisory functions as to *investments* but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) “*Affiliated company*” means a company which is an *affiliated person*.

(3) “*Affiliated person*” of another *person* means (A) any *person* directly or indirectly owning, *controlling*, or holding with power to vote, 5 per centum or more of the out-

standing *Voting securities* of such other *person*; (B) any *person* 5 per centum or more of whose outstanding *Voting securities* are directly or indirectly owned, *controlled*, or held with power to vote, by such other *person*; (C) any *person* directly or indirectly *controlling, controlled* by, or under common *control* with, such other *person*; (D) any officer, *director*, partner, copartner, or *employee* of such other *person*; (E) if such other *person* is an *investment company*, any *investment adviser* thereof or any member of an *advisory board* thereof; and (F) if such other *person* is an unincorporated *investment company* not having a board of *directors*, the depositor thereof.

(4) “*Assignment*” includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a *controlling* block of the assignor’s outstanding *Voting securities* by a security holder of the assignor; but does not include an *assignment* of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) “*Bank*” means (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a *foreign bank* (as such terms are defined in section 1(b) of the International *Banking Act* of 1978), (B) a member *bank* of the Federal Reserve System, (C) any other *banking* institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national *banks* under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over *banks*, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(6) The term “*broker*” has the same meaning as given in section 3 of the Securities Exchange Act of 1934, except that such term does not include any *person* solely by reason of the fact that such *person* is an *underwriter* for one or more *investment companies*.

(7) “*Commission*” means the Securities and Exchange Commission.

(8) “*Company*” means a corporation, a partnership, an association, a joint-stock company, a trust, a *fund*, or any organized group of *persons* whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) “*Control*” means the power to exercise a *controlling* influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any *person* who owns beneficially, either directly or through one or more *controlled* companies, more than 25 per centum of the *voting securities* of a company shall be presumed to *control* such company. Any *person* who does not so own more than 25 per centum of the *voting securities* of any company shall be presumed not to *control* such company. A natural *person* shall be presumed not to be a *controlled person* within the meaning of this title. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an *interested person*. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) “*Convicted*” includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term “*dealer*” has the same meaning as given in the Securities Exchange Act of 1934, but does not include an *insurance company* or *investment company*.

(12) “*Director*” means any *director* of a corporation or any *person* performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural *person* who is a member of a board of trustees of a *management company* created as a common-law trust.

(13) “*Employees’ securities company*” means any *investment company* or similar *issuer* all of the outstanding securities of which (other than *short-term paper*) are beneficially owned (A) by the *employees* or *persons* on retainer of a single employer or of two or more employers each of which is an *affiliated company* of the other, (B) by former *employees* of such employer or employers, (C) by members of the immediate family of such *employees*, *persons* on retainer, or former *employees*, (D) by any two or more of the foregoing classes of *persons*, or (E) by such employer or employers together with any one or more of the foregoing classes of *persons*.

(14) “*Exchange*” means any organization, association, or group of *persons*, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock *exchange* as that term is generally understood, and includes the market place and the market facilities maintained by such *exchange*.

(15) “*Face-amount certificate*” means any certificate, investment contract, or other security which represents an obligation on the part of its *issuer* to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the *payment* of periodic installments of a stated or determinable *amount* (which security shall be known as a *face-amount certificate* of the “installment type”); or any security which represents a similar obligation on the part of a *face-amount certificate company*, the consideration for which is the *payment* of a single lump sum (which security shall be known as a “fully paid” *face-amount certificate*).

(16) “*Government security*” means any security issued or *guaranteed* as to principal or interest by the United States, or by a *person controlled* or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) “*Insurance company*” means a company which is organized as an *insurance company*, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) “*Interstate commerce*” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) “*Interested person*” of another *person* means—

(A) when used with respect to an *investment company*—

(i) any *affiliated person* of such company,

(ii) any member of the immediate family of any natural *person* who is an *affiliated person* of such company,

(iii) any *interested person* of any *investment adviser* of or *principal underwriter* for such company,

(iv) any *person* or partner or *employee* of any *person* who at any time since the beginning of the last two completed *fiscal years* of such company has acted as legal counsel for such company,

(v) any *person* or any *affiliated person* of a *person* (other than a registered *investment company*) that, at any time during the 6-month period preceding the date of the determination of whether that *person* or *affiliated person* is an *interested person*, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed *shares* for—

(I) the *investment company*;

(II) any other *investment company* having the same *investment adviser* as such *investment company* or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account over which the *investment company's investment adviser* has *brokerage* placement discretion,

(vi) any *person* or any *affiliated person* of a *person* (other than a registered *investment company*) that, at any time during the 6-month period preceding the date of the determination of whether that *person* or *affiliated person* is an *interested person*, has loaned money or other property to—

(I) the *investment company*;

(II) any other *investment company* having the same *investment adviser* as such *investment company* or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the *investment company's investment adviser* has borrowing authority, and

(vii) any natural *person* whom the Commission by order shall have determined to be an *interested person* by reason of having had, at any time since the beginning of the last two completed *fiscal years* of such company, a *material* business or professional relationship with such company or with the principal *executive officer* of such company or with any other *investment company* having the same *investment adviser* or *principal underwriter* or with the principal *executive officer* of such other *investment company*:

Provided, that no *person* shall be deemed to be an *interested person* of an *investment company* solely by reason of (aa) his being a member of its board of *directors* or *advisory board* or an owner of its securities, or (bb) his membership in the immediate family of any *person* specified in clause (aa) of this proviso; and

(B) when used with respect to an *investment adviser* of or *principal underwriter* for any *investment company*—

(i) any *affiliated person* of such *investment adviser* or *principal underwriter*,

(ii) any member of the immediate family of any natural *person* who is an *affiliated person* of such *investment adviser* or *principal underwriter*,

(iii) any *person* who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such *investment adviser* or *principal underwriter* or by a *controlling person* of such *investment adviser* or *principal underwriter*,

(iv) any *person* or partner or *employee* of any *person* who at any time since the beginning of the last two completed *fiscal years* of such *investment company* has acted as legal counsel for such *investment adviser* or *principal underwriter*,

(v) any *person* or any *affiliated person* of a *person* (other than a registered *investment company*) that, at any time during the 6-month period preceding the date of the determination of whether that *person* or *affiliated person* is an *interested person*, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed *shares* for—

(I) any *investment company* for which the *investment adviser* or *principal underwriter* serves as such;

(II) any *investment company* holding itself out to investors, for purposes of investment or investor services, as a company related to any *investment company* for which the *investment adviser* or *principal underwriter* serves as such; or

(III) any account over which the *investment adviser* has *brokerage* placement discretion,

(vi) any *person* or any *affiliated person* of a *person* (other than a registered *investment company*) that, at any time during the 6-month period preceding the date of the determination of whether that *person* or *affiliated person* is an *interested person*, has loaned money or other property to—

(I) any *investment company* for which the *investment adviser* or *principal underwriter* serves as such;

(II) any *investment company* holding itself out to investors, for purposes of investment or investor services, as a company related to any *investment company* for which the *investment adviser* or *principal underwriter* serves as such; or

(III) any account for which the *investment adviser* has borrowing authority, and

(vii) any natural *person* whom the Commission by order shall have determined to be an *interested person* by reason of having had at any time since the beginning of the last two completed *fiscal years* of such *investment company* a *material* business or professional relationship with such *investment adviser* or *principal underwriter* or with the principal *executive officer* or any *controlling person* of such *investment adviser* or *principal underwriter*.

For the purposes of this paragraph (19), “member of the immediate family” means any *parent*, spouse of a *parent*, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at

least sixty days after the entry thereof, and no such order shall affect the status of any *person* for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

(20) “*Investment adviser*” of an *investment company* means (A) any *person* (other than a bona fide officer, *director*, trustee, member of an *advisory board*, or *employee* of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other *person* who pursuant to contract with a *person* described in clause (A) of this paragraph regularly performs substantially all of the duties undertaken by such *person* described in clause (A); but does not include (i) a *person* whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a *person* who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more *investment companies*, insurance companies, or other financial institutions, (iv) any *person* the character and *amount* of whose compensation for such services must be approved by a court, or (v) such other *persons* as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) “*Investment banker*” means any *person* engaged in the business of underwriting securities issued by other *persons*, but does not include an *investment company*, any *person* who acts as an *underwriter* in isolated transactions but not as a part of a regular business, or any *person* solely by reason of the fact that such *person* is an *underwriter* for one or more *investment companies*.

(22) “*Issuer*” means every *person* who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) “*Lend*” includes a purchase coupled with an agreement by the vendor to repurchase; “*borrow*” includes a sale coupled with a similar agreement.

(24) “*Majority-owned subsidiary*” of a *person* means a company 50 per centum or more of the outstanding *voting securities* of which are owned by such *person*, or by a company which, within the meaning of this paragraph, is a *majority-owned subsidiary* of such *person*.

(25) “*Means or instrumentality of interstate commerce*” includes any facility of a *national securities exchange*.

(26) “*National securities exchange*” means an *exchange* registered under section 6 of the Securities Exchange Act of 1934.

(27) “*Periodic payment plan certificate*” means (A) any certificate, investment contract, or other security providing for a series of periodic *payments* by the holder, and representing an undivided interest in certain specified securities or in a unit or *fund* of securities purchased wholly or partly with the proceeds of such *payments*, and (B) any security the *issuer* of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic *payments* for which such securities provide.

(28) “*Person*” means a natural *person* or a company.

(29) “*Principal underwriter*” of or for any *investment company* other than a *closed-end company*, or of any security issued by such a company, means any *underwriter* who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for *distribution*, or who as agent for such company sells or has the right to sell any such security to a *dealer* or to the public or both, but does not include a *dealer* who purchases from such company through a *principal underwriter* acting as agent for such company. “*Principal underwriter*” of or for a *closed-end company* or any *issuer* which is not an *investment company*, or of any security issued by such a company or *issuer*, means any *underwriter* who, in connection with a primary *distribution* of securities, (A) is in privity of contract with the *issuer* or an *affiliated person* of the *issuer*; (B) acting alone or in concert with one or more other *persons*, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another *underwriter* participating in the *distribution*.

(30) “*Promoter*” of a company or a proposed company means a *person* who, acting alone or in concert with other *persons*, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) “*Prospectus*”, as used in section 22, means a written *prospectus* intended to meet the requirements of section 10(a) of the Securities Act of 1933 and currently in use. As used elsewhere, “*prospectus*” means a *prospectus* as defined in the Securities Act of 1933.

(32) “*Redeemable security* “ means any security, other than *short-term paper*, under the terms of which the holder, upon its presentation to the *issuer* or to a *person* designated by the *issuer*, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate *share* of the *issuer’s* current net assets, or the cash equivalent thereof.

(33) “*Reorganization*” means (A) a *reorganization* under the supervision of a court of competent jurisdiction; (B) a *merger* or consolidation; (C) a sale of 75 per centum or more in *value* of the assets of a company; (D) a restatement of the capital of a company, or an *exchange* of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or

elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its *charter* or other instrument creating or defining such rights, preferences, and privileges; (G) an *exchange* of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any *exchange* of securities by a company which is not an *investment company* for securities issued by a registered *investment company*.

(34) “Sale”, “sell”, “offer to sell”, or “offer for sale” includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for *value*. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for *value*.

(35) “*Sales load*” means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the *issuer* (or in the case of a *unit investment trust*, by the depositor or trustee), less any portion of such difference deducted for trustee’s or *custodian*’s fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic *payment* plan certificate, “*sales load*” includes the *sales load* on any *investment company* securities in which the *payments* made on such certificate are invested, as well as the *sales load* on the certificate itself.

(36) “Security” means any note, stock, treasury stock, *security future*, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, *preorganization* certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the *value* thereof), or any put, call, straddle, option, or privilege entered into on a *national securities exchange* relating to foreign currency, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, *guarantee* of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) “*Separate account*” means an account established and maintained by an *insurance company* pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the *insurance company*.

(38) “*Short-term paper*” means any note, draft, bill of *exchange*, or *banker’s* acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(40) “*Underwriter*” means any *person* who has purchased from an *issuer* with a view to, or sells for an *issuer* in connection with, the *distribution* of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a *person* whose interest is limited to a *commission* from an *underwriter* or *dealer* not in excess of the usual and customary distributor’s or seller’s commission. As used in this paragraph the term “*issuer*” shall include, in addition to an *issuer*, any *person* directly or indirectly *controlling* or *controlled* by the *issuer*, or any *person* under direct or indirect common *control* with the *issuer*. When the *distribution* of the securities in respect of which any *person* is an *underwriter* is completed such *person* shall cease to be an *underwriter* in respect of such securities or the *issuer* thereof.

(41) “*Value*”, with respect to assets of registered *investment companies*, except as provided in subsection (b) of section 28 means—

(A) as used in sections 3, 5, and 12, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market *value* at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair *value* at the end of such quarter, as determined in good faith by the board of *directors*; and (iii) with respect to securities and other assets *acquired* after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this title, (i) with respect to securities for which market quotations are readily available, the market *value* of such securities; and (ii) with respect to other securities and assets, fair *value* as determined in good faith by the board of *directors*;

in each case as of such time or times as determined pursuant to this title, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by *controlled* companies are available, the board of *directors* may in good faith determine the *value* of such securities: *Provided*, that the *value* so determined is not in excess of the higher of market *value* or asset *value* of such securities in the case of *majority-owned subsidiaries*, and is not in excess of market *value* in the case of other *controlled* companies.

For purposes of the valuation of those assets of a registered *diversified company* which are not subject to the limitations provided for in section 5(b)(1), the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this title. For purposes of sections 5 and 12, in lieu of *values* determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections 8, 30, and 31.

(42) “*Voting security*” means any security presently entitling the owner or holder thereof to vote for the election of *directors* of a company. A specified percentage of the outstanding *voting securities* of a company means such *amount* of its outstanding *Voting securities* as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding *voting securities* of such company are entitled to cast. The vote of a *majority of the outstanding voting securities* of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the *voting securities* present at such meeting, if the holders of more than 50 per centum of the outstanding *voting securities* of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding *voting securities* of such company, whichever is the less.

(43) “*Wholly-owned subsidiary*” of a *person* means a company 95 per centum or more of the outstanding *voting securities* of which are owned by such *person*, or by a company which, within the meaning of this paragraph, is a *Wholly-owned subsidiary* of such *person*.

(44) “Securities Act of 1933,” “Securities Exchange Act of 1934,” and “Trust Indenture Act of 1939” mean those Acts, respectively, as heretofore or hereafter amended.

(45) “*Savings and loan association*” means a *savings and loan association*, building and loan association, cooperative *bank*, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) “*Eligible Portfolio Company*” means any *issuer* which—

(A) is organized under the laws of, and has its *principal place of business* in, any State or States;

(B) is neither an *investment company* as defined in section 3 (other than a *small business investment company* which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 and which is a *Wholly-owned subsidiary* of the *business development company*) nor a company which would be an *investment company* except for the exclusion from the definition of *investment company* in section 3(c); and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a *national securities exchange, broker, or dealer* may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934;

(ii) it is *controlled* by a *business development company*, either alone or as part of a group *acting* together, and such *business development company* in fact exercises a *controlling* influence over the management or policies of such *Eligible Portfolio Company* and, as a result of such *control*, has an *affiliated person* who is a *director* of such *Eligible Portfolio Company*;

(iii) it has *Total assets* of not more than \$4,000,000, and capital and surplus (shareholders’ equity less retained earnings) of not less than \$2,000,000, except that the Commission may adjust such *amounts* by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this title.

(47) “*Making available significant managerial assistance*” by a *business development company* means—

(A) any arrangement whereby a *business development company*, through its *directors*, officers, *employees*, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a *business development company* of a *controlling* influence over the management or policies of a portfolio company by the *business development company* acting individually or as part of a group acting together which *controls* such portfolio company; or

(C) with respect to a *small business investment company* licensed by the Small Business Administration to operate under the *Small Business Investment Act* of 1958, the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a *business development company* make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the *business development company* purchases securities of such portfolio company in conjunction with one or more other *persons* acting together, and at least one of the *persons* in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the *business development company*, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) “*Business development company*” means any *closed-end company* which—

(A) is organized under the laws of, and has its *principal place of business* in, any State or States;

(B) is operated for the purpose of making *investments* in securities described in paragraphs (1) through (3) of section 55(a) and makes available significant managerial assistance with respect to the *issuers* of such securities, provided that a *business development company* must make available significant managerial assistance only with respect to the companies which are treated by such *business development company* as satisfying the 70 per centum of the *value* of its *total assets* condition of section 55, and provided further that a *business development company* need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this title; and

(C) has elected pursuant to section 54(a) to be subject to the provisions of sections 55 through 65.

(49) “*Foreign securities authority*” means any *foreign government* or any governmental body or regulatory organization empowered by a *foreign government* to administer or enforce its laws as they relate to securities matters.

(50) “*Foreign financial regulatory authority*” means any (A) *foreign securities authority*, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a *foreign government* to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other

financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) “*Qualified purchaser*” means—

(i) any natural *person* (including any *person* who holds a joint, community property, or other similar shared ownership interest in an *issuer* that is excepted under section 3(c)(7) with that *person’s qualified purchaser* spouse) who owns not less than \$5,000,000 in *investments*, as defined by the Commission;

(ii) any company that owns not less than \$5,000,000 in *investments* and that is owned directly or indirectly by or for 2 or more natural *persons* who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such *persons*, the estates of such *persons*, or *foundations, charitable organizations*, or trusts established by or for the benefit of such *persons*;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other *person* authorized to make decisions with respect to the trust, and each settlor or other *person* who has contributed assets to the trust, is a *person* described in clause (i), (ii), or (iv); or

(iv) any *person*, acting for its own account or the accounts of other *qualified purchasers*, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in *investments*.

(B) The Commission may adopt such rules and regulations applicable to the *persons* and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term “*qualified purchaser*” does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c), would be an *investment company* (hereafter in this paragraph referred to as an “excepted *investment company*”), unless all *beneficial owners* of its outstanding securities (other than *short-term paper*), determined in accordance with section 3(c)(1)(A), that *acquired* such securities on or before April 30, 1996 (hereafter in this paragraph referred to as “pre-amendment *beneficial owners*”), and all pre-amendment *beneficial owners* of the outstanding securities (other than *short-term paper*) of any excepted *investment company* that, directly or indirectly, owns any outstanding securities of such excepted *investment company*, have consented to its treatment as a *qualified purchaser*. Unanimous consent of all trustees, *directors*, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms “*security future*” and “*narrow-based security index*” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(53) The term “*credit rating agency*” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(54) The terms “*commodity pool*”, “*commodity pool operator*”, “*commodity trading advisor*”, “*major swap participant*”, “*swap*”, “*swap dealer*”, and “*swap execution facility*” have the same meanings as in section 1a of the Commodity Exchange Act.

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or *employee* of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of Promotion of Efficiency, Competition, and Capital Formation.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[Note: Rules 0-1 through 0-11 are set forth on pages 382 through 391.]

Rule 2a-1 *Valuation of portfolio securities in special cases.*

(a) Any *investment company* whose securities are qualified for sale, or for whose securities application for such qualification has been made, in any State in which the securities owned by such company are required by applicable State law or regulations to be valued at cost or on some other basis different from that prescribed by clause (A) of section 2(a)(41) of the Investment Company Act of 1940 for the purpose of determining the percentage of its assets invested in any particular type or classification of securities or in the securities of any one *issuer*, may, in valuing its securities for the purposes of sections 5 and 12 of the Act, use the same basis of valuation as that used in complying with such State law or regulations in lieu of the method of valuation prescribed by clause (A) of section 2(a)(41) of the Act.

(b) Any *open-end company* which has heretofore valued its securities at cost for the purpose of qualifying as a “mutual investment company” under the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, shall henceforth, for the purposes of sections 5 and 12 of the Act, *value* its securities in accordance with the method prescribed in clause (A) of section 2(a)(41) of the Act unless such company is permitted under paragraph (a) of this section to use a different method of valuation.

(c) A registered *investment company* which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, shall state in its registration statement filed pursuant to section 8 of the Act, or in a report filed pursuant to section 30 of the Act, the method of valuation adopted and the facts which justify

the adoption of such method. A registered *investment company* which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this rule, unless it shall have adopted such method for the purpose or partly for the purpose of qualifying as a “mutual investment company” under the Internal Revenue Code, shall continue to use that method until it has notified the Commission of its desire to use a different method, and has received from the Commission permission for such change. Such permission may be made effective on a fixed date or within such reasonable time thereafter as may be deemed advisable under the circumstances.

(d) If at any time it appears that the method of valuation adopted by any company pursuant to paragraph (a) of this section is no longer justified by the facts, the Commission may require a change in the method of valuation within a reasonable period of time either to the method prescribed in clause (A) of section 2(a)(41) of the Act or to some other method permitted by paragraph (a) of this section which is justified by the existing facts.

Rule 2a-2 Effect of eliminations upon valuation of portfolio securities.

During any fiscal quarter in which elimination of securities from the portfolio of an *investment company* occur, the securities remaining in the portfolio shall, for the purpose of sections 5 and 12 of the Investment Company Act of 1940, be so *valued* as to give effect to the eliminations in accordance with one of the following methods: (a) specific certificate, (b) first in—first out, (c) last in—first out, or (d) average *value*. For these purposes, a single method of elimination shall be used consistently with respect to all portfolio securities. In giving effect to eliminations pursuant to this section *values* shall be computed in accordance with section 2(a)(41)(A) of the Act.

Rule 2a3-1 Investment company limited partners not deemed affiliated persons.

Preliminary Note: This rule 2a3-1 excepts from the definition of *affiliated person* in section 2(a)(3) those limited partners of *investment companies* organized in limited partnership form that are *affiliated persons* solely because they are partners under section 2(a)(3)(D). Reliance on this rule 2a3-1 does not except a limited partner that is an *affiliated person* by virtue of any other provision.

No limited partner of a registered *management company* or a *business development company*, organized as a limited partnership and relying on rule 2a19-2, shall be deemed to be an *affiliated person* of such company, or any other partner of such company, solely by reason of being a limited partner of such company.

Rule 2a-3 [Reserved]

Rule 2a-4 Definition of “current net asset value” for use in computing periodically the current price of redeemable security.

(a) The *current net asset value* of any *redeemable security* issued by a registered *investment company* used in computing periodically the current price for the purpose of

distribution, redemption, and repurchase means an *amount* which reflects calculations, whether or not recorded in the books of account, made substantially in accordance with the following, with estimates used where necessary or appropriate.

- (1) Portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair *value* as determined in good faith by the board of *directors* of the registered company.
 - (2) Changes in holdings of portfolio securities shall be reflected no later than in the first calculation on the first *business day* following the trade date.
 - (3) Changes in the number of outstanding *shares* of the registered company resulting from *distributions*, redemptions, and repurchases shall be reflected no later than in the first calculation on the first *business day* following such change.
 - (4) Expenses, including any investment advisory fees, shall be included to date of calculation. Appropriate provision shall be made for Federal income taxes if required. *Investment companies* which retain realized capital gains designated as a *distribution* to shareholders shall comply with paragraph (h) of rule 6-03 of Regulation S-X.
 - (5) Dividends receivable shall be included to date of calculation either at ex-dividend dates or record dates, as appropriate.
 - (6) Interest income and other income shall be included to date of calculation.
- (b) The items which would otherwise be required to be reflected by paragraphs (4) and (6) of this section need not be so reflected if cumulatively, when netted, they do not *amount* to as much as one cent per outstanding share.
- (c) Notwithstanding the requirements of paragraph (a) of this section, any interim determination of *current net asset value* between calculations made as of the close of the New York Stock Exchange on the preceding *business day* and the current *business day* may be estimated so as to reflect any change in *current net asset value* since the closing calculation on the preceding *business day*.

Rule 2a-5 Fair value determination and readily available market quotations.

- (a) *Fair value determination.* For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a2(a)(41)) and rule 2a-4, determining *fair value* in good faith with respect to a *fund* requires:
- (1) *Assess and manage risks.* Periodically assessing any material risks associated with the determination of the *fair value* of *fund* investments (“*valuation risks*”), including material conflicts of interest, and managing those identified *valuation risks*;

(2) *Establish and apply fair value methodologies.* Performing each of the following, taking into account the *fund's valuation risks*:

(i) Selecting and applying in a consistent manner an appropriate methodology or methodologies for determining (and calculating) the *fair value* of *fund* investments, provided that a selected methodology may be changed if a different methodology is equally or more representative of the *fair value* of *fund* investments, including specifying the key inputs and assumptions specific to each asset class or portfolio holding;

(ii) Periodically reviewing the appropriateness and accuracy of the methodologies selected and making any necessary changes or adjustments thereto; and

(iii) Monitoring for circumstances that may necessitate the use of *fair value*;

(3) *Test fair value methodologies.* Testing the appropriateness and accuracy of the *fair value* methodologies that have been selected, including identifying the testing methods to be used and the minimum frequency with which such testing methods are to be used; and

(4) *Evaluate pricing services.* Overseeing pricing service providers, if used, including establishing the process for approving, monitoring, and evaluating each pricing service provider and initiating price challenges as appropriate.

(b) *Performance of fair value determinations.* The *board* of the *fund* must determine *fair value* in good faith for any or all *fund* investments by carrying out the functions required in paragraph (a) of this section. The *board* may choose to designate the *valuation designee* to perform the *fair value* determination relating to any or all *fund* investments, which shall carry out all of the functions required in paragraph (a) of this section, subject to the requirements of this paragraph (b).

(1) *Oversight and reporting.* The *board* oversees the *valuation designee*, and the *valuation designee* reports to the *fund's board*, in writing, including such information as may be reasonably necessary for the *board* to evaluate the matters covered in the report, as follows:

(i) *Periodic reporting.*

(A) At least quarterly:

(1) Any reports or materials requested by the *board* related to the *fair value* of designated investments or the *valuation designee's* process for fair valuing *fund* investments; and

(2) A summary or description of material *fair value* matters that occurred in the prior quarter, including:

(i) Any material changes in the assessment and management of *valuation risks* required under paragraph (a)(1) of this section, including any material

changes in conflicts of interest of the *valuation designee* (and any other service provider);

(ii) Any material changes to, or material deviations from, the *fair value* methodologies established under paragraph (a)(2) of this section; and

(iii) Any material changes to the *valuation designee's* process for selecting and overseeing pricing services, as well as any material events related to the *valuation designee's* oversight of pricing services; and

(B) At least annually, an assessment of the adequacy and effectiveness of the *valuation designee's* process for determining the *fair value* of the designated portfolio of investments, including, at a minimum:

(1) A summary of the results of the testing of *fair value* methodologies required under paragraph (a)(3) of this section; and

(2) An assessment of the adequacy of resources allocated to the process for determining the *fair value* of designated investments, including any material changes to the roles or functions of the persons responsible for determining *fair value* under paragraph (b)(2) of this section; and

(ii) *Prompt board notification and reporting.* The *valuation designee* notifies the *board* of the occurrence of matters that materially affect the *fair value* of the designated portfolio of investments, including a significant deficiency or material weakness in the design or effectiveness of the *valuation designee's fair value* determination process, or material errors in the calculation of net asset value, (any such matter or error, a “*material matter*”) within a time period determined by the *board* (but in no event later than five business days after the *valuation designee* becomes aware of the *material matter*), with such timely follow-on reporting as the *board* may determine appropriate; and

(2) *Specify responsibilities.* The *valuation designee* specifies the titles of the persons responsible for determining the *fair value* of the designated investments, including by specifying the particular functions for which they are responsible, and reasonably segregates *fair value* determinations from the portfolio management of the *fund* such that the portfolio manager(s) may not determine, or effectively determine by exerting substantial influence on, the *fair values* ascribed to portfolio investments.

(c) *Readily available market quotations.* For purposes of section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)), a market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the *fund* can access at the measurement date, provided that a quotation will not be readily available if it is not reliable.

(d) *Unit investment trusts.* If the *fund* is a unit investment trust, and the initial deposit of portfolio securities into the unit investment trust occurs *after* March 8, 2021, the *fund's*

trustee or depositor must carry out the requirements of paragraph (a) of this section. If the initial deposit of portfolio securities into the unit investment trust occurred *before* March 8, 2021, and an entity other than the *fund's* trustee or depositor has been designated to carry out the *fair value* determination, that entity must carry out the requirements of paragraph (a) of this section.

(e) *Definitions.* For purposes of this section:

- (1) *Fund* means a registered investment company or business development company.
- (2) *Fair value* means the value of a portfolio investment for which market quotations are not readily available under paragraph (c) of this section.
- (3) *Board* means either the *fund's* entire board of directors or a designated committee of such board composed of a majority of directors who are not interested persons of the *fund*.
- (4) *Valuation designee* means the investment adviser, other than a sub-adviser, of a *fund* or, if the *fund* does not have an investment adviser, an officer or officers of the fund.

Rule 2a-6 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual *control* or management of the *investment adviser* to, or *principal underwriter* of, an *investment company* is not an *assignment* for purposes of section 15(a)(4) or section 15(b)(2) of the Investment Company Act of 1940, respectively.

Rule 2a-7 Money market funds.

(a) *Definitions.*

- (1) *Acquisition* (or *Acquire*) means any purchase or subsequent rollover (but does not include the failure to exercise a *Demand Feature*).
- (2) *Amortized Cost Method* of valuation means the method of calculating an *investment company's* net asset *value* whereby portfolio securities are *valued* at the *fund's* *Acquisition* cost as adjusted for amortization of premium or accretion of discount rather than at their *value* based on current market factors.
- (3) *Asset-Backed Security* means a fixed income security (other than a *Government Security*) issued by a *Special Purpose Entity* (as defined in this paragraph (a)(3)), substantially all of the assets of which consist of *Qualifying Assets* (as defined in this paragraph (a)(3)). *Special Purpose Entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive *payments* that depend primarily on the cash flow from *Qualifying Assets*, but does not include a registered *investment company*. *Qualifying Assets* means *financial assets*, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely *distribution* of proceeds to security holders.

(4) **Business Day** means any day, other than Saturday, Sunday, or any customary business holiday.

(5) **Collateralized Fully** has the same meaning as defined in Rule 5b-3(c)(1) except that Rule 5b-3(c)(1)(iv)(C) shall not apply.

(6) **Conditional Demand Feature** means a **Demand Feature** that is not an **Unconditional Demand Feature**. A **Conditional Demand Feature** is not a **Guarantee**.

(7) **Conduit Security** means a security issued by a **Municipal Issuer** (as defined in this paragraph (a)(7)) involving an arrangement or agreement entered into, directly or indirectly, with a **person** other than a **Municipal Issuer**, which arrangement or agreement provides for or secures **repayment** of the security. **Municipal Issuer** means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A **Conduit Security** does not include a security that is:

(i) Fully and unconditionally **Guaranteed** by a **Municipal Issuer**;

(ii) Payable from the general revenues of the **Municipal Issuer** or other **Municipal Issuers** (other than those revenues derived from an agreement or arrangement with a **person** who is not a **Municipal Issuer** that provides for or secures **repayment** of the security issued by the **Municipal Issuer**);

(iii) Related to a project owned and operated by a **Municipal Issuer**; or

(iv) Related to a facility leased to and under the **control** of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the **control** of a **Municipal Issuer**.

(8) **Daily Liquid Assets** means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a **Demand Feature** that is exercisable and payable, within one **Business Day**; or

(iv) **Amounts** receivable and due unconditionally within one **Business Day** on pending sales of portfolio securities.

(9) **Demand Feature** means a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise.

(10) *Demand Feature Issued by a Non-Controlled Person* means a *Demand Feature* issued by:

(i) A *person* that, directly or indirectly, does not *control*, and is not *controlled* by or under common *control* with the *issuer* of the security subject to the *Demand Feature* (*control* means “*control*” as defined in section 2(a)(9) of the Act); or

(ii) A sponsor of a *Special Purpose Entity* with respect to an *Asset-Backed Security*.

(11) *Eligible security* means a *security*:

(i) With a remaining maturity of 397 calendar days or less that the fund’s board of directors determines presents minimal credit risks to the fund, which determination must include an analysis of the capacity of the *security’s issuer* or guarantor (including for this paragraph (a)(11)(i) the provider of a *Conditional Demand Feature*, when applicable) to meet its financial obligations, and such analysis must include, to the extent appropriate, consideration of the following factors with respect to the *security’s issuer* or guarantor:

(A) Financial condition;

(B) Sources of liquidity;

(C) Ability to react to future market-wide and issuer- or guarantor-specific events, including ability to repay debt in a highly adverse situation; and

(D) Strength of the *issuer* or guarantor’s industry within the economy and relative to economic trends, and *issuer* or guarantor’s competitive position within its industry.

(ii) That is issued by a registered investment company that is a *Money Market Fund*; or

(iii) That is a *Government Security*.

Note to paragraph (a)(11): For a discussion of additional factors that may be relevant in evaluating certain specific asset types see Investment Company Act Release No. IC-31828 (9/16/15).

(12) *Event of Insolvency* has the same meaning as defined in Rule 5b-3(c)(2).

(13) *Floating Rate Security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal *amount* can be recovered through demand, can reasonably be expected to have a market *value* that approximates its amortized cost.

(14) *Government Money Market Fund* means a money market *fund* that invests 99.5 percent or more of its *Total Assets* in cash, *Government Securities*, and/or repurchase agreements that are *Collateralized Fully*.

(15) *Government Security* has the same meaning as defined in section 2(a)(16) of the Act.

(16) *Guarantee*:

(i) Means an unconditional obligation of a *person* other than the *issuer* of the security to undertake to pay, upon presentment by the holder of the *Guarantee* (if required), the principal *amount* of the underlying security plus accrued interest when due or upon *default*, or, in the case of an *Unconditional Demand Feature*, an obligation that entitles the holder to receive upon the later of exercise or the settlement of the transaction the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A *Guarantee* includes a letter of credit, financial guaranty (bond) insurance, and an *Unconditional Demand Feature* (other than an *Unconditional Demand Feature* provided by the *issuer* of the security).

(ii) The sponsor of a *Special Purpose Entity* with respect to an *Asset-Backed Security* shall be deemed to have provided a *Guarantee* with respect to the entire principal *amount* of the *Asset-Backed Security* for purposes of this section, except paragraphs (a)(11) (definition of *Eligible Security*), (d)(2)(ii) (credit substitution), (d)(3)(iv)(A) (fractional *Guarantees*) and (e) (*Guarantees* not relied on) of this section, unless the money market *fund's* board of *directors* has determined that the *fund* is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the *Asset-Backed Security*, and maintains a record of this determination (pursuant to paragraphs (g)(7) and (h)(6) of this section).

(17) *Guarantee Issued By A Non-Controlled Person* means a *Guarantee* issued by:

(i) A *person* that, directly or indirectly, does not *control*, and is not *controlled* by or under common *control* with the *issuer* of the security subject to the *Guarantee* (*control* means "*control*" as defined in section 2(a)(9) of the Act); or

(ii) A sponsor of a *Special Purpose Entity* with respect to an *Asset-Backed Security*.

(18) *Illiquid Security* means a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the *value* ascribed to it by the *fund*.

(19) *Penny-Rounding Method* of pricing means the method of computing an *investment company's* price per *share* for purposes of *distribution*, redemption and repurchase whereby the *current net asset value* per *share* is rounded to the nearest one percent.

(20) *Refunded Security* has the same meaning as defined in Rule 5b-3(c)(4).

(21) *Retail Money Market Fund* means a money market *fund* that has policies and procedures reasonably designed to limit all beneficial owners of the *fund* to natural *persons*.

(22) *Single State Fund* means a *Tax Exempt Fund* that holds itself out as seeking to maximize the *amount* of its distributed income that is exempt from the income taxes or other taxes on *investments* of a particular state and, where applicable, subdivisions thereof.

(23) *Tax Exempt Fund* means any money market *fund* that holds itself out as distributing income exempt from regular federal income tax.

(24) *Total Assets* means, with respect to a money market *fund* using the *Amortized Cost Method*, the total amortized cost of its assets and, with respect to any other money market *fund*, means the total *value* of the money market *fund's assets*, as defined in section 2(a)(41) of the Act and the rules thereunder.

(25) *Unconditional Demand Feature* means a *Demand Feature* that by its terms would be readily exercisable in the event of a *default* in *payment* of principal or interest on the underlying security or securities.

(26) *United States Dollar-Denominated* means, with reference to a security, that all principal and interest *payments* on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal *amount* to be repaid, and the timing of *payments* related to such security do not vary or float with the *value* of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(27) *Variable Rate Security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal *amount* can be recovered through demand, can reasonably be expected to have a market *value* that approximates its amortized cost.

(28) *Weekly Liquid Assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) *Government Securities* that are issued by a *person controlled* or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States that:

(A) Are issued at a discount to the principal *amount* to be repaid at maturity without provision for the *payment* of interest; and

(B) Have a remaining maturity date of 60 days or less.

(iv) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a *Demand Feature* that is exercisable and payable, within five *Business Days*; or

- (v) *Amounts* receivable and due unconditionally within five *Business Days* on pending sales of portfolio securities.
- (b) *Holding Out and Use of Names and Titles.*
- (1) *Holding out.* It shall be an untrue statement of *material* fact within the meaning of section 34(b) of the Act for a registered *investment company*, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for *distribution* to prospective investors that is required to be filed with the Commission by section 24(b) of the Act, to hold itself out to investors as a money market *fund* or the equivalent of a money market *fund*, unless such registered *investment company* complies with this section.
- (2) *Names.* It shall constitute the use of a *materially* deceptive or misleading name or title within the meaning of section 35(d) of the Act for a registered *investment company* to adopt the term “money market” as part of its name or title or the name or title of any *redeemable securities* of which it is the *issuer*, or to adopt a name that suggests that it is a money market *fund* or the equivalent of a money market *fund*, unless such registered *investment company* complies with this section.
- (3) *Titles.* For purposes of paragraph (b)(2) of this section, a name that suggests that a registered *investment company* is a money market *fund* or the equivalent thereof includes one that uses such terms as “cash,” “liquid,” “money,” “ready assets” or similar terms.

(c) *Pricing and Redeeming Shares.*

(1) *Share price calculation.*

- (i) The current price per *share*, for purposes of *distribution*, redemption and repurchase, of any *redeemable security* issued by a *Government Money Market Fund* or *Retail Money Market Fund*, notwithstanding the requirements of section 2(a)(41) of the Act and of Rule 2a-4 and Rule 22c-1 thereunder, may be computed by use of the *Amortized Cost Method* and/or the *Penny-Rounding Method*. To use these methods, the board of *directors* of the *Government or Retail Money Market Fund* must determine, in good faith, that it is in the best interests of the *fund* and its shareholders to maintain a stable net asset *value* per *share* or stable price per *share*, by virtue of either the *Amortized Cost Method* and/or the *Penny-Rounding Method*. The *Government or Retail Money Market Fund* may continue to use such methods only so long as the board of *directors* believes that they fairly reflect the market-based net asset *value* per *share* and the *fund* complies with the other requirements of this section.
- (ii) Any money market *fund* that is not a *Government Money Market Fund* or a *Retail Money Market Fund* must compute its price per *share* for purposes of

distribution, redemption and repurchase by rounding the *fund's current net asset value* per *share* to a minimum of the fourth decimal place in the case of a *fund* with a \$1.0000 *share* price or an equivalent or more precise level of accuracy for money market *funds* with a different *share* price (e.g. \$10.000 per *share*, or \$100.00 per *share*).

(2) *Liquidity fees*. Except as provided in paragraph (c)(2)(v) of this section, and notwithstanding section 27(i) of the Act (15 U.S.C. 80a-27(i)) and Rule 22c-1:

(i) *Discretionary liquidity fees*. [*Compliance date for discretionary liquidity fees is on or before April 2, 2024*]

If the *fund's board of directors*, including a majority of the *directors* who are not *interested persons* of the *fund*, determines that a liquidity fee is in the best interests of the *fund*, the *fund* must institute a liquidity fee (not to exceed two percent of the value of the shares redeemed).

(A) *Duration and application of discretionary liquidity fee*. Once imposed, a discretionary liquidity fee must be applied to all shares redeemed and must remain in effect until the money market *fund's board of directors*, including a majority of the directors who are not *interested persons* of the *fund*, determines that imposing such liquidity fee is no longer in the best interests of the *fund*.

(B) *Government money market funds*. The requirements of this paragraph (c)(2)(i) do not apply to a *government money market fund*. A *government money market fund* may, however, choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of paragraph (c)(2)(i) of this section and any other requirements that apply to liquidity fees (e.g., Item 4(b)(1)(ii) of Form N-1A).

(ii) *Determination, duration, and application of mandatory liquidity fees*. [*Compliance date for mandatory liquidity fees is on or before October 2, 2024*]

If a money market fund that is not a *government money market fund* or a *retail money market fund* has total daily net redemptions that exceed five percent of the *fund's* net assets, or such smaller amount of net redemptions as the *board* determines, based on flow information available within a reasonable period after the last computation of the *fund's* net asset value on that day, the *fund* must apply a liquidity fee to all shares that are redeemed at a price computed on that day, in an amount determined pursuant to paragraph (c)(2)(iii) of this section.

(iii) *Amount of mandatory liquidity fees*. The amount of a mandatory liquidity fee must be determined pursuant to paragraph (c)(2)(iii)(A), except as provided in paragraphs (c)(2)(iii)(C) or (c)(2)(iii)(D) of this section.

(A) *Good faith estimate of liquidity costs*. The fee amount must be based on a good faith estimate, supported by data, of the costs the *fund* would incur if it sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions, including:

(1) Spread costs, such that the *fund* is valuing each security at its bid price, and any other charges, fees, and taxes associated with portfolio security sales; and

(2) Market impacts for each security. The *fund* must determine market impacts by first establishing a market impact factor for each security, which is a good faith estimate of the percentage change in the value of the security if it were sold, per dollar of the amount of the security that would be sold if the *fund* sold a pro rata amount of each security in its portfolio to satisfy the amount of net redemptions under current market conditions and, second, multiplying the market impact factor by the dollar amount of the security that would be sold. A *fund* may assume a market impact of zero for its *daily liquid assets* and *weekly liquid assets*.

(B) *Cost estimates by type of security.* For purposes of paragraph (c)(2)(iii)(A) of this section, a *fund* may estimate costs and market impacts for each type of security with the same or substantially similar characteristics and apply those estimates to all securities of that type rather than analyze each security separately.

(C) *Default fee amount.* If the costs of selling a pro rata amount of each portfolio security cannot be estimated in good faith and supported by data, the liquidity fee amount is one percent of the value of shares redeemed.

(D) *De minimis exception.* A fund is not required to apply a liquidity fee if the amount of the fee determined under paragraph (c)(2)(iii)(A) of this section is less than 0.01% of the value of the shares redeemed.

(iv) *Variable contracts.* Notwithstanding section 27(i) of the Act (15 U.S.C. 80a-27(i)), a variable insurance contract issued by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee pursuant to paragraph (c)(2) of this section to contract owners who allocate all or a portion of their contract *value* to a subaccount of the separate account that is either a money market *fund* or that invests all of its assets in shares of a money market *fund*.

(v) *Master feeder funds.* Any money market *fund* (“*feeder fund*”) that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)), shares of another money market *fund* (“*master fund*”) may not impose liquidity fees under paragraph (c)(2) of this section, provided however, that if a *master fund*, in which the *feeder fund* invests, imposes a liquidity fee pursuant to paragraph (c)(2) of this section, then the *feeder fund* shall pass through to its investors the fee on the same terms and conditions as imposed by the *master fund*.

(3) *Share cancellation.* A money market *fund* may not reduce the number of its *shares* outstanding to seek to maintain a stable net asset value per share or stable price per share unless:

(i) The money market *fund* calculates its share price pursuant to paragraph (c)(1)(i) of this section;

- (ii) The *fund* has negative gross yield as a result of negative interest rates (“*negative interest rate event*”);
 - (iii) The *board of directors* determines that reducing the number of the *fund’s* shares outstanding is in the best interests of the *fund* and its shareholders; and
 - (iv) Timely, concise, and plain English disclosure is provided to investors about the *fund’s* share cancellation practices and their effects on investors, including:
 - (A) Advance notification to investors in the *fund’s* prospectus that the *fund* plans to use share cancellation in a *negative interest rate event* and the potential effects on investors; and
 - (B) When the *fund* is cancelling shares, information in each account statement or in a separate writing accompanying each account statement identifying that such practice is in use and explaining its effects on investors.
- (d) *Risk-limiting conditions.*
- (1) *Portfolio maturity.* The money market *fund* must maintain a dollar-weighted average portfolio maturity appropriate to its investment objective; provided, however, that the money market *fund* must not:
 - (i) *Acquire* any instrument with a remaining maturity of greater than 397 calendar days;
 - (ii) Maintain a dollar-weighted average portfolio maturity (“*WAM*”) that exceeds 60 calendar days [with the dollar-weighted average based on the percentage of each security’s market value in the portfolio] [Compliance date on or before April 2, 2024]; or
 - (iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (“*WAL*”) [with the dollar-weighted average based on the percentage of each security’s market value in the portfolio] [Compliance date on or before April 2, 2024].
 - (2) *Portfolio quality.*
 - (i) *General.* The Money Market *Fund* must limit its portfolio investments to those *United States Dollar-Denominated Securities* that at the time of *acquisition* are *eligible securities*.
 - (ii) *Securities subject to Guarantees.* A *security* that is subject to a *Guarantee* may be determined to be an *Eligible Security* based solely on whether the *Guarantee* is an *Eligible Security*, provided however, that the *issuer* of the *Guarantee*, or another institution, has undertaken to promptly notify the holder of the security in the event the *Guarantee* is substituted with another *Guarantee* (if such substitution is permissible under the terms of the *Guarantee*).
 - (iii) *Securities subject to Conditional Demand Features.* A *security* that is subject to a *Conditional Demand Feature* (“underlying security”) may be determined to be an *Eligible Security* only if:

- (A) The *Conditional Demand Feature* is an *Eligible Security*;
- (B) The *underlying security* or any *Guarantee* of such security is an *Eligible Security*, except that the *underlying security* or *Guarantee* may have a remaining maturity of more than 397 calendar days.
- (C) At the time of the *acquisition* of the *underlying security*, the *Money Market Fund*'s board of directors has determined that there is minimal risk that the circumstances that would result in the *Conditional Demand Feature* not being exercisable will occur; and
- (1) The conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or
 - (2) The terms of the *Conditional Demand Feature* require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the *Demand Feature* in accordance with its terms; and
- (D) The issuer of the *Conditional Demand Feature*, or another institution, has undertaken to promptly notify the holder of the *security* in the event the *Conditional Demand Feature* is substituted with another *Conditional Demand Feature* (if such substitution is permissible under the terms of the *Conditional Demand Feature*).

(3) *Portfolio diversification.*

- (i) *Issuer diversification.* The *Money Market Fund* must be diversified with respect to *issuers of securities acquired* by the fund as provided in paragraphs (d)(3)(i) and (ii) of this section, other than with respect to *Government Securities*.

(A) *Taxable and national funds.* Immediately after the *acquisition* of any *security*, a *Money Market Fund* other than a *Single State Fund* must not have invested more than:

- (1) Five percent of its *Total Assets* in securities issued by the *issuer* of the *security*, provided, however, that with respect to paragraph (d)(3)(i)(A) of this section, such a fund may invest up to twenty-five percent of its *Total Assets* in the *securities* of a single *issuer* for a period of up to three *Business Days* after the *acquisition* thereof; provided, further, that the fund may not invest in the *securities* of more than one issuer in accordance with the foregoing proviso in this paragraph (d)(3)(i)(A)(1) at any time; and
- (2) Ten percent of its *Total Assets* in *securities* issued by or subject to *Demand Features* or *Guarantees* from the institution that issued the *Demand Feature* or *Guarantee*, provided, however, that a *Tax Exempt Fund* need only comply with this paragraph (d)(3)(i)(A)(2) with respect to eighty-five percent of its *Total Assets*, subject to paragraph (d)(3)(iii) of this section.

(B) *Single state funds.* Immediately after the *acquisition* of any *security*, a *Single State Fund* must not have invested:

- (1) With respect to seventy-five percent of its *Total Assets*, more than five percent of its *Total Assets* in *securities* issued by the *issuer* of the *security*; and
- (2) With respect to seventy-five percent of its *Total Assets*, more than ten percent of its *Total Assets* in *securities* issued by or subject to *Demand Features* or *Guarantees* from the institution that issued the *Demand Feature* or *Guarantee*, subject to paragraph (d)(3)(iii) of this section.

(ii) *Issuer diversification calculations.* For purposes of making calculations under paragraph (d)(3)(i) of this section:

(A) *Repurchase agreements.* The *Acquisition* of a repurchase agreement may be deemed to be an *Acquisition* of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market *fund* is *Collateralized Fully* and the *fund's* board of *directors* has evaluated the seller's creditworthiness.

(B) *Refunded securities.* The *Acquisition* of a *Refunded Security* shall be deemed to be an *Acquisition* of the escrowed *Government Securities*.

(C) *Conduit securities.* A *Conduit Security* shall be deemed to be issued by the *person* (other than the *Municipal Issuer*) ultimately responsible for *payments* of interest and principal on the security.

(D) *Asset-Backed Securities*

(1) *General.* An *Asset-Backed Security Acquired* by a *fund* ("*Primary ABS*") shall be deemed to be issued by the *Special Purpose Entity* that issued the *Asset-Backed Security*, provided, however:

(i) *Holdings of primary ABS.* Any *person* whose obligations constitute ten percent or more of the principal *amount* of the *Qualifying Assets* of the *Primary ABS* ("*Ten Percent Obligor*") shall be deemed to be an *issuer* of the portion of the *Primary ABS* such obligations represent; and

(ii) *Holdings of secondary ABS.* If a *Ten Percent Obligor* of a *Primary ABS* is itself a *Special Purpose Entity* issuing *Asset-Backed Securities* ("*Secondary ABS*"), any *Ten Percent Obligor* of such *Secondary ABS* also shall be deemed to be an *issuer* of the portion of the *Primary ABS* that such *Ten Percent Obligor* represents.

(2) *Restricted Special Purpose Entities.* A *Ten Percent Obligor* with respect to a primary or secondary ABS shall not be deemed to have issued any portion of the assets of a *Primary ABS* as provided in paragraph (d)(3)(ii)(D)(1) of this section if that *Ten Percent Obligor* is itself a *Special Purpose Entity* issuing *Asset-Backed Securities* ("*Restricted Special Purpose Entity*"), and the securities that

it issues (other than securities issued to a company that *controls*, or is *controlled* by or under common *control* with, the *Restricted Special Purpose Entity* and which is not itself a *Special Purpose Entity* issuing *Asset-Backed Securities*) are held by only one other *Special Purpose Entity*.

(3) *Demand Features and Guarantees.* In the case of a *Ten Percent Obligor* deemed to be an *issuer*, the *fund* must satisfy the diversification requirements of paragraph (d)(3)(iii) of this section with respect to any *Demand Feature* or *Guarantee* to which the *Ten Percent Obligor's* obligations are subject.

(E) *Shares of other money market funds.* A money market *fund* that *Acquires shares* issued by another money market *fund* in an *amount* that would otherwise be prohibited by paragraph (d)(3)(i) of this section shall nonetheless be deemed in compliance with this section if the board of *directors* of the *Acquiring* money market *fund* reasonably believes that the *fund* in which it has invested is in compliance with this section.

(F) *Treatment of certain affiliated entities.*

(1) *General.* The money market *fund*, when calculating the *amount* of its *Total Assets* invested in securities issued by any particular *issuer* for purposes of paragraph (d)(3)(i) of this section, must treat as a single *issuer* two or more *issuers* of securities owned by the money market *fund* if one *issuer controls* the other, is *controlled* by the other *issuer*, or is under common *control* with the other *issuer*, provided that “*control*” for this purpose means ownership of more than 50 percent of the *issuer's* voting securities.

(2) *Equity owners of asset-backed commercial paper Special Purpose Entities.* The money market *fund* is not required to aggregate an asset-backed commercial paper *Special Purpose Entity* and its equity owners under paragraph (d)(3)(ii)(F)(1) of this section provided that a primary line of business of its equity owners is owning equity interests in *Special Purpose Entities* and providing services to *Special Purpose Entities*, the independent equity owners' activities with respect to the *Special Purpose Entities* are limited to providing management or administrative services, and no *Qualifying Assets* of the *Special Purpose Entity* were originated by the equity owners.

(3) *Ten Percent Obligors.* For purposes of determining *Ten Percent Obligors* pursuant to paragraph (d)(3)(ii)(D)(1)(i) of this section, the money market *fund* must treat as a single *person* two or more *persons* whose obligations in the aggregate constitute ten percent or more of the principal *amount* of the *Qualifying Assets* of the *Primary ABS* if one *person controls* the other, is *controlled* by the other *person*, or is under common *control* with the *person*, provided that “*control*” for this purpose means ownership of more than 50 percent of the *person's* voting securities.

(iii) *Diversification rules for Demand Features and Guarantees.* The money market *fund* must be diversified with respect to *Demand Features* and *Guarantees Acquired* by the *fund* as provided in paragraphs (d)(3)(i), (d)(3)(iii) and (d)(3)(iv) of this section, other than with respect to a *Demand Feature* issued by the same institution that issued the underlying security, or with respect to a *Guarantee* or *Demand Feature* that is itself a *Government Security*.

(A) *General.* Immediately after the *Acquisition* of any *Demand Feature* or *Guarantee*, any security subject to a *Demand Feature* or *Guarantee*, or a security directly issued by the *issuer* of a *Demand Feature* or *Guarantee*, a money market *fund* must not have invested more than ten percent of its *Total Assets* in securities issued by or subject to *Demand Features* or *Guarantees* from the institution that issued the *Demand Feature* or *Guarantee*, subject to paragraphs (d)(3)(i) and (d)(3)(iii)(B) of this section.

(B) *Tax Exempt Funds.* Immediately after the *Acquisition* of any *Demand Feature* or *Guarantee*, any security subject to a *Demand Feature* or *Guarantee*, or a security directly issued by the *issuer* of a *Demand Feature* or *Guarantee* (any such *Acquisition*, a “*Demand Feature or Guarantee Acquisition*”), a tax exempt *fund*, with respect to eighty-five percent of its *Total Assets*, must not have invested more than ten percent of its *Total Assets* in securities issued by or subject to *Demand Features* or *Guarantees* from the institution that issued the *Demand Feature* or *Guarantee*; provided that any *Demand Feature or Guarantee Acquisition* in excess of ten percent of the *fund*’s *Total Assets* in accordance with this paragraph must be a *Demand Feature or Guarantee Issued by a Non-Controlled Person*.

(iv) *Demand feature and Guarantee diversification calculations.*

(A) *Fractional Demand Features or Guarantees.* In the case of a security subject to a *Demand Feature* or *Guarantee* from an institution by which the institution *Guarantees* a specified portion of the *value* of the security, the institution shall be deemed to *Guarantee* the specified portion thereof.

(B) *Layered Demand Features or Guarantees.* In the case of a security subject to *Demand Features* or *Guarantees* from multiple institutions that have not limited the extent of their obligations as described in paragraph (d)(3)(iv)(A) of this section, each institution shall be deemed to have provided the *Demand Feature* or *Guarantee* with respect to the entire principal *amount* of the security.

(v) *Diversification safe harbor.* A money market *fund* that satisfies the applicable diversification requirements of paragraphs (d)(3) and (e) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act and the rules adopted thereunder.

(4) *Portfolio liquidity.* The money market *fund* must hold securities that are sufficiently liquid to meet reasonably foreseeable *shareholder* redemptions in light of the

fund's obligations under section 22(e) of the Act and any commitments the *fund* has made to shareholders; provided, however, that:

- (i) *Illiquid Securities*. The money market *fund* may not *Acquire* any *Illiquid Security* if, immediately after the *Acquisition*, the money market *fund* would have invested more than five percent of its *Total Assets* in *Illiquid Securities*.
 - (ii) *Minimum daily liquidity requirement*. The money market *fund* may not *Acquire* any security other than a *Daily Liquid Asset* if, immediately after the *Acquisition*, the *fund* would have invested less than [ten]* [Compliance Date on or before April 2, 2024: twenty-five]] percent of its *Total Assets* in *Daily Liquid Assets*. This provision does not apply to *Tax Exempt Funds*.
 - (iii) *Minimum weekly liquidity requirement*. The money market *fund* may not *Acquire* any security other than a *Weekly Liquid Asset* if, immediately after the *Acquisition*, the *fund* would have invested less than [thirty]* [Compliance Date on or before April 2, 2024: fifty]] percent of its *Total Assets* in *Weekly Liquid Assets*.
- (e) *Demand Features and Guarantees not relied upon*. If the *fund*'s board of *directors* has determined that the *fund* is not relying on a *Demand Feature* or *Guarantee* to determine the quality (pursuant to paragraph (d)(2) of this section), or maturity (pursuant to paragraph (i) of this section), or liquidity of a portfolio security (pursuant to paragraph (d)(4) of this section), and maintains a record of this determination (pursuant to paragraphs (g)(3) and (h)(7) of this section), then the *fund* may disregard such *Demand Feature* or *Guarantee* for all purposes of this section.
- (f) *Defaults and other events*
- (1) *Adverse events*. Upon the occurrence of any of the events specified in paragraphs (f)(1)(i) through (iii) of this section with respect to a portfolio *security*, the *Money Market Fund* shall dispose of such *security* as soon as practicable consistent with achieving an orderly disposition of the *security*, by sale, exercise of any *Demand Feature* or otherwise, absent a finding by the *board of directors* that disposal of the portfolio *security* would not be in the best interests of the Money Market *Fund* (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio *security*):
 - (i) The default with respect to a portfolio *security* (other than an immaterial default unrelated to the financial condition of the issuer);
 - (ii) A portfolio *security* ceases to be an *Eligible Security* (e.g., no longer presents minimal credit risks); or
 - (iii) An *Event of Insolvency* occurs with respect to the *issuer* of a portfolio *security* or the provider of any *Demand Feature* or *Guarantee*.
 - (2) *Notice to the Commission*. The Money Market *Fund* must notify the *Commission* of the occurrence of certain material events, as specified in Form N-CR (§274.222 of this chapter).

* To be replaced by the following bracketed text.

(3) *Defaults for purposes of paragraphs (f)(1) and (2) of this section.* For purposes of paragraphs (f)(1) and (2) of this section, an instrument subject to a *Demand Feature* or *Guarantee* shall not be deemed to be in default (and an *Event of Insolvency* with respect to the security shall not be deemed to have occurred) if:

(i) In the case of an instrument subject to a *Demand Feature*, the *Demand Feature* has been exercised and the *fund* has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest;

(ii) The provider of the *Guarantee* is continuing, without protest, to make payments as due on the instrument; or

(iii) The provider of a *Guarantee* with respect to an *asset-backed security* pursuant to paragraph (a)(16)(ii) of this section is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the *asset-backed security* to make payments as due.

[Compliance date on or before April 2, 2024:

(4) *Notice to the board of directors.*

(i) The money market *fund* must notify its *board of directors* within one *business day* following the occurrence of:

(A) The money market *fund* investing less than twelve and a half percent of its total assets in *daily liquid assets*; or

(B) The money market *fund* investing less than twenty-five percent of its total assets in *weekly liquid assets*.

(ii) Following an event described in paragraph (f)(4)(i) of this section, the money market *fund* must provide its *board of directors* with a brief description of the facts and circumstances leading to such event within four *business days* after occurrence of the event.]

(g) *Required procedures.* The money market *fund's board of directors* must adopt written procedures including the following:

(1) *Funds using amortized cost.* In the case of a *Government or Retail Money Market Fund* that uses the *Amortized Cost Method* of valuation, in supervising the money market *fund's* operations and delegating special responsibilities involving portfolio management to the money market *fund's* investment adviser, the money market *fund's* board of *directors*, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market *fund's* investment objectives, to stabilize the money market *fund's* net asset *value per share*, as computed for the purpose of *distribution*, redemption and repurchase, at a single *value*.

(i) *Specific procedures.* Included within the procedures adopted by the *board of directors* shall be the following:

(A) *Shadow pricing.* Written procedures shall provide:

(1) That the extent of deviation, if any, of the *current net asset value per share* calculated using available market quotations (or an appropriate substitute that

reflects current market conditions) from the money market *fund's* amortized cost price per *share*, shall be calculated at least daily, and at such other intervals that the *board of directors* determines appropriate and reasonable in light of current market conditions;

(2) For the periodic review by the *board of directors* of the *amount* of the deviation as well as the methods used to calculate the deviation; and

(3) For the maintenance of records of the determination of deviation and the *board's* review thereof.

(B) *Prompt consideration of deviation.* In the event such deviation from the money market *fund's* amortized cost price per *share* exceeds 1/2 of 1 percent, the *board of directors* shall promptly consider what action, if any, should be initiated by the *board of directors*.

(C) *Material dilution or unfair results.* Where the *board of directors* believes the extent of any deviation from the money market *fund's* amortized cost price per *share* may result in *material* dilution or other unfair results to investors or existing *shareholders*, it shall cause the *fund* to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(ii) [Reserved]

(2) *Funds using penny rounding.* In the case of a *Government or Retail Money Market Fund* that uses the penny rounding method of pricing, in supervising the money market *fund's* operations and delegating special responsibilities involving portfolio management to the money market *fund's* investment adviser, the money market *fund's* board of *directors*, as a particular responsibility within the overall duty of care owed to its *shareholders*, must establish written procedures reasonably designed, taking into account current market conditions and the money market *fund's* investment objectives, to assure to the extent reasonably practicable that the money market *fund's* price per *share* as computed for the purpose of *distribution*, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the *board of directors*.

(3) *Ongoing Review of Credit Risks.* The written procedures must require the adviser to provide ongoing review of whether each *security* (other than a *Government Security*) continues to present minimal credit risks. The review must:

(i) Include an assessment of each *security's* credit quality, including the capacity of the *issuer* or *guarantor* (including *Conditional Demand Feature* provider, when applicable) to meet its financial obligations; and

(ii) Be based on, among other things, financial data of the issuer of the portfolio *security* or provider of the *Guarantee* or *Demand Feature*, as the case may be, and in

the case of a *security* subject to a *Conditional Demand Feature*, the *issuer* of the security whose financial condition must be monitored under paragraph (d)(2)(iii) of this section, whether such data is publicly available or provided under the terms of the *security's* governing documents.

(4) *Securities subject to Demand Features or Guarantees.* In the case of a security subject to one or more *Demand Features* or *Guarantees* that the *fund's board of directors* has determined that the *fund* is not relying on to determine the quality (pursuant to paragraph (d)(2) of this section), maturity (pursuant to paragraph (i) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the security subject to the *Demand Feature* or *Guarantee*, written procedures must require periodic evaluation of such determination.

(5) *Adjustable rate securities without Demand Features.* In the case of a *Variable Rate* or *Floating Rate Security* that is not subject to a *Demand Feature* and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market *value* that approximates its amortized cost *value*.

(6) *Ten Percent Obligor of Asset-Backed Securities.* In the case of an *Asset-Backed Security*, written procedures must require the *fund* to periodically determine the number of *Ten Percent Obligors* (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the *issuers* of all or a portion of the *Asset-Backed Security* for purposes of paragraph (d)(3)(ii)(D) of this section; provided, however, written procedures need not require periodic determinations with respect to any *Asset-Backed Security* that a *fund's board of directors* has determined, at the time of *Acquisition*, will not have, or is unlikely to have, *Ten Percent Obligors* that are deemed to be *issuers* of all or a portion of that *Asset-Backed Security* for purposes of paragraph (d)(3)(ii)(D) of this section, and maintains a record of this determination.

(7) *Asset-Backed Securities not subject to Guarantees.* In the case of an *Asset-Backed Security* for which the *fund's board of directors* has determined that the *fund* is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support in connection with the *Asset-Backed Security* to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the *Asset-Backed Security*, written procedures must require periodic evaluation of such determination.

(8) *Stress Testing.* Written procedures must provide for:

(i) *General.* The periodic stress testing, at such intervals as the *board of directors* determines appropriate and reasonable in light of current market conditions, of the money market *fund's* ability to [have invested at least ten percent of its *Total Assets* in *Weekly Liquid Assets,*]* [Compliance date on or before April 2, 2024: maintain the sufficient liquidity levels identified in its written procedures] and the *fund's* ability to minimize principal volatility (and, in the case of a money market *fund* using the *Amortized Cost Method* of valuation or penny rounding method of pricing as provided in paragraph (c)(1) of this section, the *fund's* ability to maintain the stable price per *share* established

* To be replaced by the following bracketed text.

by the *board of directors* for the purpose of *distribution*, redemption and repurchase), based upon specified hypothetical events that include, but are not limited to:

(A) Increases in the general level of short-term interest rates, in combination with various levels of an increase in *shareholder* redemptions;

(B) An event indicating or evidencing credit deterioration, such as a downgrade or *default* of particular portfolio security positions, each representing various portions of the *fund's* portfolio (with varying assumptions about the resulting loss in the *value* of the security), in combination with various levels of an increase in shareholder redemptions;

(C) A widening of spreads compared to the indexes to which portfolio securities are tied in various sectors in the *fund's* portfolio (in which a sector is a logically related subset of portfolio securities, such as securities of *issuers* in similar or related industries or geographic region or securities of a similar security type), in combination with various levels of an increase in shareholder redemptions; and

(D) Any additional combinations of events that the adviser deems relevant.

(ii) A report on the results of such testing to be provided to the board of *directors* at its next regularly scheduled meeting (or sooner, if appropriate in light of the results), which report must include:

(A) The date(s) on which the testing was performed and an assessment of the money market *fund's* ability to [have invested at least ten percent of its *Total Assets* in *Weekly Liquid Assets*]* [Compliance date on or before April 2, 2024: maintain the sufficient liquidity levels identified in written procedures] and to minimize principal volatility (and, in the case of a money market *fund* using the *Amortized Cost Method* of valuation or penny rounding method of pricing as provided in paragraph (c)(1) of this section to maintain the stable price per *share* established by the *board of directors*); and

(B) An assessment by the *fund's* adviser of the *fund's* ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year, including such information as may reasonably be necessary for the *board of directors* to evaluate the stress testing conducted by the adviser and the results of the testing. The *fund* adviser must include a summary of the significant assumptions made when performing the stress tests.

(h) *Recordkeeping and reporting.*

(1) *Written procedures.* For a period of not less than six years following the replacement of existing procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in this section must be maintained and preserved.

(2) *Board considerations and actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record must be maintained and preserved of the *board of directors'* considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the *board of directors'* meetings.

* To be replaced by the following bracketed text.

(3) *Credit risk analysis.* For a period of not less than three years from the date that the credit risks of a portfolio *security* were most recently reviewed, a written record must be maintained and preserved in an easily accessible place of the determination that a portfolio *security* is an *Eligible Security*, including the determination that it presents minimal credit risks at the time the fund *acquires* the *security*, or at such later times (or upon such events) that the *board of directors* determines that the investment adviser must reassess whether the *security* presents minimal credit risks.

(4) *Determinations with respect to adjustable rate securities.* For a period of not less than three years from the date when the assessment was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determination required by paragraph (g)(5) of this section (that a *Variable Rate* or *Floating Rate Security* that is not subject to a *Demand Feature* and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market *value* that approximates its amortized cost).

(5) *Determinations with respect to Asset-Backed Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (g)(6) of this section (the number of *Ten Percent Obligors* (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the *issuers* of all or a portion of the *Asset-Backed Security* for purposes of paragraph (d)(3)(ii)(D) of this section). The written record must include:

(i) The identities of the *Ten Percent Obligors* (as that term is used in paragraph (d)(3)(ii)(D) of this section), the percentage of the *Qualifying Assets* constituted by the securities of each *Ten Percent Obligor* and the percentage of the *fund's Total Assets* that are invested in securities of each *Ten Percent Obligor*; and

(ii) Any determination that an *Asset-Backed Security* will not have, or is unlikely to have, *Ten Percent Obligors* deemed to be *issuers* of all or a portion of that *Asset-Backed Security* for purposes of paragraph (d)(3)(ii)(D) of this section.

(6) *Evaluations with respect to Asset-Backed Securities not subject to Guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(7) of this section (regarding *Asset-Backed Securities* not subject to *Guarantees*).

(7) *Evaluations with respect to securities subject to Demand Features or Guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(4) of this section (regarding securities subject to one or more *Demand Features* or *Guarantees*).

(8) *Reports with respect to stress testing.* For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (g)(8)(ii) of this section must be maintained and preserved.

(9) *Inspection of records.* The documents preserved pursuant to paragraph (h) of this section are subject to inspection by the Commission in accordance with section 31(b) of

the Act as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

(10) *Website disclosure of portfolio holdings and other fund information.*—The money market *fund* must post prominently on its website the following information:

(i) For a period of not less than six months, beginning no later than the fifth *Business Day* of the month, a schedule of its investments, as of the last *Business Day* or subsequent calendar day of the preceding month, that includes the following information:

(A) With respect to the money market *fund* and each class of redeemable *shares* thereof:

(1) The *WAM*; and

(2) The *WAL*.

(B) With respect to each security held by the money market *fund*:

(1) Name of the *issuer*;

(2) Category of investment (indicate the category that identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt [if categorized as coupon paying notes; U.S. Government Agency debt if categorized as no-coupon discount notes];*; Non-U.S. Sovereign, Sub-Sovereign and Supra-National debt; Certificate of Deposit; Non-Negotiable Time Deposit; Variable Rate Demand Note; Other Municipal Security; Asset Backed Commercial Paper; Other Asset Backed Securities; U.S. Treasury Repurchase Agreement, if collateralized only by U.S. Treasuries (including Strips) and cash; U.S. Government Agency Repurchase Agreement, collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash; Other Repurchase Agreement, if any collateral falls outside Treasury, Government Agency and cash; Insurance Company Funding Agreement; Investment Company; Financial Company Commercial Paper; and Non-Financial Company Commercial Paper [and Other Instrument]. If Other Instrument, include a brief description);

* [Bracketed items have compliance date of June 11, 2024]

(3) CUSIP number (if any);

(4) Principal *amount*;

(5) The maturity date determined by taking into account the maturity shortening provisions in paragraph (i) of this section (*i.e.*, the maturity date used to calculate *WAM* under paragraph (d)(1)(ii) of this section);

(6) The maturity date determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (*i.e.*, the maturity date used to calculate *WAL* under paragraph (d)(1)(iii) of this section);

(7) Coupon or yield; and

(8) *Value*.

(ii) A schedule, chart, graph, or other depiction, which must be updated each *Business Day* as of the end of the preceding *Business Day*, showing, as of the end of each *Business Day* during the preceding six months:

(A) The percentage of the money market *fund's Total Assets* invested in *Daily Liquid Assets*;

(B) The percentage of the money market *fund*'s *Total Assets* invested in *Weekly Liquid Assets*; and

(C) The money market *fund*'s net inflows or outflows.

(iii) A schedule, chart, graph, or other depiction showing the money market *fund*'s net asset *value per share* (which the *fund* must calculate based on current market factors before applying the amortized cost or *Penny-Rounding Method*, if used), rounded to the fourth decimal place in the case of *funds* with a \$1.0000 *share* price or an equivalent level of accuracy for *funds* with a different *share* price (e.g., \$10.000 per *share*), as of the end of each *Business Day* during the preceding six months, which must be updated each *Business Day* as of the end of the preceding *Business Day*.

(iv) A link to a website of the Securities and Exchange Commission where a user may obtain the most recent 12 months of publicly available information filed by the money market *fund* pursuant to Rule 30b1-7.

(v) For a period of not less than one year, beginning no later than the same *Business Day* on which the money market *fund* files an initial report on Form N-CR (§274.222 of this chapter) in response to the occurrence of any event specified in Part C, [E, F, or G]* of Form N-CR, the same information that the money market *fund* is required to report to the Commission on Part C (Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7), [Part E (Items E.1, E.2, E.3, and E.4), Part F (Items F.1 and F.2), or Part G]* of Form N-CR concerning such event, along with the following statement: "The Fund was required to disclose additional information about this event on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's internet site at <https://www.sec.gov>."

(11) *Processing of transactions.* A *Government Money Market Fund* and a *Retail Money Market Fund* (or its transfer agent) must have the capacity to redeem and sell securities issued by the *fund* at a price based on the *current net asset value per share* pursuant to Rule 22c-1. Such capacity must include the ability to redeem and sell securities at prices that do not correspond to a stable price per *share*.

(i) *Maturity of portfolio securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the *fund*'s interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal *amount* must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption *payment* must be made, except as provided in paragraphs (i)(1) through (i)(8) of this section:

(1) *Adjustable rate government securities.* A *Government Security* that is a *Variable Rate* security where the *Variable Rate* of interest is readjusted no less frequently than

* [Bracketed items to be deleted effective June 11, 2024]

every 397 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A *Government Security* that is a *Floating Rate Security* shall be deemed to have a remaining maturity of one day.

(2) *Short-term Variable Rate securities.* A *Variable Rate* security, the principal *amount* of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal *amount* can be recovered through demand.

(3) *Long-term Variable Rate securities.* A *Variable Rate* security, the principal *amount* of which is scheduled to be paid in more than 397 calendar days, that is subject to a *Demand Feature*, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal *amount* can be recovered through demand.

(4) *Short-term floating rate securities.* A *Floating Rate Security*, the principal *amount* of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day, except for purposes of determining *WAL* under paragraph (d)(1)(iii) of this section, in which case it shall be deemed to have a maturity equal to the period remaining until the principal *amount* can be recovered through demand.

(5) *Long-term floating rate securities.* A *Floating Rate Security*, the principal *amount* of which is scheduled to be paid in more than 397 calendar days, that is subject to a *Demand Feature*, shall be deemed to have a maturity equal to the period remaining until the principal *amount* can be recovered through demand.

(6) *Repurchase agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio lending agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money market fund securities.* An investment in a money market *fund* shall be treated as having a maturity equal to the period of time within which the *Acquired* money market *fund* is required to make *payment* upon redemption, unless the *Acquired* money market *fund* has agreed in writing to provide redemption proceeds to the investing money market *fund* within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(j) *Delegation.* The Money Market *Fund's board of directors* may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be

made by the *board of directors* under this section other than the determinations required by paragraphs (c)(1) (board findings), (c)(3)(i) and (ii) (Share Cancellation), (f)(1) (adverse events), (g)(1) and (2) (amortized cost and penny rounding procedures), and (g)(8) (stress testing procedures) of this section.

(1) *Written guidelines.* The *board of directors* must establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraphs (d)(2) and (g)(3) of this section and guidelines for determining the application and size of liquidity fees as required in paragraph (c)(2) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The *board of directors* must take any measures reasonably necessary (through periodic reviews of *fund* investments and the delegate's procedures in connection with investment decisions periodic review of the delegate's liquidity fee determinations under paragraph (c)(2) of this section, and prompt review of the adviser's actions in the event of the default of a security or *Event of Insolvency* with respect to the *issuer* of the *security* or any *Guarantee* or *Demand Feature* to which it is subject that requires notification of the *Commission* under paragraph (f)(2) of this section by reference to Form N-CR (§274.222 of this chapter)) to assure that the guidelines and procedures are being followed.

Rule 2a19-1 [Reserved]

Rule 2a19-2 Investment company general partners not deemed interested persons.

Preliminary Note: This rule 2a19-2 conditionally excepts from the definition of *interested person* in section 2(a)(19) of the Investment Company Act of 1940 general partners of *investment companies* organized in limited partnership form. Compliance with the conditions of this rule 2a19-2 does not relieve an *investment company* of any other requirement of this Act, or except a general partner that is an *interested person* by virtue of any other provision.

(a) *Director General Partners Not Deemed Interested Persons.* A general partner serving as a *director* of a *limited partnership investment company* shall not be deemed to be an *interested person* of such company, or of any *investment adviser* of, or *principal underwriter* for, such company, solely by reason of being a partner of the *limited partnership investment company*, or a copartner in the *limited partnership investment company* with any *investment adviser* of, or *principal underwriter* for, the company, provided that the Limited *Partnership Agreement* contains in substance the following:

(1) Only general partners who are natural *persons* shall serve as, and perform the functions of, *directors* of the *Limited Partnership Investment Company*, except that any general partner may act as provided in paragraph (a)(2)(iii) of this rule.

(2) A general partner shall not have the authority to act individually on behalf of, or to bind, the *Limited Partnership Investment Company*, except:

(i) in such *person's* capacity as *investment adviser*, *principal underwriter*, or *administrator*;

(ii) within the scope of such *person's* authority as delegated by the board of *directors*; or

(iii) in the event that no *director* of the company remains, to the extent necessary to continue the *Limited Partnership Investment Company*, for such limited periods as are permitted under the Act to fill *director* vacancies.

(3) Limited partners shall have all of the rights afforded shareholders under the Act. If a limited partnership interest is transferred in a manner that is effective under the *Partnership Agreement*, the transferee shall have all of the rights afforded shareholders under the Act.

(4) A general partner shall not withdraw from the *Limited Partnership Investment Company* or reduce its *Federal Tax Status Contribution* without giving at least one year's prior written notice to the *Limited Partnership Investment Company*, if such withdrawal or reduction is likely to cause the company to lose its partnership tax classification. This paragraph (a)(4) shall not apply to an *investment adviser* general partner if the company terminates its advisory agreement with such general partner.

(b) **Definitions.** (1) "*Federal Tax Status Contribution*" shall mean the interest (including limited partnership interest) in each *material* item of partnership income, gain, loss, deduction, or credit, and other contributions, required to be held or made by general partners, pursuant to section 4 of Internal Revenue Service Revenue Procedure 89-12, or any successor provisions thereto.

(2) "*Limited Partnership Investment Company*" shall mean a registered *management company* or a *business development company* that is organized as a limited partnership under state law.

(3) "*Partnership Agreement*" shall mean the agreement of the partners of the *Limited partnership investment company* as to the affairs of the limited partnership and the conduct of its business.

Rule 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 Investment Company Act of 1940.

Rule 2a41-1 *Valuation of standby commitments by registered investment companies.*

(a) A *standby commitment* means a right to sell a specified *Underlying security* or securities within a *specified period* of time and at an exercise price equal to the amortized cost of the

Underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred or assigned only with the *Underlying security* or securities. A *standby commitment* entitles the holder to receive same day settlement, and will be considered to be from the party to whom the *investment company* will look for *payment* of the exercise price. A *standby commitment* may be assigned a fair *value* of zero, Provided, That:

- (1) The *standby commitment* is not used to affect the company's valuation of the security or securities underlying the *standby commitment*; and
- (2) Any consideration paid by the company for the *standby commitment*, whether paid in cash or by paying a premium for the *Underlying security* or securities, is accounted for by the company as unrealized depreciation until the *standby commitment* is exercised or expires.

Rule 2a-46 *Certain issuers as eligible portfolio companies.*

The term *eligible portfolio company* shall include any issuer that meets the requirements set forth in paragraphs (A) and (B) of section 2(a)(46) of the Act and that:

- (a) Does not have any class of securities listed on a national securities exchange; or
- (b) Has a class of securities listed on a national securities exchange, but has an aggregate market value of outstanding voting and non-voting common equity of less than \$250 million. For purposes of this paragraph:
 - (1) The *aggregate market value* of an issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of acquisition of its securities by a business development company; and
 - (2) *Common equity* has the same meaning as in 17 CFR 230.405.

Rule 2a51-1 *Definition of investments for purposes of section 2(a)(51) (definition of "qualified purchaser"); certain calculations.*

- (a) **Definitions.** As used in this section:
 - (1) The term "*Commodity Interests*" means commodity futures contracts, options on commodity futures contracts, and options on *physical commodities* traded on or subject to the rules of:
 - (i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or
 - (ii) Any board of trade or *exchange* outside the United States, as contemplated in Part 30 of the rules under the Commodity Exchange Act.

- (2) The term “*Family Company*” means a company described in paragraph (A)(ii) of section 2(a)(51) of the Investment Company Act of 1940.
- (3) The term “*Investment Vehicle*” means an *investment company*, a company that would be an *investment company* but for the exclusions provided by sections 3(c)(1) through 3(c)(9) of the Act or the exemptions provided by rule 3a-6 or rule 3a-7, or a *commodity pool*.
- (4) The term “*Investments*” has the meaning set forth in paragraph (b) of this rule.
- (5) The term “*Physical Commodity*” means any *physical commodity* with respect to which a Commodity interest is traded on a market specified in paragraph (a)(1) of this rule.
- (6) The term “*Prospective Qualified Purchaser*” means a *person* seeking to purchase a security of a *Section 3(c)(7) Company*.
- (7) The term “*Public Company*” means a company that:
- (i) Files reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934; or
 - (ii) Has a class of securities that are listed on a “designated offshore securities market” as such term is defined by Regulation S under the Securities Act of 1933.
- (8) The term “*Related Person*” means a *person* who is related to a *Prospective Qualified Purchaser* as a sibling, spouse or former spouse, or is a direct lineal descendant or ancestor by birth or adoption of the *Prospective Qualified Purchaser*, or is a spouse of such descendant or ancestor, *provided that*, in the case of a *Family company*, a *Related Person* includes any owner of the *Family Company* and any *Person* who is a *Related Person* of such owner.
- (9) The term “*Relying Person*” means a *Section 3(c)(7) Company* or a *Person* acting on its behalf.
- (10) The term “*Section 3(c)(7) Company*” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(7) of the Act.
- (b) **Types of Investments.** For purposes of section 2(a)(51) of the Act, the term “*Investments*” means:
- (1) Securities (as defined by section 2(a)(1) of the Securities Act of 1933), other than securities of an *issuer* that *controls*, is *controlled* by, or is under common *control* with, the *Prospective Qualified Purchaser* that owns such securities, unless the *issuer* of such securities is:
 - (i) An *Investment Vehicle*;
 - (ii) A *Public Company*; or
 - (iii) A company with shareholders’ equity of not less than \$50 million (determined in accordance with generally accepted accounting principles) as reflected on the compa-

ny's most recent financial statements, *provided that* such financial statements present the information as of a date within 16 months preceding the date on which the *Prospective Qualified Purchaser* acquires the securities of a *Section 3(c)(7) Company*;

(2) Real estate held for investment purposes;

(3) *Commodity Interests* held for investment purposes;

(4) *Physical Commodities* held for investment purposes;

(5) To the extent not securities, *financial contracts* (as such term is defined in section 3(c)(2)(B)(ii) of the Act) entered into for investment purposes;

(6) In the case of a *Prospective Qualified Purchaser* that is a *Section 3(c)(7) Company*, a company that would be an *investment company* but for the exclusion provided by section 3(c)(1) of the Act, or a *commodity pool*, any *amounts* payable to such *Prospective Qualified Purchaser* pursuant to a firm agreement or similar binding commitment pursuant to which a *person* has agreed to acquire an interest in, or make capital contributions to, the *Prospective Qualified Purchaser* upon the demand of the *Prospective Qualified Purchaser*; and

(7) Cash and cash equivalents (including foreign currencies) held for investment purposes. For purposes of this section, cash and cash equivalents include:

(i) *Bank* deposits, certificates of deposit, *bankers* acceptances and similar *bank* instruments held for investment purposes; and

(ii) The net *cash surrender value* of an insurance policy.

(c) **Investment Purposes.** For purposes of this section:

(1) Real estate shall not be considered to be held for investment purposes by a *Prospective Qualified Purchaser* if it is used by the *Prospective Qualified Purchaser* or a Related *person* for *personal* purposes or as a *place of business*, or in connection with the conduct of the trade or business of the *Prospective Qualified Purchaser* or a *Related Person*, *provided that* real estate owned by a *Prospective Qualified Purchaser* who is engaged primarily in the business of investing, trading or developing real estate in connection with such business may be deemed to be held for investment purposes. Residential real estate shall not be deemed to be used for personal purposes if deductions with respect to such real estate are not disallowed by section 280A of the Internal Revenue Code.

(2) A Commodity interest or *Physical Commodity* owned, or a *financial contract* entered into, by the *Prospective Qualified Purchaser* who is engaged primarily in the business of investing, reinvesting, or trading in *Commodity Interests*, *Physical Commodities* or *financial contracts* in connection with such business may be deemed to be held for investment purposes.

(d) **Valuation.** For purposes of determining whether a *Prospective Qualified Purchaser* is a *qualified purchaser*, the aggregate *amount* of *Investments* owned and invested on a dis-

cretionary basis by the *Prospective Qualified Purchaser* shall be the *Investments'* fair market *value* on the most recent practicable date or their cost, *provided that*:

(1) In the case of *Commodity Interests*, the *amount* of *Investments* shall be the *value* of the initial margin or option premium deposited in connection with such *Commodity Interests*; and

(2) In each case, there shall be deducted from the *amount* of *Investments* owned by the *Prospective Qualified Purchaser* the *amounts* specified in paragraphs (e) and (f) of this rule, as applicable.

(e) **Deductions.** In determining whether any *person* is a *qualified purchaser* there shall be deducted from the *amount* of such *person's Investments* the *amount* of any outstanding indebtedness incurred to *acquire* or for the purpose of acquiring the *Investments* owned by such *person*.

(f) **Deductions: Family Companies.** In determining whether a *Family Company* is a *qualified purchaser*, in addition to the *amounts* specified in paragraph (e) of this rule, there shall be deducted from the *value* of such *Family company's Investments* any outstanding indebtedness incurred by an owner of the *Family company* to *acquire* such *Investments*.

(g) **Special Rules for Certain Prospective Qualified Purchasers.**

(1) *Qualified Institutional Buyers.* Any *Prospective Qualified Purchaser* who is, or who a *Relying Person* reasonably believes is, a qualified institutional buyer as defined in paragraph (a) of Rule 144A under the Securities Act of 1933, acting for its own account, the account of another qualified institutional buyer, or the account of a *qualified purchaser*, shall be deemed to be a *qualified purchaser* *provided*:

(i) That a *dealer* described in paragraph (a)(1)(ii) of Rule 144A shall own and invest on a discretionary basis at least \$25 million in securities of *issuers* that are not *affiliated persons* of the *dealer*; and

(ii) That a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(i)(E) of Rule 144A, or a trust fund referred to in paragraph (a)(1)(i)(F) of Rule 144A that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.

(2) *Joint Investments.* In determining whether a natural *person* is a *qualified purchaser*, there may be included in the *amount* of such *person's Investments* any *Investments* held jointly with such *person's* spouse, or *Investments* in which such *person shares* with such *person's* spouse a community property or similar shared ownership interest. In determining whether spouses who are making a joint investment in a *Section 3(c)(7) Company* are *qualified purchasers*, there may be included in the *amount* of each spouse's *Investments* any *Investments* owned by the other spouse (whether or not such *Investments* are held

jointly). In each case, there shall be deducted from the *amount* of any such *Investments* the *amounts* specified in paragraph (e) of this section incurred by each spouse.

(3) *Investments by Subsidiaries.* For purposes of determining the *amount* of *Investments* owned by a company under section 2(a)(51)(A)(iv) of the Act, there may be included *Investments* owned by *majority-owned subsidiaries* of the company and *Investments* owned by a company (“*Parent Company*”) of which the company is a *majority-owned subsidiary*, or by a *majority-owned subsidiary* of the company and other *majority-owned subsidiaries* of the *Parent Company*.

(4) *Certain Retirement Plans and Trusts.* In determining whether a natural *person* is a *qualified purchaser*, there may be included in the *amount* of such *person’s Investments* any *Investments* held in an individual retirement account or similar account the *Investments* of which are directed by and held for the benefit of such *person*.

(h) **Reasonable Belief.** The term “*qualified purchaser*” as used in section 3(c)(7) of the Act means any *person* that meets the definition of *qualified purchaser* in section 2(a)(51)(A) of the Act and the rules thereunder, or that a *Relying Person* reasonably believes meets such definition.

Rule 2a51-2 Definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests.

(a) **Beneficial ownership: General** Except as set forth in this section, for purposes of sections 2(a)(51)(C) and 3(c)(7)(B)(ii) of the Investment Company Act of 1940, the *beneficial owners* of securities of an excepted *investment company* (as defined in section 2(a)(51)(C) of the Act) shall be determined in accordance with section 3(c)(1) of the Act.

(b) **Beneficial ownership: Grandfather Provision.** For purposes of section 3(c)(7)(B)(ii) of the Act, securities of an *issuer* beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act) (“owning company”) shall be deemed to be beneficially owned by one *person* unless:

- (1) The owning company is an *investment company* or an excepted *investment company*;
- (2) The owning company, directly or indirectly, *controls*, is *controlled* by, or is under common *control* with, the *issuer*; and
- (3) On October 11, 1996, under section 3(c)(1)(A) of the Act as then in effect, the *Voting securities* of the *issuer* were deemed to be beneficially owned by the holders of the owning company’s outstanding securities (other than *short-term paper*), in which case, such holders shall be deemed to be *beneficial owners* of the *issuer’s* outstanding *Voting securities*.

(c) **Beneficial ownership: Consent Provision.** For purposes of section 2(a)(51)(C) of the Act, securities of an excepted *investment company* beneficially owned by a company

(without giving effect to section 3(c)(1)(A) of the Act) (“owning company”) shall be deemed to be beneficially owned by one *person* unless:

(1) The owning company is an excepted *investment company*;

(2) The owning company directly or indirectly *controls*, is *controlled* by, or is under common *control* with, the excepted *investment company* or the company with respect to which the excepted *investment company* is, or will be, a *qualified purchaser*; and

(3) On April 30, 1996, under section 3(c)(1)(A) of the Act as then in effect, the *Voting securities* of the excepted *investment company* were deemed to be beneficially owned by the holders of the owning company’s outstanding securities (other than *short-term paper*), in which case the holders of such excepted company’s securities shall be deemed to be *beneficial owners* of the excepted *investment company*’s outstanding *Voting securities*.

(d) **Indirect Ownership: Consent Provision.** For purposes of section 2(a)(51)(C) of the Act, an excepted *investment company* shall not be deemed to indirectly own the securities of an excepted *investment company* seeking a consent to be treated as a *qualified purchaser* (“*qualified purchaser* company”) unless such excepted *investment company*, directly or indirectly, *controls*, is *controlled* by, or is under common *control* with, the *qualified purchaser* company or a company with respect to which the *qualified purchaser* company is or will be a *qualified purchaser*.

(e) **Required Consent: Consent Provision.** For purposes of section 2(a)(51)(C) of the Act, the consent of the *beneficial owners* of an excepted *investment company* (“owning company”) that beneficially owns securities of an excepted *investment company* that is seeking the consents required by section 2(a)(51)(C) (“consent company”) shall not be required unless the owning company directly or indirectly *controls*, is *controlled* by, or is under common *control* with, the consent company or the company with respect to which the consent company is, or will be, a *qualified purchaser*.

Notes to rule 2a51-2.

(1) On both April 30, 1996 and October 11, 1996, section 3(c)(1)(A) of the Act as then in effect provided that:

(A) *Beneficial ownership* by a company shall be deemed to be *beneficial ownership* by one *person*, except that, if the company owns 10 per centum or more of the outstanding *Voting securities* of the *issuer*, the *beneficial ownership* shall be deemed to be that of the holders of such company’s outstanding securities (other than *short-term paper*) unless, as of the date of the most recent *acquisition* by such company of securities of that *issuer*, the *value* of all securities owned by such company of all *issuers* which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of *investment company* solely by this paragraph, does not exceed 10 per centum of the *value* of the company’s *Total assets*. Such *issuer* nonetheless is deemed to be an *investment company* for purposes of section 12(d)(1).

(2) *Issuers* seeking the consent required by section 2(a)(51)(C) of the Act should note that section 2(a)(51)(C) requires an *issuer* to obtain the consent of the *beneficial owners* of its securities and the *beneficial owners* of securities of any “excepted *investment company*” that directly or indirectly owns the securities of the *issuer*. Except as set forth in paragraphs (d) (with respect to indirect owners) and (e) (with respect to direct owners) of this section, nothing in this section is designed to limit this consent requirement.

Rule 2a51-3 Certain companies as qualified purchasers.

(a) For purposes of section 2(a)(51)(A)(ii) and (iv) of the Investment Company Act of 1940, a company shall not be deemed to be a *qualified purchaser* if it was formed for the specific purpose of acquiring the securities offered by a company excluded from the definition of *investment company* by section 3(c)(7) of the Act unless each *beneficial owner* of the company’s securities is a *qualified purchaser*.

(b) For purposes of section 2(a)(51) of the Act, a company may be deemed to be a *qualified purchaser* if each *beneficial owner* of the company’s securities is a *qualified purchaser*.

Section 3. Definition of *investment company*. [15 U.S.C. 80a-3]

(a)(1) When used in this title, “*investment company*” means any *issuer* which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing *face amount certificates* of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire *investment securities* having a *value* exceeding 40 per centum of the *value* of such *issuer’s total assets* (exclusive of Government securities and cash items) on an unconsolidated basis.

(2) As used in this section, “*investment securities*” includes all securities except (A) Government securities, (B) securities issued by *employees’ securities companies*, and (C) securities issued by *majority-owned subsidiaries* of the owner which (i) are not *investment companies*, and (ii) are not relying on the exception from the definition of *investment company* in paragraph (1) or (7) of subsection (c).

(b) Notwithstanding paragraph (1)(C) of subsection (a), none of the following *persons* is an *investment company* within the meaning of this title:

(1) Any *issuer* primarily engaged, directly or through a *wholly-owned subsidiary* or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

(2) Any *issuer* which the Commission, upon application by such *issuer*, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, re-investing, owning, holding, or trading in securities either directly or (A) through *majority-owned subsidiaries* or (B) through *controlled* companies conducting similar types of businesses. The filing of an application under this paragraph in good faith by an *issuer* other than a registered *investment company* shall exempt the applicant for a period of sixty days from all provisions of this title applicable to *investment companies* as such. For cause shown, the Commission by order may extend such period of exemption for an additional period or periods. Whenever the Commission, upon its own motion or upon application, finds that the circumstances which gave rise to the issuance of an order granting an application under this paragraph no longer exist, the Commission shall by order revoke such order.

(3) Any *issuer* all the outstanding securities of which (other than *short-term paper* and *directors'* qualifying shares) are directly or indirectly owned by a company excepted from the definition of *investment company* by paragraph (1) or (2) of this subsection.

(c) Notwithstanding subsection (a), none of the following *persons* is an *investment company* within the meaning of this title:

(1) Any *issuer* whose outstanding securities (other than *short-term paper*) are beneficially owned by not more than one hundred *persons* (or, in the case of a qualifying venture capital fund, 250 persons) and which is not making and does not presently propose to make a public offering of its securities. Such *issuer* shall be deemed to be an *investment company* for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other *acquisition* by such *issuer* of any security issued by any registered *investment company* and the sale of any security issued by any registered open-end *investment company* to any such *issuer*. For purposes of this paragraph:

(A) *Beneficial ownership* by a company shall be deemed to be *beneficial ownership* by one *person*, except that, if the company owns 10 per centum or more of the outstanding *Voting securities* of the *issuer*, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an *investment company*, the *beneficial ownership* shall be deemed to be that of the holders of such company's outstanding securities (other than *short-term paper*).

(B) *Beneficial ownership* by any *person* who acquires securities or interests in securities of an *issuer* described in the first sentence of this paragraph shall be deemed to be *beneficial ownership* by the *person* from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, where the transfer was caused by legal separation, divorce, death, or other involuntary event.

(C)

(i) The term “*qualifying venture capital fund*” means a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital, with such dollar amount to be indexed for inflation once every 5 years by the Commission, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest \$1,000,000.

(ii) The term “*venture capital fund*” has the meaning given the term in Rule 203(l)-1 of the Investment Advisers Act of 1940, or any successor regulation.

(2)(A) Any *person* primarily engaged in the business of underwriting and distributing securities issued by other *persons*, selling securities to customers, acting as *broker*, and acting as *market intermediary*, or any one or more of such activities, whose gross income normally is derived principally from such business and related activities.

(B) For purposes of this paragraph—

(i) the term “*market intermediary*” means any *person* that regularly holds itself out as being willing contemporaneously to engage in, and that is regularly engaged in, the business of entering into transactions on both sides of the market for a *financial contract* or one or more such *financial contracts*; and

(ii) the term “*financial contract*” means any arrangement that—

(I) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by *participants* in the financial markets;

(II) is in respect of securities, commodities, currencies, interest or other rates, other measures of *value*, or any other financial or economic interest similar in purpose or function to any of the foregoing; and

(III) is entered into in response to a request from a counter party for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counter party to such arrangement.

(3) Any *bank* or *insurance company*; any *savings and loan association*, building and loan association, cooperative *bank*, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or *person* thereof or therefor; or any *common trust fund* or similar *fund* maintained by a *bank* exclusively for the collective investment and reinvestment of moneys contributed thereto by the *bank* in its capacity as a trustee, executor, *administrator*, or guardian if—

(A) such *fund* is employed by the *bank* solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

- (B) except in connection with the ordinary advertising of the *bank's* fiduciary services, interests in such *fund* are not—
- (i) advertised; or
 - (ii) offered for sale to the general public; and
- (C) fees and expenses charged by such *fund* are not in contravention of fiduciary principles established under applicable Federal or State law.
- (4) Any *person* substantially all of whose business is confined to making small loans, industrial *banking*, or similar businesses.
- (5) Any *person* who is not engaged in the business of issuing *redeemable securities, face-amount certificates* of the installment type or periodic *payment* plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to *prospective purchasers* of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.
- (6) Any company primarily engaged, directly or through *majority-owned subsidiaries*, in one or more of the businesses described in paragraphs (3), (4), and (5) or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last *fiscal year* was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding, or trading in securities.
- (7)(A) Any *issuer*, the outstanding securities of which are owned exclusively by *persons* who, at the time of acquisition of such securities, are *qualified purchasers*, and which is not making and does not at that time propose to make a public offering of such securities. Securities that are owned by *persons* who received the securities from a *qualified purchaser* as a gift or bequest, or in a case in which the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a *qualified purchaser*, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
- (B) Notwithstanding subparagraph (A), an *issuer* is within the exception provided by this paragraph if—
- (i) in addition to *qualified purchasers*, outstanding securities of that *issuer* are beneficially owned by not more than 100 *persons* who are not *qualified purchasers*, if—
 - (I) such *persons* acquired any portion of the securities of such *issuer* on or before September 1, 1996; and

(II) at the time at which such *persons* initially acquired the securities of such *issuer*, the *issuer* was excepted by paragraph (1); and

(ii) prior to availing itself of the exception provided by this paragraph—

(I) such *issuer* has disclosed to each *beneficial owner*, as determined under paragraph (1), that future investors will be limited to *qualified purchasers*, and that ownership in such *issuer* is no longer limited to not more than 100 *persons*; and

(II) concurrently with or after such disclosure, such *issuer* has provided each *beneficial owner*, as determined under paragraph (1), with a reasonable opportunity to redeem any part or all of their interests in the *issuer*, notwithstanding any agreement to the contrary between the *issuer* and such *persons*, for that *person's* proportionate *share* of the *issuer's* net assets.

(C) Each *person* that elects to redeem under subparagraph (B)(ii)(II) shall receive an *amount* in cash equal to that *person's* proportionate share of the *issuer's* net assets, unless the *issuer* elects to provide such *person* with the option of receiving, and such *person* agrees to receive, all or a portion of such *person's* share in assets of the *issuer*. If the *issuer* elects to provide such *persons* with such an opportunity, disclosure concerning such opportunity shall be made in the disclosure required by subparagraph (B)(ii)(I).

(D) An *issuer* that is excepted under this paragraph shall nonetheless be deemed to be an *investment company* for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) relating to the purchase or other acquisition by such *issuer* of any security issued by any registered *investment company* and the sale of any security issued by any registered open-end *investment company* to any such *issuer*.

(E) For purposes of determining compliance with this paragraph and paragraph (1), an *issuer* that is otherwise excepted under this paragraph and an *issuer* that is otherwise excepted under paragraph (1) shall not be treated by the Commission as being a single *issuer* for purposes of determining whether the outstanding securities of the *issuer* excepted under paragraph (1) are beneficially owned by not more than 100 *persons* or whether the outstanding securities of the *issuer* excepted under this paragraph are owned by *persons* that are not *qualified purchasers*. Nothing in this subparagraph shall be construed to establish that a *person* is a bona fide *qualified purchaser* for purposes of this paragraph or a bona fide *beneficial owner* for purposes of paragraph (1).

(8) [Repealed]

(9) Any *person* substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests.

(10)(A) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes—

- (i) no part of the net earnings of which inures to the benefit of any private shareholder or individual; or
- (ii) which is or maintains a *fund* described in subparagraph (B).

(B) For the purposes of subparagraph (A)(ii), a *fund* is described in this subparagraph if such *fund* is a *pooled income fund*, collective trust *fund*, collective investment *fund*, or similar *fund* maintained by a *charitable organization* exclusively for the collective investment and reinvestment of one or more of the following:

- (i) assets of the general endowment *fund* or other *funds* of one or more *charitable organizations*;
- (ii) assets of a *pooled income fund*;
- (iii) assets contributed to a *charitable organization* in exchange for the issuance of *charitable gift annuities*;
- (iv) assets of a *charitable remainder trust* or of any other trust, the remainder interests of which are irrevocably dedicated to any *charitable organization*;
- (v) assets of a *charitable lead trust*;
- (vi) assets of a trust, the remainder interests of which are revocably dedicated to or for the benefit of 1 or more *charitable organizations*, if the ability to revoke the dedication is limited to circumstances involving—
 - (I) an adverse change in the financial circumstances of a settlor or an income beneficiary of the trust;
 - (II) a change in the identity of the *charitable organization* or organizations having the remainder interest, provided that the new beneficiary is also a *charitable organization*; or
 - (III) both the changes described in subclauses (I) and (II);
- (vii) assets of a trust not described in clauses (i) through (v), the remainder interests of which are revocably dedicated to a *charitable organization*, subject to subparagraph (C); or
- (viii) such assets as the Commission may prescribe by rule, regulation, or order in accordance with section 6(c).

(C) A *fund* that contains assets described in clause (vii) of subparagraph (B) shall be excluded from the definition of an *investment company* for a period of 3 years after the date of enactment of this subparagraph [December 8, 1995], but only if—

- (i) such assets were contributed before the date which is 60 days after the date of enactment of this subparagraph [December 8, 1995]; and

(ii) such assets are commingled in the *fund* with assets described in one or more of clauses (i) through (vi) and (viii) of subparagraph (B).

(D) For purposes of this paragraph—

(i) a trust or *fund* is “maintained” by a *Charitable organization* if the organization serves as a trustee or *administrator* of the trust or *fund* or has the power to remove the trustees or *administrators* of the trust or *fund* and to designate new trustees or *administrators*;

(ii) the term “*pooled income fund*” has the same meaning as in section 642(c)(5) of the Internal Revenue Code of 1986;

(iii) the term “*charitable organization*” means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of the Internal Revenue Code of 1986;

(iv) the term “*charitable lead trust*” means a trust described in section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code of 1986;

(v) the term “*charitable remainder trust*” means a charitable remainder annuity trust or a charitable remainder unitrust, as those terms are defined in section 664(d) of the Internal Revenue Code of 1986; and

(vi) the term “*charitable gift annuity*” means an annuity issued by a *Charitable organization* that is described in section 501(m)(5) of the Internal Revenue Code of 1986.

(11) Any *employee’s* stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986; or any governmental plan described in section 3(a)(2)(C) of the Securities Act of 1933; or any collective trust *fund* maintained by a *bank* consisting solely of assets of one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection; or any *separate account* the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1986 or the requirements for deduction of the employer’s contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an *insurance company* in connection with the operation of such *separate account*.

(12) Any voting trust the assets of which consist exclusively of securities of a single *issuer* which is not an *investment company*.

(13) Any security holders’ protective committee or similar *issuer* having outstanding and issuing no securities other than certificates of deposit and *short-term paper*.

(14) Any church plan described in section 414(e) of the Internal Revenue Code of 1986, if, under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan *participants* or beneficiaries, or any company or account that is—

(A) established by a *person* that is eligible to establish and maintain such a plan under section 414(e) of the Internal Revenue Code of 1986; and

(B) substantially all of the activities of which consist of—

(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under the Internal Revenue Code of 1986; or

(ii) administering or providing benefits pursuant to church plans.

Rule 3a-1 *Certain prima facie investment companies.*

Notwithstanding section 3(a)(1)(C) of the Investment Company Act of 1940, an *issuer* will be deemed not to be an *investment company* under the Act; Provided, that:

(a) No more than 45 percent of the *value* (as defined in section 2(a)(41) of the Act) of such *issuer's Total assets* (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such *issuer's* net income after taxes (for the last four fiscal quarters combined) is derived from, securities other than:

(1) Government securities;

(2) Securities issued by *employees'* securities companies;

(3) Securities issued by *majority-owned subsidiaries* of the *issuer* (other than subsidiaries relying on the exclusion from the definition of *investment company* in section 3(b)(3) or section 3(c)(1) of the Act) which are not *investment companies*; and

(4) Securities issued by companies:

(i) Which are *controlled* primarily by such *issuer*;

(ii) Through which such *issuer* engages in a business other than that of investing, re-investing, owning, holding or trading in securities; and

(iii) Which are not *investment companies*;

(b) The *issuer* is not an *investment company* as defined in section 3(a)(1)(A) or section 3(a)(1)(B) of the Act and is not a special situation *investment company*; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the *issuer* shall consolidate its financial statements with the financial statements of any *Wholly-owned subsidiaries*.

Rule 3a-2 Transient investment companies.

(a) For purposes of section 3(a)(1)(A) and section 3(a)(1)(C) of the Investment Company Act of 1940, an *issuer* is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; Provided, that the *issuer* has a bona fide intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

(1) The *issuer's* business activities; and

(2) An appropriate resolution of the *issuer's* board of *directors*, or by an appropriate action of the *person* or *persons* performing similar functions for any *issuer* not having a board of *directors*, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

(1) The date on which an *issuer* owns securities and/or cash having a *value* exceeding 50 percent of the *value* of such *issuer's Total assets* on either a consolidated or unconsolidated basis; or

(2) The date on which an *issuer* owns or proposes to acquire *investment securities* (as defined in section 3(a) of the Act) having a *value* exceeding 40 per centum of the *value* of such *issuer's Total assets* (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No *issuer* may rely on this section more frequently than once during any three-year period.

Rule 3a-3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1)(A) or section 3(a)(1)(C) of the Investment Company Act of 1940, an *issuer* will be deemed not to be an *investment company* for purposes of the Act; Provided, that all of the outstanding securities of the *issuer* (other than *short-term paper*, *directors' qualifying shares*, and debt securities owned by the Small Business Administration) are directly or indirectly owned by a company which satisfies the conditions of paragraph (a) of rule 3a-1 and which is:

(a) A company that is not an *investment company* as defined in section 3(a) of the Act;

(b) A company that is an *investment company* as defined in section 3(a)(1)(C) of the Act, but which is excluded from the definition of the term "*investment company*" by section 3(b)(1) or 3(b)(2) of the Act; or

- (c) A company that is deemed not to be an *investment company* for purposes of the Act by rule 3a-1.

Rule 3a-4 Status of investment advisory programs.

Note:

*This section is a nonexclusive safe harbor from the definition of **investment company** for programs that provide discretionary investment advisory services to clients. There is no registration requirement under section 5 of the Securities Act of 1933 with respect to programs that are organized and operated in the manner described in this rule 3a-4. The rule is not intended, however, to create any presumption about a program that is not organized and operated in the manner contemplated by the section.*

- (a) Any program under which discretionary investment advisory services are provided to *clients* that has the following characteristics will not be deemed to be an *investment company* within the meaning of the Investment Company Act of 1940:

(1) Each *client's* account in the program is managed on the basis of the *client's* financial situation and investment objectives and in accordance with any reasonable restrictions imposed by the *client* on the management of the account.

(2)(i) At the opening of the account, the sponsor or another *person* designated by the sponsor obtains information from the *client* regarding the *client's* financial situation and investment objectives, and gives the *client* the opportunity to impose reasonable restrictions on the management of the account;

(ii) At least annually, the sponsor or another *person* designated by the sponsor contacts the *client* to determine whether there have been any changes in the *client's* financial situation or investment objectives, and whether the *client* wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions;

(iii) At least quarterly, the sponsor or another *person* designated by the sponsor notifies the *client* in writing to contact the sponsor or such other *person* if there have been any changes in the *client's* financial situation or investment objectives, or if the *client* wishes to impose any reasonable restrictions on the management of the *client's* account or reasonably modify existing restrictions, and provides the *client* with a means through which such contact may be made; and

(iv) The sponsor and *personnel* of the manager of the *client's* account who are knowledgeable about the account and its management are reasonably available to the *client* for consultation.

(3) Each *client* has the ability to impose reasonable restrictions on the management of the *client's* account, including the designation of particular securities or types of secu-

rities that should not be purchased for the account, or that should be sold if held in the account; Provided, however, that nothing in this section requires that a *client* have the ability to require that particular securities or types of securities be purchased for the account.

(4) The sponsor or *person* designated by the sponsor provides each *client* with a statement, at least quarterly, containing a description of all activity in the *client's* account during the preceding period, including all transactions made on behalf of the account, all contributions and withdrawals made by the *client*, all fees and expenses charged to the account, and the *value* of the account at the beginning and end of the period.

(5) Each *client* retains, with respect to all securities and funds in the account, to the same extent as if the *client* held the securities and funds outside the program, the right to:

(i) Withdraw securities or cash;

(ii) Vote securities, or delegate the authority to vote securities to another *person*;

(iii) Be provided in a timely manner with a written confirmation or other notification of each securities transaction, and all other documents required by law to be provided to security holders; and

(iv) Proceed directly as a security holder against the *issuer* of any security in the *client's* account and not be obligated to join any *person* involved in the operation of the program, or any other *client* of the program, as a condition precedent to initiating such proceeding.

(b) As used in this section, the term sponsor refers to any *person* who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to *clients* regarding the selection of, *persons* responsible for managing the *client's* account in the program. If a program has more than one sponsor, one *person* shall be designated the principal sponsor, and such *person* shall be considered the sponsor of the program under this section.

Rule 3a-5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.

(a) A *finance subsidiary* will not be considered an *investment company* under section 3(a) of the Investment Company Act of 1940 and securities of a *finance subsidiary* held by the *parent company* or a *company controlled by the parent company* will not be considered “*investment securities*” under section 3(a)(1)(C) of the Act; provided, that:

(1) Any debt securities of the *finance subsidiary* issued to or held by the public are unconditionally *guaranteed* by the *parent company* as to the *payment* of principal, interest, and premium, if any (except that the *guarantee* may be subordinated in right of *payment* to other debt of the *parent company*);

(2) Any non-voting preferred stock of the *finance subsidiary* issued to or held by the public is unconditionally *guaranteed* by the *parent company* as to *payment* of dividends, *payment* of the liquidation preference in the event of liquidation, and *payments* to be made under a sinking fund, if a sinking fund is to be provided (except that the *guarantee* may be subordinated in right of *payment* to other debt of the *parent company*);

(3) The *parent company's guarantee* provides that in the event of a *default* in *payment* of principal, interest, premium, dividends, liquidation preference or *payments* made under a sinking fund on any debt securities or non-voting preferred stock issued by the *finance subsidiary*, the holders of those securities may institute legal proceedings directly against the *parent company* (or, in the case of a partnership or joint venture, against the partners or *participants* in the joint venture) to enforce the *guarantee* without first proceeding against the *finance subsidiary*;

(4) Any securities issued by the *finance subsidiary* which are convertible or exchangeable are convertible or exchangeable only for securities issued by the *parent company* (and, in the case of a partnership or joint venture, for securities issued by the partners or *participants* in the joint venture) or for debt securities or non-voting preferred stock issued by the *finance subsidiary* meeting the applicable requirements of paragraphs (a)(1) through (a)(3);

(5) The *finance subsidiary* invests in or loans to its *parent company* or a company *controlled* by its *parent company* at least 85% of any cash or cash equivalents raised by the *finance subsidiary* through an offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after the *finance subsidiary's* receipt of such cash or cash equivalents;

(6) The *finance subsidiary* does not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its *parent company* or a company *controlled* by its *parent company* (or in the case of a partnership or joint venture, the securities of the partners or *participants* in the joint venture) or debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act; and

(7) Where the *parent company* is a *Foreign bank* as the term is used in rule 3a-6, the *parent company* may, in lieu of the guaranty required by paragraph (a)(1) or (a)(2) of this section, issue, in favor of the holders of the *finance subsidiary's* debt securities or non-voting preferred stock, as the case may be, an irrevocable letter of credit in an *amount* sufficient to fund all of the *amounts* required to be *guaranteed* by paragraphs (a)(1) and (a)(2) of this section, provided, that:

(i) *payment* on such letter of credit shall be conditional only upon the presentation of customary documentation, and

(ii) the beneficiary of such letter of credit is not required by either the letter of credit or applicable law to institute proceedings against the *finance subsidiary* before enforcing its remedies under the letter of credit.

(b) For purposes of this rule,

(1) A “*finance subsidiary*” shall mean any corporation—

(i) all of whose securities other than debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (3) or *directors’* qualifying *shares* are owned by its *parent company* or a company *controlled* by its *parent company*; and

(ii) the primary purpose of which is to finance the business operations of its *parent company* or companies *controlled* by its *parent company*;

(2) A “*parent company*” shall mean any corporation, partnership or joint venture:

(i) that is not considered an *investment company* under section 3(a) or that is excepted or exempted by order from the definition of *investment company* by section 3(b) or by the rules or regulations under section 3(a);

(ii) that is organized or formed under the laws of the United States or of a state or that is a *Foreign private issuer*, or that is a *Foreign bank* or *Foreign insurance company* as those terms are used in rule 3a-6; and

(iii) in the case of a partnership or joint venture, each partner or *participant* in the joint venture meets the requirements of paragraphs (b)(2)(i) and (ii).

(3) A “*company controlled by the parent company*” shall mean any corporation, partnership or joint venture:

(i) that is not considered an *investment company* under section 3(a) or that is excepted or exempted by order from the definition of *investment company* by section 3(b) or by the rules or regulations under section 3(a);

(ii) that is either organized or formed under the laws of the United States or of a state or that is a *Foreign private issuer*, or that is a *Foreign bank* or *Foreign insurance company* as those terms are used in rule 3a-6; and

(iii) in the case of a corporation, more than 25 percent of whose outstanding *Voting securities* are beneficially owned directly or indirectly by the *parent company*; or

(iv) in the case of a partnership or joint venture, each partner or *participant* in the joint venture meets the requirements of paragraphs (b)(3)(i) and (ii), and the *parent company* has the power to exercise a *controlling* influence over the management or policies of the partnership or joint venture.

(4) A “*Foreign private issuer*” shall mean any *issuer* which is incorporated or organized under the laws of a foreign country, but not a *Foreign Government* or political subdivision of a *Foreign Government*.

Rule 3a-6 Foreign banks and foreign insurance companies.

(a) Notwithstanding section 3(a)(1)(A) or section 3(a)(1)(C) of the Investment Company Act of 1940, a *Foreign bank* or *Foreign insurance company* shall not be considered an *investment company* for purposes of the Act.

(b) For purposes of this section:

(1)(i) "*Foreign bank*" means a *banking* institution incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(A) regulated as such by that country's or subdivision's government or any agency thereof;

(B) *engaged substantially in commercial banking activity*; and

(C) not operated for the purpose of evading the provisions of the Act;

(ii) The term "*Foreign bank*" shall also include:

(A) A trust company or loan company that is:

(1) organized or incorporated under the laws of Canada or a political subdivision thereof;

(2) regulated as a trust company or a loan company by that country's or subdivision's government or any agency thereof; and

(3) not operated for the purpose of evading the provisions of the Act; and

(B) a building society that is:

(1) organized under the laws of the United Kingdom or a political subdivision thereof;

(2) regulated as a building society by the country's or subdivision's government or any agency thereof; and

(3) not operated for the purpose of evading the provisions of the Act.

(iii) Nothing in this section shall be construed to include within the definition of "*Foreign bank*" a common or collective trust or other separate pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

(2) "*Engaged substantially in commercial banking activity*" means engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial *banks* in the country in which the head office of the *banking* institution is located.

(3) “*Foreign insurance company*” means an *insurance company* incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(i) Regulated as such by that country’s or subdivision’s government or any agency thereof;

(ii) Engaged primarily and predominantly in:

(A) the writing of insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933, except for the substitution of supervision by *Foreign Government* insurance regulators for the regulators referred to in that section; or

(B) the reinsurance of risks on such agreements underwritten by insurance companies; and

(iii) Not operated for the purpose of evading the provisions of the Act. Nothing in this section shall be construed to include within the definition of “*Foreign insurance company*” a *separate account* or other pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

Note: Foreign *banks* and Foreign insurance companies (and certain of their *finance subsidiaries* and holding companies) relying on rule 3a-6 for exemption from the Investment Company Act of 1940 may be required by rule 489 under the Securities Act of 1933 to file Form F-N with the Commission in connection with the filing of a registration statement under the Securities Act of 1933.

Rule 3a-7 Issuers of asset-backed securities.

(a) Notwithstanding section 3(a) of the Investment Company Act of 1940, any *issuer* who is engaged in the business of purchasing, or otherwise acquiring, and holding *eligible assets* (and in activities related or incidental thereto), and who does not issue *redeemable securities* will not be deemed to be an *investment company*; Provided that:

(1) The *issuer* issues *fixed-income securities* or other securities which entitle their holders to receive *payments* that depend primarily on the cash flow from *eligible assets*;

(2) Securities sold by the *issuer* or any *underwriter* thereof are *fixed-income securities* rated, at the time of initial sale, in one of the four highest categories assigned long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by at least one nationally recognized statistical rating organization that is not an *affiliated person* of the *issuer* or of any *person* involved in the organization or operation of the *issuer*, except that:

(i) Any *fixed-income securities* may be sold to accredited investors as defined in paragraphs (1), (2), (3), and (7) of rule 501(a) under the Securities Act of 1933 and any entity in which all of the equity owners come within such paragraphs; and

(ii) Any securities may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act of 1933 and to *persons* (other than any rating organization rating the *issuer's* securities) involved in the organization or operation of the *issuer* or an affiliate, as defined in rule 405 under the Securities Act of 1933, of such a *person*;

Provided, that the *issuer* or any *underwriter* thereof effecting such sale exercises reasonable care to ensure that such securities are sold and will be resold to *persons* specified in paragraphs (a)(2) (i) and (ii) of this section;

(3) The *issuer* acquires additional *eligible assets*, or disposes of *eligible assets*, only if:

(i) The assets are acquired or disposed of in accordance with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the *issuer's* securities are issued;

(ii) The acquisition or disposition of the assets does not result in a downgrading in the rating of the *issuer's* outstanding *fixed-income securities*; and

(iii) The assets are not acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market *value* changes; and

(4) If the *issuer* issues any securities other than securities exempted from the Securities Act of 1933 by section 3(a)(3) thereof, the *issuer*:

(i) Appoints a trustee that meets the requirements of section 26(a)(1) of the Act and that is not affiliated, as that term is defined in rule 405 under the Securities Act of 1933, with the *issuer* or with any *person* involved in the organization or operation of the *issuer*, which does not offer or provide credit or credit enhancement to the *issuer*, and that executes an agreement or instrument concerning the *issuer's* securities containing provisions to the effect set forth in section 26(a)(3) of the Act;

(ii) Takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those *eligible assets* that principally generate the cash flow needed to pay the fixed-income security holders, provided that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the *issuer*; and

(iii) Takes actions necessary for the cash flows derived from *eligible assets* for the benefit of the holders of *fixed-income securities* to be deposited periodically in a segregated account that is maintained or *controlled* by the trustee consistent with the rating of the outstanding *fixed-income securities*.

(b) For purposes of this section:

(1) *Eligible assets* means *financial assets*, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely *distribution* of proceeds to security holders.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

- (i) A stated principal *amount*; or
- (ii) Interest on a principal *amount* (which may be a notional principal *amount*) calculated by reference to a fixed rate or to a standard or formula which does not reference any change in the market *value* or fair *value* of *eligible assets*; or
- (iii) Interest on a principal *amount* (which may be a notional principal *amount*) calculated by reference to auctions among holders and prospective holders, or through remarketing of the security; or
- (iv) An *amount* equal to specified fixed or variable portions of the interest received on the assets held by the *issuer*; or
- (v) Any combination of *amounts* described in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section;

Provided, that substantially all of the *payments* to which the holders of such securities are entitled consist of the foregoing *amounts*.

Rule 3a-8 *Certain research and development companies.*

(a) Notwithstanding sections 3(a)(1)(A) and 3(a)(1)(C) of the Investment Company Act of 1940, an *issuer* will be deemed not to be an *investment company* if:

- (1) Its *research and development expenses*, for the last four fiscal quarters combined, are a substantial percentage of its total expense for the same period;
- (2) Its net income derived from *investments in securities*, for the last four fiscal quarters combined, does not exceed twice the amount of its *research and development expenses* for the same period;
- (3) Its expenses for investment advisory and management activities, investment research and custody, for the last four fiscal quarters combined, do not exceed five percent of its total expenses for the same period;
- (4) Its *investments in securities* are *capital preservation investments*, except that:
 - (i) No more than 10 percent of the *issuer's total assets* may consist of *other investments*, or
 - (ii) No more than 25 percent of the *issuer's total assets* may consist of *other investments*, provided that at least 75 percent of such *other investments* are *investments* made pursuant to a collaborative research and development arrangement;
- (5) It does not hold itself out as being engaged in the business of investing, reinvesting or trading in *securities*, and it is not a special situation *investment company*;

(6) It is primarily engaged, directly, through *majority-owned subsidiaries*, or through companies which it *controls primarily*, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in *securities*, as evidenced by:

(i) The activities of its officers, *directors* and *employees*;

(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of *directors*, which resolution or action has been recorded contemporaneously in its minute books or comparable documents; and

(7) Its board of *directors* has adopted a written investment policy with respect to the *issuer's capital preservation investments*.

(b) For purposes of this section:

(1) All assets shall be valued in accordance with section 2(a)(41)(A) of the Act;

(2) The percentages described in this section are determined on an unconsolidated basis, except that the *issuer* shall consolidate its financial statements with the financial statements of any *wholly-owned subsidiaries*;

(3) Board of *directors* means the *issuer's* board of *directors* or an appropriate *person* or *persons* performing similar functions for any *issuer* not having a board of *directors*;

(4) *Capital preservation investment* means an investment that is made to conserve capital and liquidity until the *funds* are used in the *issuer's* primary business or businesses;

(5) *Controlled primarily* means *controlled* within the meaning of section 2(a)(9) of the Act with a degree of *control* that is greater than that of any other *person*;

(6) *Investment made pursuant to a collaborative research and development arrangement* means an investment in an investee made pursuant to a business relationship which:

(i) Is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the *issuer's* research and development activities;

(ii) Calls for the *issuer* to conduct joint research and development activities with the investee or a *company controlled primarily* by, or which *controls primarily*, the investee; and

(iii) Is not entered into for the purpose of avoiding regulation under the Act;

(7) *Investments in securities* means all *securities* other than *securities* issued by *majority-owned subsidiaries* and *companies controlled primarily* by the *issuer* that conduct similar types of businesses, through which the *issuer* is engaged primarily in a

business other than that of investing, reinvesting, owning, holding, or trading in *securities*;

(8) *Other investment* means an *investment in securities* that is not a *capital preservation investment*; and

(9) *Research and development expenses* means research and development costs as defined in FASB ASC Topic 730, Research and Development, as currently in effect or as it may be subsequently revised.

Rule 3a-9 Crowdfunding vehicle.

(a) Notwithstanding section 3(a) of the Act, a crowdfunding vehicle will be deemed not to be an investment company if the vehicle:

(1) Is organized and operated for the sole purpose of directly acquiring, holding, and disposing of securities issued by a single crowdfunding issuer and raising capital in one or more offerings made in compliance with Rule 227.100 through Rule 227.504 (Regulation Crowdfunding);

(2) Does not borrow money and uses the proceeds from the sale of its securities solely to purchase a single class of securities of a single crowdfunding issuer;

(3) Issues only one class of securities in one or more offerings under Regulation Crowdfunding in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act of 1933;

(4) Receives a written undertaking from the crowdfunding issuer to fund or reimburse the expenses associated with its formation, operation, or winding up, receives no other compensation, and any compensation paid to any person operating the vehicle is paid solely by the crowdfunding issuer;

(5) Maintains the same fiscal year-end as the crowdfunding issuer;

(6) Maintains a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer securities it owns and the number, denomination, type and rights of its securities outstanding;

(7) Seeks instructions from the holders of its securities with regard to:

(i) The voting of the crowdfunding issuer securities it holds and votes the crowdfunding issuer securities only in accordance with such instructions; and

(ii) Participating in tender or exchange offers or similar transactions conducted by the crowdfunding issuer and participates in such transactions only in accordance with such instructions;

(8) Receives, from the crowdfunding issuer, all disclosures and other information required under Regulation Crowdfunding and the crowdfunding vehicle promptly pro-

vides such disclosures and other information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary; and

(9) Provides to each investor the right to direct the crowdfunding vehicle to assert the rights under State and Federal law that the investor would have if he or she had invested directly in the crowdfunding issuer and provides to each investor any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer.

(b) For purposes of this section:

(1) **Crowdfunding issuer** means a company that seeks to raise capital as a co-issuer with a crowdfunding vehicle in an offering that complies with all of the requirements under section 4(a)(6) of the Securities Act of 1933 and Regulation Crowdfunding.

(2) **Crowdfunding vehicle** means an issuer formed by or on behalf of a crowdfunding issuer for the purpose of conducting an offering under section 4(a)(6) of the Securities Act of 1933 as a co-issuer with the crowdfunding issuer, which offering is controlled by the crowdfunding issuer.

(3) **Regulation Crowdfunding** means the regulations set forth in Rule 227.100 through Rule 227.504 of this chapter (17 C.F.R. Part 227).

Rule 3c-1 Definition of beneficial ownership for certain section 3(c)(1) funds.

(a) As used in this section:

(1) The term “**Covered company**” means a company that is an *investment company*, a *Section 3(c)(1) Company* or a *Section 3(c)(7) Company*.

(2) The term “**Section 3(c)(1) Company**” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(1) of the Investment Company Act of 1940.

(3) The term “**Section 3(c)(7) Company**” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(7) of the Act.

(b) For purposes of section 3(c)(1)(A) of the Act, *beneficial ownership* by a *Covered company* owning 10 percent or more of the outstanding *Voting securities* of a *Section 3(c)(1) Company* shall be deemed to be *beneficial ownership* by one *person*, provided that:

(1) On April 1, 1997, the *Covered company* owned 10 percent or more of the outstanding *Voting securities* of the *Section 3(c)(1) Company* or non-*Voting securities* that, on such date and in accordance with the terms of such securities, were convertible into or *exchangeable* for *Voting securities* that, if converted or *exchanged* on or after such date, would have constituted 10 percent or more of the outstanding *Voting securities* of the *Section 3(c)(1) Company*; and

(2) On the date of any *acquisition* of securities of the *Section 3(c)(1) Company* by the *Covered company*, the *value* of all securities owned by the *Covered company* of all *issuers* that are *Section 3(c)(1)* or *Section 3(c)(7) Companies* does not exceed 10 percent of the *Covered company's Total assets*.

Rule 3c-2 Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Investment Company Act of 1940, *beneficial ownership* by a company owning 10 per centum or more of the outstanding *Voting securities* of any *issuer* which is a *small business investment company* licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be *beneficial ownership* by one *person* (a) if and so long as the *value* of all securities of *small business investments* companies owned by such company does not exceed 5 per centum of the *value* of its *Total assets*; or (b) if and so long as such stock of the *small business investment company* shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis: Provided, that such State development corporation is not, or as a result of its investment in the *small business investment company* (considering such investment as an investment security) would not be, an *investment company* as defined in section 3 of the Act.

Rule 3c-3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term “public offering” as used in section 3(c)(1) of the Investment Company Act of 1940 shall not be deemed to include the offer and sale by a *small business investment company*, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, *exchangeable* for, or accompanied by any equity security, and (b) *guaranteed* as to timely *payment* of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this section shall be counted, in the aggregate, as one *person* for purposes of section 3(c)(1) of the Act.

Rule 3c-4 Definition of “common trust fund” as used in section 3(c)(3) of the Act.

The term “*common trust fund*” as used in section 3(c)(3) of the Investment Company Act of 1940 shall include a *common trust fund* which is maintained by a *bank* which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954, and which is maintained exclusively for the collective investment and reinvestment of monies contributed

thereto by one or more *bank* members of such affiliated group in the capacity of trustee, executor, *administrator*, or guardian, provided, that:

(a) the *common trust fund* is operated in compliance with the same State and Federal regulatory requirements as would apply if the *bank* maintaining such *fund* and any other contributing *banks* were the same entity; and

(b) the rights of *persons* for whose benefit a contributing *bank* acts as trustee, executor, *administrator*, or guardian would not be diminished by reason of the maintenance of such *common trust fund* by another *bank* member of the affiliated group.

Rule 3c-5 Beneficial ownership by knowledgeable employees and certain other persons.

(a) As used in this rule:

(1) The term “*Affiliated management person*” means an *affiliated person*, as such term is defined in section 2(a)(3) of the Investment Company Act of 1940, that manages the investment activities of a *Covered company*. For purposes of this definition, the term “*investment company*” as used in section 2(a)(3) of the Act includes a *Covered company*.

(2) The term “*Covered company*” means a *Section 3(c)(1) Company* or a *Section 3(c)(7) Company*.

(3) The term “*Executive officer*” means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other *person* who performs similar policy-making functions, for a *Covered company* or for an *Affiliated management person* of the *Covered company*.

(4) The term “*Knowledgeable employee*” with respect to any *Covered company* means any natural *person* who is:

(i) An *Executive officer, director*, trustee, general partner, *advisory board* member, or *person* serving in a similar capacity, of the *Covered company* or an *Affiliated management person* of the *Covered company*; or

(ii) An *employee* of the *Covered company* or an *Affiliated management person* of the *Covered company* (other than an *employee* performing solely clerical, secretarial or administrative functions with regard to such company or its *investments*) who, in connection with his or her regular functions or duties, participates in the investment activities of such *Covered company*, other *Covered companies*, or *investment companies* the investment activities of which are managed by such *Affiliated management person* of the *Covered company*, provided that such *employee* has been performing such functions and duties for or on behalf of the *Covered company* or the

Affiliated management person of the *Covered company*, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(5) The term “*Section 3(c)(1) Company*” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(1) of the Act.

(6) The term “*Section 3(c)(7) Company*” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(7) of the Act.

(b) For purposes of determining the number of *beneficial owners* of a *Section 3(c)(1) Company*, and whether the outstanding securities of a *Section 3(c)(7) Company* are owned exclusively by *qualified purchasers*, there shall be excluded securities beneficially owned by:

(1) A *person* who at the time such securities were *acquired* was a *Knowledgeable employee* of such Company;

(2) A company owned exclusively by *Knowledgeable employees*;

(3) Any *person* who *acquires* securities originally *acquired* by a *Knowledgeable employee* in accordance with this section, provided that such securities were *acquired* by such *person* in accordance with rule 3c-6.

Rule 3c-6 Certain transfers of interests in section 3(c)(1) and section 3(c)(7) funds.

(a) As used in this rule:

(1) The term “*Donee*” means a *person* who acquires a security of a *Covered company* (or a security or other interest in a company referred to in paragraph (b)(3) of this section) as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce.

(2) The term “*Section 3(c)(1) Company*” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(1) of the Investment Company Act of 1940.

(3) The term “*Section 3(c)(7) Company*” means a company that would be an *investment company* but for the exclusion provided by section 3(c)(7) of the Act.

(4) The term “*Transferee*” means a Section 3(c)(1) *Transferee* or a *Qualified purchaser transferee*, in each case as defined in paragraph (b) of this section.

(5) The term “*Transferor*” means a Section 3(c)(1) *Transferor* or a *Qualified purchaser transferor*, in each case as defined in paragraph (b) of this section.

(b) *Beneficial ownership* by any *person* (“Section 3(c)(1) *Transferee*”) who *acquires* securities or interests in securities of a *Section 3(c)(1) Company* from a *person* other than the Section 3(c)(1) Company shall be deemed to be *beneficial ownership* by the *person* from whom such transfer was made (“Section 3(c)(1) *Transferor*”), and securities of a *Section 3(c)(7)*

Company that are owned by *persons* who received the securities from a *qualified purchaser* other than the *Section 3(c)(7) Company* (“*Qualified purchaser transferor*”) or a *person* deemed to be a *qualified purchaser* by this section shall be deemed to be *acquired* by a *qualified purchaser* (“*Qualified purchaser transferee*”), provided that the Transferee is:

- (1) The estate of the Transferor;
- (2) A *Donee*; or
- (3) A company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the *persons* specified in paragraphs (b)(1) and (b)(2) of this section.

Section 4. Classification of *investment companies*. [15 U.S.C. 80a-4]

For the purposes of this title, *investment companies* are divided into three principal classes, defined as follows:

- (1) “*Face-amount certificate company*” means an *investment company* which is engaged or proposes to engage in the business of issuing *face-amount certificates* of the installment type, or which has been engaged in such business and has any such certificate outstanding.
- (2) “*Unit investment trust*” means an *investment company* which (A) is organized under a trust indenture, contract of *custodianship* or agency, or similar instrument, (B) does not have a board of *directors*, and (C) issues only *redeemable securities*, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust.
- (3) “*Management company*” means any *investment company* other than a *face-amount certificate company* or a *unit investment trust*.

Section 5. Subclassification of *management companies*. [15 U.S.C. 80a-5]

(a) For the purposes of this title, *management companies* are divided into *open-end* and *closed-end companies*, defined as follows:

- (1) “*Open-end company*” means a *management company* which is offering for sale or has outstanding any *redeemable security* of which it is the *issuer*.
- (2) “*Closed-end company*” means any *management company* other than an *open-end company*.

(b) *Management companies* are further divided into diversified companies and *non-diversified companies*, defined as follows:

- (1) “*Diversified company*” means a *management company* which meets the following requirements: At least 75 per centum of the *value* of its *Total assets* is represented by cash and cash items (including receivables), Government securities, securities of other

investment companies, and other securities for the purposes of this calculation limited in respect of any one *issuer* to an *amount* not greater in *value* than 5 per centum of the *value* of the *Total assets* of such *management company* and to not more than 10 per centum of the outstanding *Voting securities* of such *issuer*.

(2) “*Non-diversified company*” means any *management company* other than a *diversified company*.

(c) A registered *diversified company* which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) shall not lose its status as a *diversified company* because of any subsequent discrepancy between the *value* of its various *investments* and the requirements of said paragraph, so long as any such discrepancy existing immediately after its *acquisition* of any security or other property is neither wholly nor partly the result of such *acquisition*.

Rule 5b-1 *Definition of “total assets.”*

The term “*total assets*,” when used in computing *values* for the purposes of sections 5 and 12 of the Investment Company Act of 1940, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopted either of the alternative methods of valuation permitted by rule 2a-1.

Rule 5b-2 *Exclusion of certain guarantees as securities of the guarantor.*

(a) For the purposes of section 5 of the Investment Company Act of 1940, a *guarantee* of a security shall not be deemed to be a security issued by the guarantor: Provided, that the *value* of all securities issued or *guaranteed* by the guarantor, and owned by the *management company*, does not exceed 10 percent of the *value* of the *Total assets* of such *management company*.

(b) Notwithstanding paragraph (a) of this section, for the purposes of section 5 of the Act, a *guarantee* by a railroad company of a security issued by a terminal company, warehouse company, switching company, or bridge company, shall not be deemed to be a security issued by such railroad company, provided:

(1) The security is *guaranteed* jointly or severally by more than one railroad company; and

(2) No one of such *guaranteeing* railroad companies directly or indirectly *controls* all of its co-guarantors.

(c) For the purposes of section 5 of the Act, a lease or other arrangement whereby a railroad company is or becomes obligated to pay a stipulated annual sum or rental either to another railroad company or to the security holders of such other railroad company shall not be deemed in itself a *guarantee*.

Rule 5b-3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

(a) **Repurchase agreements.** For purposes of sections 5 and 12(d)(3) of the Investment Company Act of 1940, the acquisition of a repurchase agreement may be deemed to be an **acquisition** of the **Underlying securities**, provided the obligation of the seller to repurchase the securities from the **investment company** is **Collateralized fully**.

(b) **Refunded securities.** For purposes of section 5 of the Act, the acquisition of a **Refunded security** is deemed to be an acquisition of the escrowed Government Securities.

(c) Definitions. As used in this section:

(1) **Collateralized fully** in the case of a repurchase agreement means that:

(i) The **value** of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the **investment company** reasonably could expect to incur if the seller **defaults**) is, and during the entire term of the repurchase agreement remains, at least equal to the **Resale price** provided in the agreement;

(ii) The **investment company** has perfected its security interest in the collateral;

(iii) The collateral is maintained in an account of the **investment company** with its **custodian** or a third party that qualifies as a **custodian** under the Act;

(iv) The collateral consists entirely of:

(A) Cash items;

(B) Government Securities; or

(C) Securities that the investment company's board of **directors**, or its delegate, determines at the time the repurchase agreement is entered into:

(1) Each issuer of which has an exceptionally strong capacity to meet its financial obligations; and

Note to paragraph (c)(1)(iv)(C)(1): For a discussion of the phrase "exceptionally strong capacity to meet its financial obligations" see Investment Company Act Release No. 30847 (December 27, 2013).

(2) Are sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days; and

(v) Upon an **Event of insolvency** with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(2) *Event of insolvency* means, with respect to a *person*:

- (i) An admission of insolvency, the application by the *person* for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general *assignment* for the benefit of creditors, the filing by the *person* of a voluntary petition in *bankruptcy* or application for *reorganization* or an arrangement with creditors; or
- (ii) The institution of similar proceedings by another *person* which proceedings are not contested by the *person*; or
- (iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the *person*, whether or not contested by the *person*.

(3) *Government security* means any “*Government security*” as defined in section 2(a)(16) of the Act.

(4) Issuer, as used in paragraph (c)(1)(iv)(C)(1) of this Rule 5b-3, means the issuer of a collateral security or the issuer of an unconditional obligation of a person other than the issuer of the collateral security to undertake to pay, upon presentment by the holder of the obligation (if required), the principal amount of the underlying collateral security plus accrued interest when due or upon default.

(5) *Refunded security* means a debt security the principal and interest *payments* of which are to be paid by Government Securities (“deposited securities”) that have been irrevocably placed in an escrow account pursuant to an agreement between the *issuer* of the debt security and an escrow agent that is not an “*affiliated person*,” as defined in section 2(a)(3)(C) of the Act, of the *issuer* of the debt security, and, in accordance with such escrow agreement, are pledged only to the *payment* of the debt security and, to the extent that excess proceeds are available after all *payments* of principal, interest, and applicable premiums on the *Refunded securities*, the expenses of the escrow agent and, thereafter, to the *issuer* or another party; provided that:

- (i) The deposited securities are not redeemable prior to their final maturity;
- (ii) The escrow agreement prohibits the substitution of the deposited securities unless the substituted securities are Government Securities; and
- (iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant has certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the *Refunded Securities*.

(6) *Resale price* means the acquisition price paid to the seller of the securities plus the accrued resale premium on such acquisition price. The accrued resale premium is the *amount* specified in the repurchase agreement or the daily amortization of the difference between the acquisition price and the *resale price* specified in the repurchase agreement.

Section 6. Exemptions. [15 U.S.C. 80a-6]

(a) The following *investment companies* are exempt from the provisions of this title:

(1) Any company which since the effective date of this title or within five years prior to such date has been reorganized under the supervision of a court of competent jurisdiction, if (A) such company was not an *investment company* at the commencement of such *reorganization* proceedings, (B) at the conclusion of such proceedings all outstanding securities of such company were owned by creditors of such company or by *persons* to whom such securities were issued on account of creditors' claims, and (C) more than 50 per centum of the *Voting securities* of such company, and securities representing more than 50 per centum of the net asset *value* of such company, are currently owned beneficially by not more than twenty-five *persons*; but such exemption shall terminate if any security of which such company is the *issuer* is offered for sale or sold to the public after the conclusion of such proceedings by the *issuer* or by or through any *underwriter*. For the purposes of this paragraph, any new company organized as part of the *reorganization* shall be deemed the same company as its predecessor; and *beneficial ownership* shall be determined in the manner provided in section 3(c)(1).

(2) Any *issuer* as to which there is outstanding a writing filed with the Commission by the Federal Savings and Loan Insurance Corporation stating that exemption of such *issuer* from the provisions of this title is consistent with the public interest and the protection of investors and is necessary or appropriate by reason of the fact that such *issuer* holds or proposes to *acquire* any assets or any product of any assets which have been segregated (A) from assets of any company which at the filing of such writing is an insured institution within the meaning of section 401(a) of the National Housing Act as heretofore or hereafter amended, or (B) as a part of or in connection with any plan for or condition to the insurance of accounts of any company by said corporation or the conversion of any company into a Federal *savings and loan association*. Any such writing shall expire when canceled by a writing similarly filed or at the expiration of two years after the date of its filing, whichever first occurs; but said corporation may, nevertheless, before, at, or after the expiration of any such writing file another writing or writings with respect to such *issuer*.

(3) Any company which prior to March 15, 1940, was and now is a *wholly-owned subsidiary* of a registered *face-amount certificate company* and was prior to said date and now is organized and operating under the insurance laws of any State and subject to supervision and examination by the insurance commissioner thereof, and which prior to March 15, 1940, was and now is engaged, subject to such laws, in business substantially all of which consists of issuing and selling only to residents of such State and investing the proceeds from, securities providing for or representing participations or interests in intangible assets consisting of mortgages or other liens on real estate or notes or bonds secured thereby or in a *fund* or deposit of mortgages or other liens on real estate or notes or bonds secured thereby or having outstanding such securities so issued and sold.

(4)(A) Any company that is not engaged in the business of issuing *redeemable securities*, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State if—

(i) the organizational documents of the company state that the activities of the company are limited to the promotion of economic, business, or industrial development in the State through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose;

(ii) immediately following each sale of the securities of the company by the company or any *underwriter* for the company, not less than 80 percent of the securities of the company being offered in such sale, on a class-by-class basis, are held by *persons* who reside or who have a substantial business presence in that State;

(iii) the securities of the company are sold, or proposed to be sold, by the company or by any *underwriter* for the company, solely to accredited investors, as that term is defined in section 2(a)(15) of the Securities Act of 1933, or to such other *persons* that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

(iv) the company does not purchase any security issued by an *investment company* or by any company that would be an *investment company* except for the exclusions from the definition of the term “*investment company*” under paragraph (1) or (7) of section 3(c), other than—

(I) any debt security that meets such standards of creditworthiness as the Commission shall adopt; or

(II) any security issued by a registered open-end *investment company* that is required by its investment policies to invest not less than 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end *investment company* to be comparable in quality to securities described in subclause (I).

(B) Notwithstanding the exemption provided by this paragraph, section 9 (and, to the extent necessary to enforce section 9, sections 38 through 51) shall apply to a company described in this paragraph as if the company were an *investment company* registered under this title.

(C) Any company proposing to rely on the exemption provided by this paragraph shall file with the Commission a notification stating that the company intends to do so, in such form and manner as the Commission may prescribe by rule.

(D) Any company meeting the requirements of this paragraph may rely on the exemption provided by this paragraph upon filing with the Commission the notification required by subparagraph (C), until such time as the Commission determines by order that such reliance is not in the public interest or is not consistent with the protection of investors.

(E) The exemption provided by this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.

(b) Upon application by any employees' security company, the Commission shall by order exempt such company from the provisions of this title and of the rules and regulations hereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order of exemption shall apply, the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the *persons* by whom its *voting securities*, evidences of indebtedness, and other securities are owned and *controlled*, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the *issuer* of any such security.

(c) The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any *person*, security, or transaction, or any class or classes of *persons*, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

(d) The Commission, by rules and regulations or order, shall exempt a closed-end *investment company* from any or all provisions of this title, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if—

(1) the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is the *issuer* and which it proposes to offer for sale, do not exceed \$10,000,000, or such other *amount* as the Commission may set by rule, regulation or order;

(2) no security of which such company is the *issuer* has been or is proposed to be sold by such company or any *underwriter* therefor, in connection with a public offering, to any *person who is not a resident of the State under the laws of which such company is organized or otherwise created; and*

(3) such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(e) If, in connection with any rule, regulation, or order under this Section exempting any *investment company* from any provision of section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of this title pertaining to registered *investment companies* shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other *persons* in their transactions and relations with such company, as though such company were a registered *investment company*.

(f) Any *closed-end company* which—

(1) elects to be treated as a *business development company* pursuant to section 54; or

(2) would be excluded from the definition of an *investment company* by section 3(c)(1), except that it presently proposes to make a public offering of its securities as a *business development company*, and has notified the Commission, in a form and manner which the Commission may, by rule, prescribe, that it intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 55 through 65,

shall be exempt from sections 1 through 53, except to the extent provided in sections 59 through 65.

Rule 6a-5 Purchase of certain debt securities by companies relying on section 6(a)(5) of the Investment Company Act of 1940.

For purposes of reliance on the exemption for certain companies under section 6(a)(5)(A) of the Act (15 U.S.C. 80a-6(a)(5)(A)), a company shall be deemed to have met the requirement for creditworthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) of the Investment Company Act (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) if, at the time of purchase, the board of directors (or its delegate) determines or members of the company (or their delegate) determine that the debt security is:

(a) Subject to no greater than moderate credit risk; and

(b) Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

Rule 6b-1 Exemption of employees' securities company pending determination of application.

Any *employees' securities company* which files an application for an order of exemption under section 6(b) of the Investment Company Act of 1940 shall be exempt, pending final determination of such application by the Commission, from all provisions of the Act applicable to *investment companies* as such.

Rule 6c-3 Exemptions for certain registered variable life insurance separate accounts.

A *separate account* which meets the requirements of paragraph (a) of rule 6e-2 or paragraph (a) of rule 6e-3(T) and registers as an *investment company* under section 8(a) of the

Investment Company Act of 1940, and the *investment adviser, principal underwriter* and depositor of such *separate account*, shall be exempt from the provisions of the Act specified in paragraph (b) of rule 6e-2 or paragraph (b) of rule 6e-3(T), except for sections 7 and 8(a) of the Act, under the same terms and conditions as a *separate account* claiming exemption under rule 6e-2 or rule 6e-3(T).

Rule 6c-4(T) [Reserved]

Rule 6c-5(T) [Reserved]

Rule 6c-6 Exemption for certain registered separate accounts and other persons.

(a) As used in this rule,

(1) “*Revenue Ruling*” shall mean Revenue Ruling 81-225, 1981-41 I.R.B. (October 13, 1981), issued by the Internal Revenue Service on September 25, 1981.

(2) “*Existing separate account*” shall mean a *separate account* which is, or is a part of, a *unit investment trust* registered under the Investment Company Act of 1940, engaged in a continuous offering of its securities on September 25, 1981.

(3) “*Existing portfolio company*” shall mean a registered open-end management *investment company*, engaged in a continuous offering of its securities on September 25, 1981, all or part of whose securities were owned by an *existing separate account* on September 25, 1981.

(4) “*New portfolio company*” shall mean any registered open-end management *investment company* the *shares* of which will be sold to one or more registered *separate accounts* for the purpose of minimizing the impact of the *Revenue Ruling* on the contract owners of an *existing separate account*, which *new portfolio company* has the same (i) investment objectives, (ii) *fundamental* policies, and (iii) voting rights as the *existing portfolio company* and has an advisory fee schedule, including expenses assumed by the adviser, that is at least as advantageous to the *new portfolio company* as was the fee schedule of the *existing portfolio company*.

(5) “*New separate account*” shall mean a *separate account* which (i) is, or is a part of, a *unit investment trust* registered under the Act; (ii) is intended to minimize the impact of the *Revenue Ruling* on the contractowners of an *existing separate account*; (iii) invests solely in one or more new portfolio companies; (iv) has the same (A) *sales loads*, (B) depositor, and (C) custodial arrangements as the *existing separate account*; and (v) has (A) asset charges, (B) *administrative fees*, and (C) any other fees and charges (not including taxes) that correspond only to fees of the *existing separate account* and are no greater than those corresponding fees.

(b) Any order of the Commission under the Act, granted to an *existing separate account* on or before September 25, 1981, shall remain in full force and effect notwithstanding that the

existing separate account invests in one or more new portfolio companies in lieu of, or in addition to, investing in one or more *existing portfolio companies*; Provided, that:

- (1) No *material* changes in the facts upon which the order was based have occurred;
- (2) All representations, undertakings, and conditions made or agreed to by the *existing separate account*, and any other *person* or *persons*, other than any existing portfolio company, in connection with the issuance of the order are, and continue to be, applicable to the *existing separate account* and any such other *person* or *persons*, unless modified in accordance with this section;
- (3) All representations, undertakings, and conditions made or agreed to by the *existing portfolio company* in connection with the issuance of the order are made or agreed to by the *new portfolio company*, unless modified in accordance with this section; and
- (4) Part II of the Registration Statement under the Securities Act of 1933 of the *existing separate account* (i) indicates that the *existing separate account* is relying upon paragraph (b) of this section, (ii) lists the Investment Company Act release numbers of any orders upon which the *existing separate account* intends to rely, and (iii) contains a representation that the provisions of this paragraph (b) have been complied with.

(c) Any order of the Commission under the Act, granted to an *existing separate account* on or before September 25, 1981, shall apply with full force and effect to a *new separate account* and the depositor of and *principal underwriter* for the *new separate account* notwithstanding that the *new separate account* invests in one or more new portfolio companies; Provided, that:

- (1) No *material* changes in the facts upon which the order was based have occurred;
- (2) All representations, undertakings, and conditions made or agreed to by the depositor, *principal underwriter*, and any other *person* or *persons* other than the *existing separate account* or any *existing portfolio companies*, in connection with the issuance of the order are, and continue to be, applicable to such depositor, *principal underwriter*, and other *person* or *persons*, unless modified in accordance with this section;
- (3) All representations, undertakings, and conditions made or agreed to by the *existing separate account* in connection with the issuance of the order are made or agreed to by the *new separate account*, unless modified in accordance with this section;
- (4) All representations, undertakings, and conditions made or agreed to by an *existing portfolio company* in connection with the issuance of the order are made or agreed to by the *new portfolio company*, unless modified in accordance with this section; and
- (5) Part II of the registration statement under the Securities Act of 1933 of the *new separate account* (i) indicates that the *new separate account* is relying upon paragraph (c) of this section, (ii) lists the Investment Company Act release numbers of any orders upon which the *new separate account* intends to rely, and (iii) contains a representation that the provisions of this paragraph (c) have been complied with.

(d) Any *affiliated person* or depositor of or *principal underwriter* for a new or *existing separate account* or any *affiliated person* of or *principal underwriter* for a new or *existing portfolio company*, and any *affiliated person* of such *persons, principal underwriters*, or depositor shall be exempt from section 17(d) of the Act and rule 17d-1 thereunder to the extent necessary to permit the organization of one or more new portfolio companies; Provided, that, any expenses borne by the *existing portfolio company* or the *new portfolio company* in connection with such organization are necessary and appropriate and are allocated in a manner that is fair and reasonable to all of the shareholders of these companies.

(e) Any *affiliated person* or depositor of or *principal underwriter* for a new or *existing separate account* and any *affiliated persons* of such a *person, principal underwriter*, or depositor shall be exempt from section 17(d) of the Act and rule 17d-1 thereunder to the extent necessary to permit such *person* to bear any reasonable expenses arising out of the organization of one or more new portfolio companies or the *new separate account*.

(f) Any *affiliated persons* or depositor of or *principal underwriter* for a new or *existing separate account* or any *affiliated person* of or *principal underwriter* for a new or *existing portfolio company*, and any *affiliated person* of such *persons, principal underwriters*, or depositor shall be exempt from section 17(a), and any *existing portfolio company* which has made an election pursuant to rule 18f-1 shall be permitted to revoke that election to the extent necessary to permit transactions involving the transfer of assets from the *existing portfolio company* to a *new portfolio company*; Provided, that:

(1) Such assets are transferred without the imposition of any fees or charges;

(2) The board of *directors* of the *existing portfolio company*, including a majority of the *directors* of the company who are not *interested persons* of such company, determines that the transfer of assets is fair and reasonable to all shareholders of the company and such determination, and the basis upon which it was made, is recorded in the minute book of the *existing portfolio company*;

(3) Any securities involved are valued by the *existing portfolio company* for purposes of the transfer in accordance with its valuation practices for determining net asset *value* per share; and

(4) With respect to rule 18f-1, the *existing separate account* requests that the *existing portfolio company* redeem in kind the *shares* of the portfolio company held by the *separate account*.

(g) The *new portfolio company* shall be exempt from section 2(a)(41) of the Act and rules 2a-4 and 22c-1 under the Act to the extent necessary to permit it to use the same method of valuation for the purpose of pricing its *shares* for sale, redemption, and repurchase, as the *existing portfolio company*; Provided, that:

(1) The *existing portfolio company* had on September 25, 1981, an order of the Commission exempting it, for the purposes of pricing its *shares* for sale, redemption,

and repurchase, from: (i) section 2(a)(41) of the Act and rules 2a-4 and 22c-1 under the Act to the extent necessary to permit it to use the amortized cost valuation method or (ii) rules 2a-4 and 22c-1 under the Act to the extent necessary to permit it to calculate its net asset value per *share* to the nearest one cent on *share values* of \$1.00;

(2) All representations, undertakings, and conditions made or agreed to by the *existing portfolio company* in connection with the order are made or agreed to by the *new portfolio company* unless modified in accordance with this rule; and

(3) Part II of the registration statement under the Securities Act of 1933 of the *new portfolio company* (i) indicates that the *new portfolio company* is relying upon paragraph (g) of this section, (ii) lists the Investment Company Act release numbers of any orders upon which the *new portfolio company* intends to rely, and (iii) contains a representation that the provisions of paragraph (g) have been complied with.

(h) The depositor or trustee of an *existing separate account* shall be exempt from section 26(c) of the Act to the extent necessary to permit the substitution of securities of the *new portfolio company* for securities of the *existing portfolio company*; *Provided*; That, within thirty days of such substitution:

(1) The *existing separate account* notifies all contractowners of the substitution of securities and any determinations of the board of *directors* of the *new portfolio company* required by paragraph (d) of this section;

(2) The *existing separate account* delivers a copy of the *prospectus* of the *new portfolio company* to all contractowners; and

(3) The *existing separate account*, concurrently with the notification referred to in paragraph (h)(1) of this section or the delivery of the *prospectus* of the *new portfolio company* referred to in paragraph (h)(2) of this section, whichever is later, offers to those contractowners who would otherwise have surrender rights under their contracts the right, for a period of at least thirty days from the receipt of this offer, to surrender their contracts without the imposition of any withdrawal charge or contingent *Deferred sales load*, and any surrendering contractowner receives the price next determined after the request for surrender is received by the *insurance company*.

(i) The *existing separate account* shall be exempt from section 22(d) of the Act to the extent necessary to permit it to comply with paragraph (h) of this section and the *principal underwriter* for or depositor of the *existing separate account* shall be exempt from section 26(a)(4)(B) of the Act to the extent necessary to permit them to rely on paragraph (h) of this section.

(j) Notwithstanding section 11 of the Act, the *existing separate account* or any *principal underwriter* for the *existing separate account* may make or cause to be made to the contractowners of the *existing separate account* an offer to *exchange* a security *funded* by an *existing portfolio company* for a security *funded* by a *new portfolio company* without the terms of that offer having first been submitted to and approved by the Commission; Pro-

vided, that the *exchange* is to be made on the basis of the relative net asset values of the securities to be *exchanged* without the imposition of any fees or charges.

(k) Notwithstanding section 11 of the Act, the *new separate account* or any *principal underwriter* for the *new separate account* may make or cause to be made an offer to the contractowners of the *existing separate account* to exchange their securities for securities of the *new separate account* without the terms of that offer having first been submitted to and approved by the Commission; Provided, that:

(1) The exchange is to be made on the basis of the relative net asset values of the securities to be exchanged without the imposition of any fees or charges; and

(2) If the *new separate account* imposes a contingent *deferred sales load* (“*sales load*”) on the securities to be acquired in the exchange (i) at the time this *sales load* is imposed, it is calculated as if (A) the contractowner had been a contractowner of the *new separate account* from the date on which he became a contractowner of the *existing separate account*, in the case of a *sales load* based on the *amount* of time the contractowner has been invested in the *new separate account*, and (B) *amounts* attributable to purchase *payments* made to the *existing separate account* had been made to the *new separate account* on the date on which they were made to the *existing separate account*, in the case of a *sales load* based on the *amount* of time purchase *payments* have been invested in the *new separate account*, and (ii) the total *sales load* imposed does not exceed 9 percent of the sum of the purchase *payments* made to the *new separate account* and that portion of purchase *payments* made to the *existing separate account* attributable to the securities exchanged.

(l) Notwithstanding the foregoing, the provisions of this section will be available to a *new separate account* or *new portfolio company*, or to any *affiliated person* or depositor of or *principal underwriter* for such a *new separate account*, to any *affiliated person* of or *principal underwriter* for such a *new portfolio company*, to any *affiliated person* of such *persons*, depositor, or *principal underwriters*, or to any substitution of securities effected in reliance on this section, only if such *new separate account* or *new portfolio company* is registered under the Act or such substitution is effected prior to September 21, 1983.

Rule 6c-7 Exemptions from certain provisions of sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program.

A registered *separate account*, and any depositor of or *underwriter* for such account, shall be exempt from the provisions of sections 22(e), 27(i)(2)(A), and 27(d) of the Investment Company Act of 1940 with respect to any variable annuity contract participating in such account to the extent necessary to permit compliance with the Texas Optional Retirement

Program (“Program”), Provided, that the *separate account*, depositor, or *underwriter* for such account:

- (a) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in each registration statement, including the *prospectus*, used in connection with the Program;
- (b) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in any sales literature used in connection with the offer of annuity contracts to potential Program *participants*;
- (c) Instructs salespeople who solicit Program *participants* to purchase annuity contracts specifically to bring the restrictions on redemption imposed by the Program to the attention of potential Program *participants*;
- (d) Obtains from each Program *participant* who purchases an annuity contract in connection with the Program, prior to or at the time of such purchase, a signed statement acknowledging the restrictions on redemption imposed by the Program; and
- (e) Includes in Part II of the *separate account’s* registration statement under the Securities Act of 1933 a representation that this section is being relied upon and that the provisions of paragraphs (a)-(d) of this section have been complied with.

Rule 6c-8 Exemptions for registered separate accounts to impose a deferred sales load and to deduct certain administrative charges.

- (a) As used in this section “*Deferred sales load*” shall mean any *sales load*, including a contingent *Deferred sales load*, that is deducted upon redemption or annuitization of *amounts* representing all or a portion of a securityholder’s interest in a registered *separate account*.
- (b) A registered *separate account*, and any depositor of or *principal underwriter* for such account, shall be exempt from the provisions of sections 22(c) and 27(i)(2)(A) of the Investment Company Act of 1940 and rule 22c-1 under the Act to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account; provided that the terms of any offer to exchange another contract for the contract are in compliance with the requirements of paragraph (d) or (e) of rule 11a-2 under the Act.
- (c) A registered *separate account*, and any depositor of or *principal underwriter* for such account, shall be exempt from sections 22(c) and 27(i)(2)(A) of the Act and rule 22c-1 under the Act to the extent necessary to permit them to deduct from the *value* of any variable annuity contract participating in such account, upon total redemption of the contract prior to the last day of the year, the full annual fee for administrative services that otherwise would have been deducted on that date.

Rule 6c-9 [Reserved]

Rule 6c-10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any *exempted person* shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), and 22(d) of the Investment Company Act of 1940 and rule 22c-1 to the extent necessary to permit a *Deferred sales load* to be imposed on *shares* issued by the company, Provided, that:

(1) The *amount* of the *Deferred sales load* does not exceed a specified percentage of the net asset value or the offering price at the time of purchase;

(2) The terms of the *Deferred sales load* are covered by the provisions of Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.; and

(3) The same *Deferred sales load* is imposed on all shareholders, except that scheduled variations in or elimination of a *Deferred sales load* may be offered to a particular class of shareholders or transactions, provided, that the conditions in rule 22d-1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the *amount* of a *Deferred sales load* not yet paid.

(b) For purposes of this section:

(1) Company means a registered open-end *management investment company*, other than a registered *separate account*, and includes a separate series of the company;

(2) *Exempted person* means any *principal underwriter* of, *dealer* in, and any other *person* authorized to consummate transactions in, securities issued by a company; and

(3) *Deferred sales load* means any *amount* properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

Rule 6c-11 Exchange-traded funds.

(a) *Definitions.*

(1) For purposes of this section:

Authorized participant means a member or participant of a clearing agency registered with the *Commission*, which has a written agreement with the *exchange-traded fund* or one of its service providers that allows the *authorized participant* to place orders for the purchase and redemption of *creation units*.

Basket means the securities, assets or other positions in exchange for which an *exchange traded fund* issues (or in return for which it redeems) *creation units*.

Business day means any day the *exchange-traded fund* is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Investment Company Act of 1940.

Cash balancing amount means an amount of cash to account for any difference between the value of the *basket* and the net asset value of a *creation unit*.

Creation unit means a specified number of *exchange-traded fund shares* that the *exchange-traded fund* will issue to (or redeem from) an *authorized participant* in exchange for the deposit (or delivery) of a *basket* and a *cash balancing amount* if any.

Custom basket means:

- (A) A *basket* that is composed of a non-representative selection of the *exchange traded fund's* portfolio holdings; or
- (B) A representative *basket* that is different from the initial *basket* used in transactions on the same *business day*.

Exchange-traded fund means a registered open-end management company:

- (A) That issues (and redeems) *creation units* to (and from) *authorized participants* in exchange for a *basket* and a *cash balancing amount* if any; and
- (B) Whose shares are listed on a *national securities exchange* and traded at market-determined prices.

Exchange-traded fund share means a share of stock issued by an *exchange-traded fund*.

Foreign investment means any security, asset or other position of the ETF issued by a foreign issuer as that term is defined in Rule 3b-4 of this title, and that is traded on a trading market outside of the United States.

Market price means:

- (A) The official closing price of an *exchange-traded fund share*; or
- (B) If it more accurately reflects the market value of an *exchange-traded fund share* at the time as of which the *exchange-traded fund* calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

National securities exchange means an exchange that is registered with the *Commission* under section 6 of the Securities Exchange Act of 1934.

Portfolio holdings means the securities, assets or other positions held by the *exchange traded fund*.

Premium or discount means the positive or negative difference between the *market price* of an *exchange-traded fund share* at the time as of which the current net asset value is

calculated and the *exchange-traded fund's* current net asset value per share, expressed as a percentage of the *exchange-traded fund share's* current net asset value per share.

(2) Notwithstanding the definition of *exchange-traded fund* in paragraph (a)(1) of this section, an *exchange-traded fund* is not prohibited from selling (or redeeming) individual shares on the day of consummation of a reorganization, merger, conversion or liquidation, and is not limited to transactions with *authorized participants* under these circumstances.

(b) *Application of the Act to Exchange-Traded Funds.* If the conditions of paragraph (c) of this section are satisfied:

(1) *Redeemable security.* An *exchange-traded fund share* is considered a “redeemable security” within the meaning of section 2(a)(32) of the Investment Company Act of 1940.

(2) *Pricing.* A dealer in *exchange-traded fund shares* is exempt from section 22(d) of the Investment Company Act of 1940 and Rule 22c-1(a) with regard to purchases, sales and repurchases of *exchange-traded fund shares* at market-determined prices.

(3) *Affiliated transactions.*

A person who is an affiliated person of an *exchange-traded fund* (or who is an affiliated person of such a person) solely by reason of the circumstances described in paragraphs (b)(3)(i)(i) and (ii) of this section is exempt from sections 17(a)(1) and 17(a)(2) of the Investment Company Act of 1940 and (a)(2) with regard to the deposit and receipt of *baskets*:

(i) Holding with the power to vote 5% or more of the *exchange-traded fund's shares*; or

(ii) Holding with the power to vote 5% or more of any investment company that is an affiliated person of the *exchange-traded fund*.

(4) *Postponement of redemptions.* If an *exchange-traded fund* includes a *foreign investment* in its *basket*, and if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring *foreign investments* to redeeming *authorized participants* prevents timely delivery of the *foreign investment* in response to a redemption request, the *exchange-traded fund* is exempt, with respect to the delivery of the *foreign investment*, from the prohibition in section 22(e) of the Investment Company Act of 1940 against postponing the date of satisfaction upon redemption for more than seven days after the tender of a redeemable security if the *exchange-traded fund* delivers the *foreign investment* as soon as practicable, but in no event later than 15 days after the tender of the *exchange-traded fund shares*.

(c) *Conditions.*

(1) Each *business day*, an *exchange-traded fund* must disclose prominently on its website, which is publicly available and free of charge:

(i) Before the opening of regular trading on the primary listing exchange of the *exchange-traded fund shares*, the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share:

- (A) Ticker symbol;
- (B) CUSIP or other identifier;
- (C) Description of holding;
- (D) Quantity of each security or other asset held; and
- (E) Percentage weight of the holding in the portfolio;

(ii) The *exchange-traded fund's* current net asset value per share, *market price*, and *premium or discount*, each as of the end of the prior *business day*;

(iii) A table showing the number of days the *exchange-traded fund's* shares traded at a *premium or discount* during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the *exchange-traded fund*, if shorter);

(iv) A line graph showing *exchange-traded fund share* premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the *exchange-traded fund*, if shorter);

(v) The *exchange-traded fund's* median bid-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:

- (A) Identifying the *exchange-traded fund's* national best bid and national best offer as of the end of each 10 second interval during each trading day of the last 30 calendar days;
- (B) Dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and
- (C) Identifying the median of those values.

(vi) If the *exchange-traded fund's premium or discount* is greater than 2% for more than seven consecutive trading days, a statement that the *exchange-traded fund's premium or discount*, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the *premium or discount*, which must be maintained on the website for at least one year thereafter.

(2) The portfolio holdings that form the basis for the *exchange-traded fund's* next calculation of current net asset value per share must be the ETF's portfolio holdings as of the close of business on the prior *business day*.

(3) An *exchange-traded fund* must adopt and implement written policies and procedures that govern the construction of *baskets* and the process that will be used for the acceptance of *baskets*; provided, however, if the *exchange-traded fund* utilizes a *custom basket*, these written policies and procedures also must:

(i) Set forth detailed parameters for the construction and acceptance of *custom baskets* that are in the best interests of the *exchange-traded fund* and its shareholders, including the process for any revisions to, or deviations from, those parameters; and

(ii) Specify the titles or roles of the employees of the *exchange-traded fund's* investment adviser who are required to review each *custom basket* for compliance with those parameters.

(4) An *exchange-traded fund* that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, must comply with all applicable provisions of rule 18f-4.

(d) *Recordkeeping*. The *exchange-traded fund* must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place:

(1) All written agreements (or copies thereof) between an *authorized participant* and the *exchange-traded fund* or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of *creation units*;

(2) For each *basket* exchanged with an *authorized participant*, records setting forth:

(i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the *basket* exchanged for *creation units*;

(ii) If applicable, identification of the *basket* as a *custom basket* and a record stating that the *custom basket* complies with policies and procedures that the *exchange-traded fund* adopted pursuant to paragraph (c)(3) of this section;

(iii) *Cash balancing amount* (if any); and

(iv) Identity of *authorized participant* transacting with the *exchange traded fund*.

Rule 6d-1 Exemption for certain closed-end investment companies.

(a) An application under section 6(d) of the Investment Company Act of 1940 shall contain the following information:

(1) A brief description of the character of the business and investment policy of the applicant.

- (2) The information relied upon by the applicant to satisfy the conditions of paragraphs (1) and (2) of section 6(d) of the Act.
 - (3) The number of holders of each class of the applicant's outstanding securities.
 - (4) An unconsolidated balance sheet as of a date not earlier than the end of the applicant's first *fiscal year*, together with a schedule specifying the title, the *amount*, the book *value* and, if determinable, the market *value* of each security in the applicant's portfolio.
 - (5) An unconsolidated profit and loss statement for the applicant's last *fiscal year*.
 - (6) A statement of each provision of the Act from which the applicant seeks exemption, together with a statement of the facts by reason of which, in the applicant's opinion, such exemption is not contrary to the public interest or inconsistent with the protection of investors.
- (b) There shall be attached to each copy of the application a copy of Form N-8A. The form need not be executed, but it shall be clearly marked on its facing page as an exhibit to the application. The filing of Form N-8A in this manner shall not be construed as the filing of a notification of registration under section 8(a) of the Act.
- (c) The application may contain any additional information which the applicant desires to submit.

Rule 6e-2 Exemptions for certain variable life insurance separate accounts.

- (a) A *separate account*, and the *investment adviser, principal underwriter* and depositor of such *separate account*, shall, except for the exemptions provided in paragraph (b) of this rule 6e-2, be subject to all provisions of the Investment Company Act of 1940 and rules and regulations promulgated thereunder as though such *separate account* were a registered *investment company* issuing periodic *payment* plan certificates if:
- (1) Such *separate account* is established and maintained by a life *insurance company* pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies to the extent necessary with rule 7d-1 under the Act;
 - (2) The assets of the *separate account* are derived solely from the sale of *Variable life insurance contracts* as defined in paragraph (c) of this rule 6e-2, and advances made by the life *insurance company* which established and maintains the *separate account* ("life insurer") in connection with the operation of such *separate account*;
 - (3) The *separate account* is not used for variable annuity contracts or for *funds* corresponding to dividend accumulations or other contract liabilities not involving life contingencies;

- (4) The income, gains and losses, whether or not realized, from assets allocated to such *separate account*, are, in accordance with the applicable *Variable life insurance contract*, credited to or charged against such account without regard to other income, gains or losses of the life insurer;
 - (5) The *separate account* is legally segregated, and that portion of its assets having a *value* equal to, or approximately equal to, the reserves and other contract liabilities with respect to such *separate account* are not chargeable with liabilities arising out of any other business that the life insurer may conduct;
 - (6) The assets of the *separate account* have, at each time during the year that adjustments in the reserves are made, a *value* at least equal to the reserves and other contract liabilities with respect to such *separate account*, and at all other times, except pursuant to an order of the Commission, have a *value* approximately equal to or in excess of such reserves and liabilities; and
 - (7) The *investment adviser* of the *separate account* is registered under the Investment Advisers Act of 1940.
- (b) If a *separate account* meets the requirements of paragraph (a) of this section, then such *separate account* and the other *persons* described in paragraph (a) of this section shall be exempt from the provisions of the Act as follows:
- (1) Section 7.
 - (2) Section 8 to the extent that:
 - (i) For purposes of paragraph (a) of section 8, the *separate account* shall file with the Commission a notification on Form N-6EI-1 which identifies such *separate account*; and
 - (ii) For purposes of paragraph (b) of section 8, the *separate account* shall file with the Commission a form to be designated by the Commission within 90 days after filing the notification on Form N-6EI-1: Provided, however, that if the *fiscal year* of the *separate account* ends within this ninety day period the form may be filed within 90 days after the end of such *fiscal year*.
 - (3) Section 9 to the extent that:
 - (i) The eligibility restrictions of section 9(a) shall not be applicable to those *persons* who are officers, *directors* and *employees* of the life insurer or its affiliates who do not participate directly in the management or administration of the *separate account* or in the sale of *Variable life insurance contracts funded* by such *separate account*; and
 - (ii) A life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) to serve as *investment adviser*, depositor of or *principal underwriter* for a variable life insurance *separate account* only if an *affiliated person* of such life insurer, ineligible by

reason of paragraph (1) or (2) of section 9(a), participates directly in the management or administration of the *separate account* or in the sale of *Variable life insurance contracts* funded by such *separate account*.

(4) Section 13(a) to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the *separate account* make (or refrain from making) certain *investments* which would result in changes in the sub-classification or investment policies of the *separate account*;

(ii) Changes in the investment policy of the *separate account* initiated by contract-holders or the board of *directors* of the *separate account* may be disapproved by the life insurer, provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(A) Such change would be contrary to state law; or

(B) Such change would be inconsistent with the investment objectives of the *separate account* or would result in the purchase of securities for the *separate account* which vary from the general quality and nature of *investments* and investment techniques utilized by other *separate accounts* of the life insurer or of an affiliated life *insurance company*, which *separate accounts* have investment objectives similar to the *separate account*; and

(iii) Any action taken in accordance with paragraph (b)(4)(i) or (ii) of this rule and the reasons therefor shall be disclosed in the proxy statement for the next meeting of *Variable life insurance contractholders* of the *separate account*.

(5) Section 14(a).

(6)(i) Section 15(a) to the extent this section requires that the initial written contract pursuant to which the *investment adviser* serves or acts shall have been approved by the vote of a *majority of the outstanding voting securities* of the registered company: Provided, that:

(A) Such *investment adviser* is selected and a written contract is entered into before the effective date of the registration statement under the Securities Act of 1933, as amended, for *Variable life insurance contracts* which are funded by the *separate account*, and that the terms of the contract are fully disclosed in such registration statement, and

(B) A written contract is submitted to a vote of *Variable life insurance contractholders* at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown; and

(ii) Sections 15 (a), (b) and (c) to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the *separate account* and an *investment adviser* or *principal underwriter*;

(B) Changes in the *principal underwriter* for the *separate account* initiated by contractholders or the board of *directors* of the *separate account* may be disapproved by the life insurer: Provided, that such disapproval is reasonable;

(C) Changes in the *investment adviser* of the *separate account* initiated by contract-holders or the board of *directors* of the *separate account* may be disapproved by the life insurer: Provided, that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(1) The rate of the proposed investment advisory fee will exceed the maximum rate that is permitted to be charged against the assets of the *separate account* for such services as specified by any *Variable life insurance contract funded by such separate account*; or

(2) The proposed *investment adviser* may be expected to employ investment techniques which vary from the general techniques utilized by the current *investment adviser* to the *separate account*, or advise the purchase or sale of securities which would be inconsistent with the investment objectives of the *separate account*, or which would vary from the quality and nature of *investments* made by other *separate accounts* of the life insurer or of an affiliated life *insurance company*, which *separate accounts* have investment objectives similar to the *separate account*; and

(D) Any action taken in accordance with paragraph (b)(6)(ii)(A), (B) or (C) of this section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of *Variable life insurance contractholders* of the *separate account*.

(7) Section 16(a) to the extent that:

(i) *Persons* serving as *directors* of the *separate account* prior to the first meeting of such account's *Variable life insurance contractholders* are exempt from the requirement of section 16(a) of the Act that such *persons* be elected by the holders of outstanding *Voting securities* of such account at an annual or special meeting called for that purpose, Provided, that: (A) Such *persons* have been appointed *directors* of such account by the life insurer before the effective date of the registration statement under the Securities Act of 1933, as amended, for *Variable life insurance contracts* which are *funded* by the *separate account* and are identified in such registration statement (or are replacements appointed by the life insurer for any such *persons* who have become unable to serve as *directors*), and (B) An election of *directors* for such account shall be held at the first meeting of *Variable life insurance contractholders* after the

effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts funded by such account, which meeting shall take place within one year after such effective date, unless the time for holding such meeting shall be extended by the Commission upon written request for good cause shown; and

(ii) A member of the board of *directors* of such *separate account* may be disapproved or removed by the appropriate insurance regulatory authority if such *person* is ineligible to serve as a *director* of the *separate account* pursuant to insurance law or regulation of the jurisdiction in which the life insurer is domiciled.

(8) Section 17(f) to the extent that the securities and similar *investments* of the *separate account* may be maintained in the custody of the life insurer or an *insurance company* which is an *affiliated person* of such life insurer: Provided, that:

(i) The securities and similar *investments* allocated to such *separate account* are clearly identified as to ownership by such account, and such securities and similar *investments* are maintained in the vault of an *insurance company* which meets the qualifications set forth in paragraph (b)(8)(ii) of this section, and whose procedures and activities with respect to such safekeeping function are supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar *investments* will be held;

(ii) The *insurance company* maintaining such *investments* must file with an insurance regulatory authority of a State or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar *investments* of the *separate account* in its vault, which vault must be equivalent to that of a *bank* which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar *investments* shall be limited to *employees* of or agents authorized by the Commission, representatives of insurance regulatory authorities, independent public accountants for the *separate account*, accountants for the life insurer and to no more than 20 *persons* authorized pursuant to a resolution of the board of *directors* of the *separate account*, which *persons* shall be *directors* of the *separate account*, officers and responsible *employees* of the life insurer or officers and responsible *employees* of the affiliated *insurance company* in whose vault such *investments* are maintained (if applicable), and access to such securities and similar *investments* shall be had only by two or more such *persons* jointly, at least one of whom shall be a *director* of the *separate account* or officer of the life insurer;

(iv) The requirement in paragraph (b)(8)(i) of this section that the securities and similar *investments* of the *separate account* be maintained in the vault of a qualified *insurance company* shall not apply to securities deposited with insurance regulatory authorities or deposited in a system for the central handling of securities established by a *national securities exchange* or national securities association registered with the Commission under the Securities Exchange Act of 1934, as amended, or such *person* as may be permitted by the Commission, or to securities on loan which are collateralized to the extent of their full market *value*, or to securities hypothecated, pledged, or placed in escrow for the account of such *separate account* in connection with a loan or other transaction authorized by specific resolution of the board of *directors* of the *separate account*, or to securities in transit in connection with the sale, *exchange*, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each *person* when depositing such securities or similar *investments* in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated *insurance company*, shall sign a notation in respect of such deposit, withdrawal or order which shall show (A) the date and time of the deposit, withdrawal or order, (B) the title and *amount* of the securities or other *investments* deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar *investments* deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another *person* the name of such *person*. Such notation shall be transmitted promptly to an officer or *director* of the *separate account* or the life insurer designated by the board of *directors* of the *separate account* who shall not be a *person* designated for the purpose of paragraph (b)(8)(iii) of this Rule 6e-2. Such notation shall be on serially numbered forms and shall be preserved for at least one year;

(vi) Such securities and similar *investments* shall be verified by complete examination by an independent public accountant retained by the *separate account* at least three times during each *fiscal year*, at least two of which shall be chosen by such accountant without prior notice to such *separate account*. A certificate of such accountant stating that he has made an examination of such securities and *investments* and describing the nature and extent of the examination shall be transmitted to the Commission by the accountant promptly after each examination; and

(vii) Securities and similar *investments* of a *separate account* maintained with a *bank* or other company whose functions and physical facilities are supervised by federal or state authorities pursuant to any arrangement whereby the *directors*, officers, *employees* or agents of the *separate account* or the life insurer are authorized or permitted to withdraw such *investments* upon their mere receipt are deemed to be in the

custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of paragraph (b)(8) of this section except that such securities will be maintained in the vault of a *bank* or other company rather than the vault of an *insurance company*.

(9) Section 18(i) to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of security-holders on matters relating to the *investment company*:

(A) *Variable life insurance contractholders* shall have one vote for each \$100 of *Cash value* funded by the *separate account*, with fractional votes allocated for *amounts* less than \$100;

(B) The life insurer shall have one vote for each \$100 of assets of the *separate account* not otherwise attributable to contractholders pursuant to paragraph (b)(9)(i)(A), with fractional votes allocated for *amounts* less than \$100: Provided, that after the commencement of sales of *Variable life insurance contracts* funded by the *separate account*, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days prior to any meeting at which such vote is held: Provided, that if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date; and

(ii) The requirement of this section that every *share* of stock issued by a registered management *investment company* (except a common-law trust of the character described in section 16(c)) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provision of this rule.

(10) Section 19 to the extent that the provisions of this section shall not be applicable to any dividend or similar *distribution* paid or payable pursuant to provisions of participating *Variable life insurance contracts*.

(11) Sections 22(d), 22(e), and 27(i)(2)(A) and rule 22c-1 promulgated under section 22(c) to the extent:

(i) That the *amount* payable on death and the *Cash surrender value* of each *Variable life insurance contract* shall be determined on each day during which the New York Stock Exchange is open for trading, not less frequently than once daily as of the time of the close of trading on such *exchange*: Provided, that the *amount* payable on death need not be determined more than once each contract month if such determination does not reduce the participation of the contract in the investment experience of the

separate account: Provided further, however, That if the net valuation premium for such contract is transferred at least annually, then the *amount* payable on death need be determined only when such net premium is transferred; and

(ii) Necessary for compliance with this rule 6e-2 or with insurance laws and regulations and established administrative procedures of the life insurer with respect to issuance, transfer and redemption procedures for *Variable life insurance contracts* funded by the *separate account* including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract: Provided, however, that any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholder and to all other holders of contracts of the same class or series funded by the *separate account*: And, further provided, That any such action shall be disclosed in the form required to be filed by the *separate account* with the Commission pursuant to paragraph (b)(2)(ii) of this rule 6e-2.

(12) Section 27(i)(2)(A), to the extent that such sections require that the *variable life insurance contract* be redeemable or provide for a refund in cash; provided that such contract provides for election by the contractholder of a *cash surrender value* or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered; and further provided that unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, such contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or *payment* of an interest or similar charge;

(13) section 32(a)(2): Provided, that:

(i) The independent public accountant is selected before the effective date of the registration statement under the Securities Act of 1933, as amended, for *Variable life insurance contracts* which are funded by the *separate account*, and the identity of such accountant is disclosed in such registration statement, and

(ii) The selection of such accountant is submitted for ratification or rejection to *Variable life insurance contractholders* at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown.

(14) If the *separate account* is organized as a *unit investment trust*, all the assets of which consist of the *shares* of one or more registered management *investment*

companies which offer their *shares* exclusively to variable life insurance *separate accounts* of the life insurer or of any affiliated life *insurance company*:

(i) The eligibility restrictions of section 9(a) of the Act shall not be applicable to those *persons* who are officers, *directors* and *employees* of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management *investment company* described in paragraph (b)(14) introductory text;

(ii) The life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) of the Act to serve as *investment adviser* of or *principal underwriter* for any registered management *investment company* described in paragraph (b)(14) of this section only if an *affiliated person* of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote *shares* of the registered management *investment companies* held by the *separate account* without regard to instructions from contractholders of the *separate account* if such instructions would require such *shares* to be voted:

(A) To cause such companies to make (or refrain from making) certain *investments* which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an *investment adviser* when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(4)(i) and (b)(6)(ii)(A); or

(B) In favor of changes in investment objectives, *investment adviser* of or *principal underwriter* for such companies subject to the provisions of paragraphs (b)(4)(ii) and (b)(6)(ii)(B) and (C) of this section;

(iv) Any action taken in accordance with paragraph (b)(14)(iii)(A) or (B) of this section and the reasons therefor shall be disclosed in the next report to contractholders made pursuant to section 30(e) and rule 30e-2;

(v) Any registered management *investment company* established by the insurer and described in this paragraph (b)(14) of this section shall be exempt from section 14(a); and

(vi) Any registered management *investment company* established by the insurer and described in paragraph (b)(14) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act, to the extent prescribed by paragraphs (b)(6)(i), (b)(7)(i), and (b)(13), provided that such company complies with the conditions set forth in those paragraphs as if it were a *separate account*.

(c) When used in this rule, “*Variable life insurance contract*” means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in

which it is offered, funded by a *separate account* of a life insurer, which contract, so long as premium *payments* are duly paid in accordance with its terms, provides for:

- (1) A death benefit and *Cash surrender value* which vary to reflect the investment experience of the *separate account*;
- (2) An initial stated dollar *amount* of death benefit, and *payment* of a death benefit *guaranteed* by the life insurer to be at least equal to such stated *amount*; and
- (3) Assumption of the mortality and expense risks thereunder by the life insurer for which a charge against the assets of the *separate account* may be assessed. Such charge shall be disclosed in the *prospectus* and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the *prospectus* and as provided for in the contract.

Rule 6e-3 Exemptions for flexible premium variable life insurance separate accounts.

(a) A *separate account*, and its *investment adviser*, *principal underwriter* and depositor, shall, except as provided in paragraph (b) of this rule, comply with all provisions of the Investment Company Act of 1940 and the rules under it that apply to a registered *investment company* issuing periodic payment plan certificates if:

- (1) It is a *separate account* within the meaning of section 2(a)(37) of the Act and is established and maintained by a life *insurance company* pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with rule 7d-1 under the Act (the “*life insurer*”);
- (2) The assets of the *separate account* are derived solely from (i) the sale of *flexible premium variable life insurance contracts* (“*flexible contracts*”) as defined in paragraph (c)(1) of this rule, (ii) the sale of scheduled premium *Variable life insurance contracts* (“*scheduled contracts*”) as defined in paragraph (c)(1) of rule 6e-2 under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the *life insurer* in connection with the operation of such *separate account*;
- (3) The *separate account* is not used for variable annuity contracts or other contract liabilities not involving life contingencies;
- (4) The *separate account* is legally segregated, and that part of its assets with a *value* approximately equal to the reserves and other contract liabilities for such *separate account* are not chargeable with liabilities arising from any other business of the *life insurer*;
- (5) The *value* of the assets of the *separate account*, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the *separate account*, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The *investment adviser* of the *separate account* is registered under the Investment Advisers Act of 1940.

(b) A *separate account* that meets the requirements of paragraph (a) of this rule, and its *investment adviser*, *principal underwriter* and depositor shall be exempt with respect to *flexible contracts* funded by the *separate account* from the following provisions of the Act:

(1) Subject to section 26(f) of the Act, in connection with any sales charge deducted under the flexible contract, the *separate account* and other persons shall be exempt from sections 12(b) , 22(c), and 27(i)(2)(A) of the Act, and rule 12b-1 and rule 22c-1 under the Act.

(2) section 7.

(3) section 8, to the extent that:

(i) For purposes of paragraph (a) of section 8, the *separate account* filed with the Commission a notification on Form N-6EI-1 which identifies the *separate account*; and

(ii) For purposes of paragraph (b) of section 8, the *separate account* shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N-6EI-1, provided, however, that if the *fiscal year* of the *separate account* ends within this ninety day period, the form may be filed within ninety days after the end of such *fiscal year*.

(4) section 9, to the extent that:

(i) The eligibility restrictions of section 9(a) shall not apply to *persons* who are officers, *directors* or *employees* of the *life insurer* or its affiliates and who do not participate directly in the management or administration of the *separate account* or in the sale of *flexible contracts*; and

(ii) A *life insurer* shall be ineligible under paragraph (3) of section 9(a) to serve as *investment adviser*, depositor of or *principal underwriter* for the *separate account* only if an *affiliated person* of such *life insurer*, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates directly in the management or administration of the *separate account* or in the sale of *flexible contracts*.

(5) section 13(a), to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the *separate account* make (or refrain from making) certain *investments* which would result in changes in the sub-classification or investment policies of the *separate account*;

(ii) Changes in the investment policy of the *separate account* initiated by its contractholders or board of *directors* may be disapproved by the *life insurer*, if the dis-

approval is reasonable and is based on a good faith determination by the *life insurer* that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the *separate account* or would result in the purchase of securities for the *separate account* which vary from the general quality and nature of *investments* and investment techniques used by other *separate accounts* of the life insurer or of an affiliated life *insurance company* with similar investment objectives; and

(iii) Any action described in paragraph (b)(5)(i) or (ii) of this rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(6) section 14(a).

(7)(i) section 15(a), to the extent it requires that the initial written contract with the *investment adviser* shall have been approved by the vote of a *majority of the outstanding voting securities* of the registered *investment company*, *provided*, that:

(A) The *investment adviser* is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for *flexible contracts*, and that the terms of the contract are fully disclosed in the registration statement, and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting; and

(ii) sections 15(a), (b) and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the *separate account* and an *investment adviser* or *principal underwriter*;

(B) Changes in the *principal underwriter* for the *separate account* initiated by contractholders or the board of *directors* of the *separate account* may be disapproved by the *life insurer*, *provided*, that such disapproval is reasonable;

(C) Changes in the *investment adviser* of the *separate account* initiated by contractholders or the board of *directors* of the *separate account* may be disapproved by the *life insurer*, *provided*, that such disapproval is reasonable and is based on a good faith determination by the *life insurer* that:

(1) The proposed investment advisory fee will exceed the maximum rate specified in any *flexible contract* that may be charged against the assets of the *separate account* for such services; or

(2) The proposed *investment adviser* may be expected to employ investment techniques which vary from the general techniques used by the current *investment adviser* to the *separate account*, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the *separate account*, or which would vary from the quality and nature of *investments* made by other *separate accounts* with similar investment objectives of the *life insurer* or an affiliated *life insurance company*; and

(D) Any action described in paragraph (b)(7)(ii) (A), (B) or (C) of this rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(8) section 16(a), to the extent that:

(i) *Directors* of the *separate account* serving before the first meeting of the account's contractholders are exempt from the requirement of section 16(a) that they be elected by the holders of outstanding *Voting securities* of the account at an annual or special meeting called for that purpose, provided, that: (A) Such *persons* were appointed *directors* of the account by the *life insurer* before the effective date of the 1933 Act registration statement for *flexible contracts* and are identified in the registration statement (or are replacements appointed by the *life insurer* for any such *persons* who have become unable to serve as *directors*), and (B) An election of *directors* for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for *flexible contracts*, unless the time for holding the meeting is extended by the Commission upon written request and for good cause shown; and

(ii) A member of the board of *directors* of the *separate account* may be disapproved or removed by an insurance regulatory authority if the *person* is not eligible to be a *director* of the *separate account* under the law of the *life insurer's* domicile.

(9) section 17(f), to the extent that the securities and similar *investments* of a *separate account* organized as a management *investment company* may be maintained in the custody of the *life insurer* or of an affiliated *life insurance company*, *provided*, that:

(i) The securities and similar *investments* allocated to the *separate account* are clearly identified as owned by the account, and the securities and similar *investments* are kept in the vault of an *insurance company* which meets the qualifications in paragraph (b)(9)(ii) of this rule, and whose safekeeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar *investments* will be held;

(ii) The *insurance company* maintaining such *investments* must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and

inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar *investments* of the *separate account* in its vault, which vault must be equivalent to that of a *bank* which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar *investments* shall be limited to *employees* of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the *separate account* (or on its behalf by the *life insurer*), accountants for the *life insurer*, and to no more than 20 *persons* authorized by a resolution of the board of *directors* of the *separate account*, which *persons* shall be *directors* of the *separate account*, officers and responsible *employees* of the *life insurer* or officers and responsible *employees* of the affiliated life *insurance company* in whose vault the *investments* are kept (if applicable), and access to such securities and similar *investments* shall be had only by two or more such *persons* jointly, at least one of whom shall be a *director* of the *separate account* or officer of the *life insurer*;

(iv) The requirement in paragraph (b)(9)(i) of this rule that the securities and similar *investments* of the *separate account* be maintained in the vault of a qualified *insurance company* shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such *separate account* in connection with a loan or other transaction authorized by specific resolution of the board of directors of the *separate account*, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each *person* when depositing such securities or similar *investments* in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the *life insurer* or affiliated life *insurance company*, shall sign a notation showing: (A) the date and time of the deposit, withdrawal or order, (B) the title and *amount* of the securities or other *investments* deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar *investments* deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another *person*, the name of such *person*. The notation shall be sent promptly to an officer or *director* of the *separate account* or the *life insurer* designated by the board of *directors* of the *separate account* who is

not himself permitted to have access to the securities or *investments* under paragraph (b)(9)(iii) of this rule. The notation shall be on serially numbered forms and shall be kept for at least one year;

(vi) The securities and similar *investments* shall be verified by complete examination by an independent public accountant retained by the *separate account* (or on its behalf by the *life insurer*) at least three times each *fiscal year*, at least two of which shall be chosen by the accountant without prior notice to the *separate account*. A certificate of the accountant stating that he has made an examination of such securities and *investments* and describing the nature and extent of the examination shall be sent to the Commission by the accountant promptly after each examination; and

(vii) Securities and similar *investments* of a *separate account* maintained with a *bank* or other company whose functions and physical facilities are supervised by federal or state authorities under any arrangement whereby the *directors*, officers, *employees* or agents of the *separate account* or the *life insurer* are authorized or permitted to withdraw such *investments* upon their mere receipt are deemed to be in the custody of the *life insurer* and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a *bank* or other company rather than the vault of an *insurance company*.

(10) section 18(i), to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the *investment company*:

(A) Flexible contractholders shall have one vote for each \$100 of *Cash value* funded by the *separate account*, with fractional votes allocated for *amounts* less than \$100;

(B) The *life insurer* shall have one vote for each \$100 of assets of the *separate account* not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this rule, with fractional votes allocated for *amounts* less than \$100, provided, that after the commencement of sales of *flexible contracts*, the *life insurer* shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held, provided, that if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date; and

(ii) The requirement of section 18(i) that every *share* of stock issued by a registered management *investment company* (except a common-law trust of the character described in section 16(c)) shall be a voting stock and have equal voting rights with ev-

ery other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this rule.

(11) section 19, to the extent that the provisions of this section shall not apply to any dividend or similar *distribution* paid or payable under provisions of participating *flexible contracts*.

(12) sections 22(c), 22(d), 22(e), and 27(i)(2)(A) and rule 22c-1 to the extent:

(i) The *Cash value* of each *flexible contract* shall be computed in accordance with rule 22c-1(b) under the Act; provided, however, that where actual computation is not necessary for the operation of a particular contract, then the *Cash value* of that contract must only be capable of computation; and provided further, that to the extent the calculation of the *Cash value* reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees or *sales charges*, such deductions need only be made at such times as specified in the contract or as necessary for compliance with insurance laws and regulations;

(ii) The death benefit, unless required by insurance laws and regulations, shall be computed on any day that the investment experience of the *separate account* would affect the death benefit under the terms of the contract provided that such terms are reasonable, fair, and nondiscriminatory; and

(iii) Necessary to comply with this rule or with insurance laws and regulations and established administrative procedures of the *life insurer* for issuance, increases in or additions of insurance benefits, transfer and redemption of *flexible contracts*, including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract, provided, however, that any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholders and to all other holders of contracts of the same class or series funded by the *separate account*, and provided further, that any such action shall be disclosed in the form filed by the *separate account* with the Commission under paragraph (b)(3)(ii) of this rule.

(13) Sections 27(i)(2)(A) and 22(c) and rule 22c-1 thereunder, to the extent that:

(i) Such sections require that the *flexible contract* be redeemable or provide for a *refund* in cash, provided, that the contract provides for election by the contractholder of a *Cash surrender value* or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered, And provided further, that unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or *payment* of an interest or similar charge.

- (ii) Notwithstanding the provisions of paragraph (b)(13)(i) of this rule, if the *amounts* available under the contract to pay the charges due under the contract on any *contract processing day* are less than such charges due, the contract may provide that the *cash surrender value* shall be applied to purchase a non-forfeiture option specified by the *life insurer* in such contract, provided, that the contract also provides that *contract processing days* occur not less frequently than monthly,
- (iii) Subject to section 26(f), *sales charges* and administrative expenses or fees may be deducted upon redemption.

(14) Section 32(a)(2), provided, that: (i) the independent public accountant is selected before the effective date of the 1933 Act registration statement for *flexible contracts*, and the identity of the accountant is disclosed in the registration statement, and (ii) the selection of the accountant is submitted for ratification or rejection to flexible contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for *flexible contracts*, unless the time for holding the meeting is extended by order of the Commission.

(15) If the *separate account* is organized as a *unit investment trust*, all the assets of which consist of the *shares* of one or more registered management *investment companies* which offer their *shares* exclusively to *separate accounts* of the *life insurer*, or of any affiliated life *insurance company*, offering either scheduled contracts or *flexible contracts*, or both; or which also offer their *shares* to variable annuity *separate accounts* of the *life insurer* or of an affiliated life *insurance company*, or which offer their *shares* to any such life *insurance company* in consideration solely for advances made by the life insurer in connection with the operation of the *separate account*; provided, that: the board of *directors* of each *investment company*, constituted with a majority of disinterested *directors*, will monitor such company for the existence of any *material* irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the *life insurer* agrees that it will be responsible for reporting any potential or existing conflicts to the *directors*; and if a conflict arises, the *life insurer* will, at its own cost, remedy such conflict up to and including establishing a new registered management *investment company* and segregating the assets underlying the variable annuity contracts and the scheduled or *flexible contracts*; then:

- (i) The eligibility restrictions of section 9(a) shall not apply to those *persons* who are officers, *directors* or *employees* of the *life insurer* or its affiliates who do not participate directly in the management or administration of any registered management *investment company* described in this paragraph (b)(15);
- (ii) The *life insurer* shall be ineligible under paragraph (3) of section 9(a) to serve as *investment adviser* of or *principal underwriter* for any registered management *investment company* described in this paragraph (b)(15) only if an *affiliated person* of such *life insurer*, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) For purposes of any section of the Act which provides for the vote of securityholders on matters relating to the *separate account* or the underlying registered *investment company*, the voting provisions of paragraphs (b)(10)(i) and (ii) of this rule apply, provided, that:

(A) The *life insurer* may vote *shares* of the registered management *investment companies* held by the *separate account* without regard to instructions from contractholders of the *separate account* if such instructions would require such *shares* to be voted:

(1) To cause such companies to make (or refrain from making) certain *investments* which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an *investment adviser* when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this rule; or

(2) In favor of changes in investment objectives, *investment adviser* or or *principal underwriter* for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of this rule;

(B) Any action taken in accordance with paragraph (b)(15)(iii)(A) (1) or (2) of this section and the reasons therefor shall be disclosed in the next report contractholders made under section 30(e) and Rule 30e-2;

(iv) Any registered management *investment company* established by the *life insurer* and described in this paragraph (b)(15) shall be exempt from section 14(a); and

(v) Any registered management *investment company* established by the *life insurer* and described in this paragraph (b)(14) shall be exempt from sections 15(a), 16(a), and 32(a)(2), to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of this rule, Provided, that the company complies with the conditions set forth in paragraphs (b)(7)(i), (b)(8)(i), and (b)(14) of the rule as if it were a *separate account*.

(c) When used in this rule:

(1) “*Flexible premium variable life insurance contract*” means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a *separate account* of a *life insurer*, which contract provides for:

(i) *Premium Payments* which are not fixed by the *life insurer* as to both timing and *amount*: Provided, however, that the *life insurer* may fix the timing and minimum *amount* of *premium payments* for the first two *contract periods* following issuance of the contract or of an increase in or addition of insurance benefits, and may prescribe a reasonable minimum *amount* for any additional premium *payment*;

(ii) A death benefit the *amount* or duration of which may vary to reflect the investment experience of the *separate account*;

- (iii) A *Cash value* which varies to reflect the investment experience of the *separate account*; and
 - (iv) There is a reasonable expectation that subsequent premium *payments* will be made.
- (2) “*Contract period*” means the period from a contract issue or anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the contract.
- (3) “*Cash value*” means the *amount* that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding contract loan.
- (4) “*Cash surrender value*” means the *amount* available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with the termination have been deducted and before deduction of any outstanding contract loan.
- (5) “*Contract processing day*” means any day on which charges under the contract are deducted from the *separate account*.

Section 7. Transactions by unregistered *investment companies*. [15 U.S.C. 80a-7]

- (a) Prohibition of transactions in interstate commerce by companies. No *investment company* organized or otherwise created under the laws of the United States or of a State and having a board of *directors*, unless registered under section 8, shall directly or indirectly—
- (1) offer for sale, sell, or deliver after sale, by the use of the mails or any *means or instrumentality of interstate commerce*, any security or any interest in a security, whether the *issuer* of such security is such *investment company* or another *person*; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any *means or instrumentality of interstate commerce*;
 - (2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any *means or instrumentality of interstate commerce*, any security or any interest in a security, whether the *issuer* of such security is such *investment company* or another *person*;
 - (3) *control* any *investment company* which does any of the acts enumerated in paragraphs (1) and (2);
 - (4) engage in any business in *interstate commerce*; or
 - (5) *control* any company which is engaged in any business in *interstate commerce*.

The provisions of this subsection (a) shall not apply to transactions of an *investment company* which are merely incidental to its dissolution.

(b) Prohibition of transactions in interstate commerce by depositors or trustees of companies. No depositor or trustee of or *underwriter* for any *investment company*, organized or otherwise created under the laws of the United States or of a State and not having a board of *directors*, unless such company is registered under section 8 or exempt under section 6, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by use of the mails or any *means or instrumentality of interstate commerce*, any security or any interest in a security of which such company is the *issuer*; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any *means or instrumentality of interstate commerce*;

(2) purchase, redeem, or otherwise acquire or attempt to acquire, by use of the mails or any *means or instrumentality of interstate commerce*, any security or any interest in a security of which such company is the *issuer*; or

(3) sell or purchase for the account of such company, by use of the mails or any *means or instrumentality of interstate commerce*, any security or interest in a security, by whomever issued.

The provisions of this subsection (b) shall not apply to transactions which are merely incidental to the dissolution of an *investment company*.

(c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies. No *promoter* of a proposed *investment company*, and no *underwriter* for such a *promoter*, shall make use of the mails or any *means or instrumentality of interstate commerce*, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any *preorganization* certificate or subscription for such a company.

(d) Prohibitions of transactions in interstate commerce by companies not organized under laws of the United States or a State; exceptions. No *investment company*, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or *underwriter* for such a company not so organized or created, shall make use of the mails or any *means or instrumentality of interstate commerce*, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the *issuer*. Notwithstanding the provisions of this subsection and of section 8(a), the Commission is authorized, upon application by an *investment company* organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under this title and to make a public offering of its securities by use of the mails and means or instrumentalities of *interstate commerce*, if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions

of this title against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

(e) Disclosure By Exempt Charitable Organizations. Each *fund* that is excluded from the definition of an *investment company* under section 3(c)(10)(B) of this Act shall provide, to each donor to such *fund*, at the time of the donation or within 90 days after the date of enactment of this subsection [December 8, 1995], whichever is later, written information describing the *material* terms of the operation of such *fund*.

Rule 7d-1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

(a) A management *investment company* organized under the laws of Canada or any province thereof may obtain an order pursuant to section 7(d) permitting its registration under the Investment Company Act of 1940 and the public offering of its securities, if otherwise appropriate, upon the filing of an application complying with paragraph (b) of this section. All such applications will be considered by the Commission pursuant to the procedure set forth in rule 0-5 and other applicable rules. Conditions and arrangements proposed by *investment companies* organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case.

(b) An application filed pursuant to this section shall contain, inter alia, the following undertakings and agreements of the applicant:

(1) Applicant will cause each present and future officer, *director*, *investment adviser*, *principal underwriter* and *custodian* of the applicant to enter into an agreement, to be filed by applicant with the Commission upon the filing of its registration statement or upon the assumption of such office by such *person*, which will provide, among other things, that each such *person* agrees (i) to comply with the applicant's Letters Patent (*Charter*) and By Laws, the Act and the rules thereunder, and the undertakings and agreements contained in said application insofar as applicable to such *person*; (ii) to do nothing inconsistent with the applicant's undertakings and agreements required by this section; (iii) that the undertakings enumerated as paragraphs (b)(1)(i) and (ii) of this section constitute representations and inducements to the Commission to issue its order in the premises and continue the same in effect, as the case may be; (iv) that each such agreement constitutes a contract between such *person* and the applicant and its shareholders with the intent that applicant's shareholders shall be beneficiaries of and shall have the status of parties to such agreement so as to enable them to maintain actions at law or in equity within the United States and Canada for any violation thereof. In addition, the agreement of each officer and *director* will contain provisions similar to those contained in paragraph (b)(6) of this section.

(2) That every agreement and undertaking of the applicant, its officers, *directors*, *investment adviser*, *principal underwriter* and *custodian* required by this section (i)

constitute inducements to the Commission for the issuance and continuance in effect of, and conditions to, the Commission's order to be entered under this section; (ii) constitute a contract among applicant and applicant's shareholders with the same intent as set forth in paragraph (b)(1)(iv) of this section (b); and (iii) failure by the applicant or any of the above enumerated *persons* to comply with any such agreement and undertaking, unless permitted by the Commission, shall constitute a violation of the order entered under this section.

(3) That the Commission, in its discretion, may revoke its order permitting registration of the applicant and the public offering of its securities if it shall find after notice and opportunity for hearing that there shall have been a violation of such order or the Act and may determine whether *distribution* of applicant's assets is necessary or appropriate in the interests of investors and may so direct.

(4) That applicant will perform every action and thing necessary to cause and assist the *custodian* of its assets to distribute the same, or the proceeds thereof, if the Commission or a court of competent jurisdiction, shall have so directed by a final order.

(5) That any shareholder of the applicant or the Commission on its own motion or on request of shareholders shall have the right to initiate a proceeding (i) before the Commission for the revocation of the order permitting registration of the applicant or (ii) before a court of competent jurisdiction for the liquidation of applicant and a distribution of its assets to its shareholders and creditors. Such court may enter such order in the event that it shall find, after notice and opportunity for hearing, that applicant, its officers, *directors*, *investment adviser*, *principal underwriter* or *custodian* shall have violated any provision of the Act or the Commission's order of registration of the applicant. A court of competent jurisdiction for the purpose of paragraphs (b)(4) and (5) of this paragraph means the District Court of the United States of the district in which the assets of the applicant are maintained.

(6) That any shareholder of the applicant shall have the right to bring suit at law or in equity, in any court of the United States or Canada having jurisdiction over applicant, its assets or any of its officers or *directors* to enforce compliance by applicant, its officers and *directors* with any provision of applicant's *Charter* or By Laws, the Act and the rules thereunder, or undertakings and agreements required by this section, insofar as applicable to such *persons*. That such court may appoint a trustee or receiver of the applicant with all powers necessary to implement the purposes of such suit, including the administration of the estate, the collection of corporate property including choses-in-action, and *distribution* of applicant's assets to its creditors and shareholders. That applicant and its officers and *directors* waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of the applicant to bring such suit, reserving, however, their right to maintain that they have complied with the aforesaid provisions, undertakings and agreements, and otherwise to dispute such suit on its merits. Applicant, its officers and *directors* also agree that any final judgment or decree of any

United States court as aforesaid, may be granted full faith and credit by a court of competent jurisdiction of Canada and consent that such Canadian court may enter judgment or decree thereon at the instance of any shareholder, receiver or trustee of the applicant.

(7) Applicant will file, and will cause each of its present or future *directors*, officers, or *investment advisers* who is not a resident of the United States to file with the Commission irrevocable designation of the applicant's *custodian* as an agent in the United States to accept service of process in any suit, action or proceeding before the Commission or any appropriate court to enforce the provisions of the acts administered by the Commission, or to enforce any right or liability based upon applicant's *Charter*, By Laws, contracts, or the respective undertakings and agreements of any such *person* required by this section, or which alleges a liability on the part of any such *persons* arising out of their service, acts or transactions relating to the applicant.

(8) Applicant's *Charter* and By Laws, taken together, will contain, so long as applicant is registered under the Act, in substance the following:

(i) The provisions of the Act as follows: section 2(a): Provided, that the term "government securities" defined in section 2(a)(16) may include securities issued or *guaranteed* by Canada or any instrumentality of the government of Canada; the term "*value*" defined in section 2(a)(41) may be defined solely for the purposes of sections 5 and 12 in accordance with the provisions of Rule 2a-1 if the same shall be necessary or desirable to comply with Canadian regulatory or revenue laws or rules or regulations thereunder; the term "*bank*" defined in section 2(a)(5) shall be defined solely for the purposes of sections 9 and 10, as any *banking* institution; section 4; section 5; section 6(c); section 9; section 10(a), (b), (c), (e), (f) and (g): Provided, that the provisions of section 10(d) may be substituted for the provisions of section 10(a) and 10(b)(2) if applicable; section 11; section 12(a), (b), (c), and (d); section 13(a); section 15(a), (b), and (c); section 16(a); sections 17, 18, 19, 20 and 21; section 22(d); section 22(e): Provided, that the Toronto Stock Exchange or the Montreal Stock Exchange or both may be included in addition to the New York Stock Exchange; Section 22(f); section 22(g); section 23; section 25(a) and (b); section 30(a), (b), (d), (e), and (f); section 31; section 32(a): Provided, that provision may be made for the selection and termination of employment of the accountant in compliance with The Companies Act of Canada; section 32(b). Where a provision of the Act prohibits or directs action by an *investment company*, or its *directors*, officers or *employees*, the *Charter* or By Laws shall state that the applicant or its *directors*, officers or *employees* shall or shall not act, as the case may be, in conformity with the intent of the statute; where the provision applies to others, such as *principal underwriters*, *investment advisers*, *controlled* companies and *affiliated persons*, the *Charter* or By Laws shall also state that the applicant will not permit the prohibited conduct or will obtain the required action. Any of the provisions of sections 11, 12, 15, 18, 22, 23, 30, and 31 may be omitted if not applicable to a company of applicant's classification or sub-classification as defined in section 4 or 5 of

the Act or if not applicable because the subject matter of such provisions is prohibited by the *Charter* or By Laws. Other provisions of the Act not specified above may be incorporated in the applicant's *Charter* or By Laws at its option.

(ii) Any question of interpretation of any term or provision of the *Charter* or By Laws having a counterpart in or otherwise derived from a term or provision of the Act shall be resolved by reference to interpretations, if any, of the corresponding term or provision of the Act by the courts of the United States of America or, in the absence of any controlling decision of any such court, by rules, regulations, orders or interpretations of the Commission.

(iii) Applicant will maintain the original or duplicate copies of its books and records at the office of its *custodian* or other office located within the United States.

(iv) At least a majority of the *directors* and of the officers of the applicant will be United States citizens of whom a majority will be resident in the United States.

(v) Except as provided in rule 17f-5 and rule 17f-7, applicant will appoint, by contract, a *bank*, as defined in section 2(a)(5) of the Act and having the qualification described in section 26(a)(1) of the Act, to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. The contract will provide, *inter alia*, that the *custodian* will: (A) consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities *exchange*, through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, and (B) redeem in the United States such of applicant's *shares* as shall be surrendered therefor, and (C) distribute applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the *custodian* of an order of the Commission or court directing such *distribution* as provided in paragraphs (b) (3) and (5) of this section.

(vi) Applicant's *principal underwriter* for the sale of its *shares* will be a citizen and resident of the United States or a corporation organized under the laws of a state of the United States, and having its *principal place of business* therein, and if redeemable *shares* are offered, also a member in good standing of a securities association registered under section 15A of the Securities Exchange Act of 1934.

(vii) Applicant will appoint an accountant, qualified to act as an independent public accountant for the applicant under the Act and the rules thereunder, who maintains a permanent office and *place of business* in the United States.

(viii) Any contract entered into between the applicant and its *investment adviser* and *principal underwriter* will contain provisions in compliance with the requirements of sections 15, 17(i) and 31 and the rules thereunder, and require that the *investment adviser* maintain in the United States its books and records or duplicate copies thereof relating to applicant.

- (ix) Applicant's *Charter* and By Laws will not be changed in any manner inconsistent with this paragraph or the Act and the rules thereunder unless authorized by the Commission.
- (9) Contracts of the applicant, other than those executed on an established securities *exchange* which do not involve *affiliated persons*, will provide that:
- (i) Such contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, if the subject matter of such contracts is within the purview of such Acts; and
 - (ii) In effecting the purchase or sale of assets the parties thereto will utilize the United States mails or means of *interstate commerce*.
- (10) Applicant will furnish to the Commission with its registration statement filed under the Act a list of *persons* affiliated with it and with its *investment adviser* and *principal underwriter* and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the Act.

Rule 7d-2 Definition of “public offering” as used in section 7(d) of the Act with respect to certain Canadian tax-deferred retirement savings accounts.

(a) Definitions. As used in this section:

- (1) “*Canadian law*” means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.
- (2) “*Canadian Retirement Account*” means a trust or other arrangement, including, but not limited to, a “Registered Retirement Savings Plan” or “Registered Retirement Income Fund” administered under *Canadian law*, that is managed by the *Participant* and:
 - (i) Operated to provide retirement benefits to a *Participant*; and
 - (ii) Established in Canada, administered under *Canadian law*, and qualified for tax-deferred treatment under *Canadian law*.
- (3) “*Eligible Security*” means a security issued by a *Qualified Company* that:
 - (i) Is offered to a *Participant*, or sold to his or her *Canadian Retirement Account*, in reliance on this section; and
 - (ii) May also be purchased by Canadians other than *Participants*.
- (4) “*Foreign Government*” means the government of any foreign country or of any political subdivision of a foreign country.

(5) “*Foreign Issuer*” means any *issuer* that is a *Foreign Government*, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an *issuer* meeting the following conditions:

(i) More than 50 percent of the outstanding *voting securities* of the *issuer* are held of record either directly or through voting trust certificates or depositary receipts by residents of the *United States*; and

(ii) Any of the following:

(A) The majority of the *executive officers* or *directors* are *United States* citizens or residents;

(B) More than 50 percent of the assets of the *issuer* are located in the *United States*; or

(C) The business of the *issuer* is administered principally in the United States.

(iii) For purposes of this definition, the term resident, as applied to security holders, means any *person* whose address appears on the records of the *issuer*, the voting trustee, or the depositary as being located in the *United States*.

(6) “*Participant*” means a natural *person* who is a resident of the *United States*, or is temporarily present in the *United States*, and who contributes to, or is or will be entitled to receive the income and assets from, a *Canadian Retirement Account*.

(7) “*Qualified Company*” means a *Foreign Issuer* whose securities are qualified for investment on a tax-deferred basis by a *Canadian Retirement Account* under *Canadian law*.

(8) “*United States*” means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Public Offering*. For purposes of section 7(d) of the Investment Company Act of 1940, the term “public offering” does not include the offer to a *Participant*, or the sale to his or her *Canadian Retirement Account*, of *Eligible Securities* issued by a *Qualified Company*, if the *Qualified Company*:

(1) Includes in any written offering *materials* delivered to a *Participant*, or to his or her *Canadian Retirement Account*, a prominent statement that the *Eligible Security*, and the *Qualified Company* that issued the *Eligible Security*, are not registered with the U.S. Securities and Exchange Commission, and that the *Eligible Security* and the *Qualified Company* are relying on exemptions from registration.

(2) Has not asserted that *Canadian law*, or the jurisdiction of the courts of Canada, does not apply in a proceeding involving an *Eligible Security*.

Section 8. Registration of *investment companies*. [15 U.S.C. 80a-8]

(a) Any *investment company* organized or otherwise created under the laws of the United States or of a State may register for the purposes of this title by filing with the Commission a notification of registration, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An *investment company* shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Every registered *investment company* shall file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations, an original and such copies of a registration statement, in such form and containing such of the following information and documents as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein: (A) the classification and subclassifications, as defined in sections 4 and 5, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance of *senior securities*; (D) engaging in the business of underwriting securities issued by other *persons*; (E) concentrating *investments* in a particular industry or group of industries; (F) the purchase and sale of real estate and commodities, or either of them; (G) making loans to other *persons*; and (H) portfolio turnover (including a statement showing the aggregate dollar *amount* of purchases and sales of portfolio securities, other than Government securities, in each of the last three full *fiscal years* preceding the filing of such registration statement);

(2) a recital of all investment policies of the registrant, not enumerated in paragraph (b)(1), which are changeable only if authorized by shareholder vote;

(3) a recital of all policies of the registrant, not enumerated in paragraphs (b)(1) and (2), in respect of matters which the registrant deems matters of *fundamental* policy;

(4) the name and address of each *affiliated person* of the registrant; the name and principal address of every company, other than the registrant, of which each such *person* is an officer, *director*, or partner; a brief statement of the business experience for the preceding five years of each officer and *director* of the registrant; and

(5) the information and documents which would be required to be filed in order to register under the Securities Act of 1933 and the Securities Exchange Act of 1934 all securities (other than *short-term paper*) which the registrant has outstanding or proposes to issue.

(c) The Commission shall make provision, by permissive rules and regulations or order, for the filing of the following, or so much of the following as the Commission may designate, in lieu of the information and documents required pursuant to subsection (b):

(1) copies of the most recent registration statement filed by the registrant under the Securities Act of 1933 and currently effective under such Act, or if the registrant has not filed such a statement, copies of a registration statement filed by the registrant under the Securities Exchange Act of 1934 and currently effective under such Act;

(2) copies of any reports filed by the registrant pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934; and

(3) a report containing reasonably current information regarding the matters included in copies filed pursuant to paragraphs (1) and (2), and such further information regarding matters not included in such copies as the Commission is authorized to require under subsection (b).

(d) If the registrant is a *unit investment trust* substantially all of the assets of which are securities issued by another registered *investment company*, the Commission is authorized to prescribe for the registrant, by rules and regulations or order, a registration statement which eliminates inappropriate duplication of information contained in the registration statement filed under this section by such other *investment company*.

(e) If it appears to the Commission that a registered *investment company* has failed to file the registration statement required by this section or a report required pursuant to section 30(a) or (b), or has filed such a registration statement or report but omitted therefrom *material* facts required to be stated therein, or has filed such a registration statement or report in violation of section 34(b), the Commission shall notify such company by registered mail or by *certified* mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be *materially* incomplete or misleading, as the case may be, and shall fix a date (in no event earlier than thirty days after the mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes—

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section 30(a) or (b), or has filed such a registration statement or report but omitted therefrom *material* facts required to be stated therein, or has filed such a registration statement or report in violation of section 34(b); and

(2) that such suspension or revocation is in the public interest.

(f) Whenever the Commission, on its own motion or upon application, finds that a registered *investment company* has ceased to be an *investment company*, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. If necessary for the protection of investors, an order under this subsection may be made upon appropriate conditions. The Commission’s denial of any application under this subsection shall be by order.

(g) DATA STANDARDS FOR REGISTRATION STATEMENTS.—

(1) REQUIREMENT.—The Commission shall, by rule, adopt data standards for all registration statements required to be filed with the Commission under this section, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) CONSISTENCY.—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

Rule 8b-1 Scope of rule 8b-1 to rule 8b-31.

The rules contained in rule 8b-1 to Rule 8b-31 shall govern all registration statements pursuant to section 8 of the Investment Company Act of 1940, including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30 (a) or (b) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

Rule 8b-2 Definitions.

Unless the context otherwise requires, the terms in paragraphs (a) through (m) of this section, when used in the rules contained in 8b-1 through 8b-32, in the rules under section 30 (a) or (b) of the Investment Company Act of 1940 or in the forms for registration statements and reports pursuant to section 8 or 30 (a) or (b) of the Act, shall have the respective meanings indicated in this section. The terms “EDGAR,” “EDGAR Filer Manual,” “electronic filer,” “electronic filing,” “electronic format,” “electronic submission,” “paper format,” and “signature” shall have the meanings assigned to such terms in Regulation S-T—General Rules for Electronic Filings.

(a) *Amount*. The term “*amount*”, when used in regard to securities, means the principal *amount* if relating to evidences of indebtedness, the number of *shares* if relating to shares, and the number of units if relating to any other kind of security.

(b) *Certified*. The term “*certified*”, when used in regard to financial statements, means *certified* by an independent public or independent *certified* public accountant or accountants.

(c) *Charter*. The term “*charter*” includes articles of incorporation, declaration of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated *person*.

(d) *Employee*. The term “*employee*” does not include a *director*, trustee, officer or member of the *advisory board*.

(e) *Fiscal year*. The term “*fiscal year*” means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(f) *Investment income*. The term “*investment income*” means the aggregate of net operating income or loss from real estate and gross income from interest, dividends and all other sources, exclusive of profit or loss on sales of securities or other properties.

(g) *Material*. The term “*material*”, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling any security of the particular company.

(h) *Parent*. A “*parent*” of a specified *person* is an *affiliated person* who *controls* the specified *person* directly or indirectly through one or more intermediaries.

(i) *Previously filed or reported*. The terms “*previously filed*” and “*previously reported*” means *previously filed* with, or reported in, a registration statement filed under section 8 of the Act or under the Securities Act of 1933, a report filed under section 30 of the Act or section 13 or 15(d) of the Securities Exchange Act of 1934, a definitive proxy statement filed under section 20 of the Act or section 14 of the Securities Exchange Act of 1934, or a *prospectus* filed under the Securities Act of 1933: Provided, That information contained in any such document shall be deemed to have been *previously filed* with, or *reported* to, an *exchange* only if such document is filed with such *exchange*.

(j) *Share*. The term “*share*” means a *share* of stock in a corporation or unit of interest in an unincorporated *person*.

(k) *Significant subsidiary*. The term “significant subsidiary” means a *subsidiary*, including its *subsidiaries*, which meets any of the following conditions, using *amounts* determined under U.S. Generally Accepted Accounting Principles and, if applicable, section 2(a)(41) of the Act:

(i) Investment Test. The value of the registrant’s and its other *subsidiaries’* investments in and advances to the tested *subsidiary* exceed 10 percent of the value of the total investments of the registrant and its *subsidiaries* consolidated as of the end of the most recently completed fiscal year; or

(ii) Income Test. The absolute value of the sum of combined *investment income* from dividends, interest, and other income, the net realized gains and losses on investments,

and the net change in unrealized gains and losses on investments from the tested *subsidiary*, for the most recently completed fiscal year exceeds:

(A) 80 percent of the absolute value of the change in net assets resulting from operations of the registrant and its *subsidiaries* consolidated for the most recently completed fiscal year; or

(B) 10 percent of the absolute value of the change in net assets resulting from operations of the registrant and its *subsidiaries* consolidated for the most recently completed fiscal year and the investment test (paragraph (k)(i) of this section) condition exceeds 5 percent. However, if the absolute value of the change in net assets resulting from operations of the registrant and its *subsidiaries* consolidated is at least 10 percent lower than the average of the absolute value of such amounts for each of its last five fiscal years, then the registrant may compute both conditions of the income test using the average of the absolute value of such amounts for the registrant and its *subsidiaries* consolidated for each of its last five fiscal years.

(l) *Subsidiary*. A “*subsidiary*” of a specified *person* is an *affiliated person* who is *controlled* by the specified *person*, directly or indirectly, through one or more intermediaries.

(m) *Totally-held subsidiary*. The term “*totally-held subsidiary*” means a *subsidiary* (1) substantially all of whose outstanding securities are owned by its *parent* and/or the *parent’s* other *totally-held subsidiaries*, and (2) which is not indebted to any *person* other than its *parent* and/or the *parent’s* other *totally-held subsidiaries* in an *amount* which is *material* in relation to the particular *subsidiary*, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Rule 8b-3 Title of securities.

Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as “maturing serially from 1950 to 1960”; if the *payment* of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

Rule 8b-4 Interpretation of requirements.

Unless the context clearly shows otherwise:

- (a) The forms require information only as to the company filing the registration statement or report.
- (b) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.
- (c) Whenever words relate to the future, they have reference solely to present intention.
- (d) Any words indicating the holder of a position or office include *persons*, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or officers.

Rule 8b-5 Time of filing original registration statement.

An *investment company* shall file a registration statement with the Commission on the appropriate form within three months after the filing of notification of registration under section 8(a) of the Investment Company Act of 1940, provided that if the *fiscal year* of the company ends within the three months period, its registration statement may be filed within three months after the end of such *fiscal year*.

Rule 8b-6 [Reserved]

Rule 8b-10 Requirements as to proper form.

Every registration statement or report shall be prepared in accordance with the form prescribed therefor by the Commission, as in effect on the date of filing. Any such statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Commission within thirty days after the date of filing.

Rule 8b-11 Number of copies; signatures; binding.

- (a) Three complete copies of each registration statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission.
- (b) In the case of a registration statement filed on Form N-1A, Form N-2, Form N-3, Form N-4 or Form N-6, three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.
- (c) At least one copy of the registration statement or report shall be signed in the manner prescribed by the appropriate form. Unsigned copies shall be conformed. If the signature of any *person* is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the registration statement or report.

(d) Each copy of a registration statement or report filed with the Commission shall be bound in one or more parts without stiff covers. The binding shall be made on the left-hand side and in such manner as to leave the reading matter legible.

(e) *Signatures.* Where the Investment Company Act of 1940 or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the *Commission* to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated, or facsimile signatures are used, each signatory to the filing shall manually or electronically sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing (“*authentication document*”). Execute each such authentication document before or at the time the filing is made and retain for a period of five years. The requirements set forth in Rule 302(b) of Regulation S-T must be met with regards to the use of an electronically signed authentication document pursuant to this paragraph (e). Upon request, the registrant shall furnish to the *Commission* or its staff a copy of any or all documents retained pursuant to this section.

Rule 8b-12 Requirements as to paper, printing and language.

(a) Registration statements and reports shall be filed on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size, insofar as practicable. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size.

(b) In the case of a registration statement filed on Form N-1A, Form N-2, Form N-3, Form N-4 or Form N-6, Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size, insofar as practicable. The *prospectus* and if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

(c) The registration statement or report and, insofar as practicable all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, the registration statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(d) The body of all printed registration statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large as 10-point modern type. However, to the extent necessary for convenient presentation,

financial statements and other statistical or tabular data, including tabular data in notes, may be set in type at least as large and as legible as 8-point modern type. All type shall be leaded at least 2-points.

(e) Registration statements and reports shall be in the English language. If any exhibit or other paper or document filed with a registration statement or report is in a foreign language, it shall be accompanied by a translation into the English language.

(f) Where a registration statement or report is distributed through an electronic medium, *issuers* may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

Rule 8b-13 Preparation of registration statement or report.

The registration statement or report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted from the registration statement or report. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

Rule 8b-14 Riders; inserts.

Riders shall not be used. If the registration statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

Rule 8b-15 Amendments.

All amendments shall be filed under cover of the facing sheet of the appropriate form, shall be clearly identified as amendments, and shall comply with all pertinent requirements applicable to registration statements and reports. Amendments shall be filed separately for each separate registration or report amended. Except as permitted under rule 102(b) of Regulation S-T, any amendment filed under this section shall state the complete text of each item amended. An amendment to any report required to include the certifications as specified in rule 30a-2(a) must include new certifications by each principal executive and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in rules 13a-14(b) or 15d-14(b) under the Securities Exchange Act of 1934 and rule 30a-2(b)

must be accompanied by new certifications by each principal executive and principal financial officer of the registrant.

Rule 8b-16 Amendments to registration statement.

(a) Every registered management *investment company* which is required to file an annual report on Form N-CEN, as prescribed by Rule 30a-1 shall amend the registration statement required pursuant to section 8(b) by filing, not more than 120 days after the close of each *fiscal year* ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

(b) Paragraph (a) of this section shall not apply to a registered closed-end management *investment company* whose registration statement was filed on Form N-2; provided that the following information is transmitted to shareholders in its annual report to shareholders:

(1) if the company offers a dividend reinvestment plan to shareholders, information about the plan required to be disclosed in the company's *prospectus* by Item 10.1.e of Form N-2;

(2) The company's investment objectives and policies (described in Item 8.2 of Form N-2), and any *material* changes to same that have not been approved by shareholders;

(3) any changes in the company's *charter* or by-laws that would delay or prevent a change of *control* of the company (described in Item 10.1.f of Form N-2) that have not been approved by shareholders;

(4) The principal risk factors associated with investment in the company (described in Item 8.3 of Form N-2), and any material changes to same; and

(5) any changes in the *persons* who are primarily responsible for the day-to-day management of the company's portfolio (described in Item 9.1.c of Form N-2), including any new *person's* business experience during the past five years and the length of time he or she has been responsible for the management of the portfolio.

(c) In lieu of including a description of the dividend reinvestment plan in its annual report, a company may comply with the disclosure requirement of paragraph (b)(1) of this section concerning a company's dividend reinvestment plan by delivering to each shareholder annually a separate document containing the information about the plan required to be disclosed in the company's *prospectus* by Item 10.1.e of Form N-2. Any such document shall be deemed to be a record or document subject to the record-keeping requirements of section 31 and the rules adopted thereunder.

(d) The changes required to be disclosed by paragraphs (b)(2) through (b)(5) of this section are those that occurred since the later of either the effective date of the company's registra-

tion statement relating to its initial offering of securities under the Securities Act of 1933 (or the most recent post-effective amendment thereto) or the close of the period covered by the previously transmitted annual shareholder report.

(e) The changes required to be disclosed by paragraphs (b)(2) through (5) of this section must be described in enough detail to allow investors to understand each change and how it may affect the fund. Such disclosures must be prefaced with the following legend: “The following information [in this annual report] is a summary of certain changes since [date]. This information may not reflect all of the changes that have occurred since you purchased [this fund].”

Rule 8b-20 Additional information.

In addition to the information expressly required to be included in a registration statement or report, there shall be added such further *material* information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

Rule 8b-21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another *person* not affiliated with the registrant, the information may be omitted subject to the following conditions:

- (a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.
- (b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the *person* within whose knowledge the information rests and stating the result of a request made to such *person* for the information.

Rule 8b-22 Disclaimer of control.

If the existence of *control* is open to reasonable doubt in any instance, the registrant may disclaim the existence of *control* and any admission thereof; in such case, however, the registrant shall state the *material* facts pertinent to the possible existence of *control*.

Rule 8b-23 [Reserved]

Rule 8b-24 [Reserved]

Rule 8b-25 Extension of time for furnishing information.

(a) Subject to paragraph (b) of this section, if it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commission as a separate document an application (a) identifying the information, document or report in question, (b) stating why the filing thereof at the time required is impracticable, and (c) requesting an extension of time for filing the information, document or report to a specified date not more than 60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Commission, within 10 days after receipt thereof, shall enter an order denying the application. Rule 0-5 shall not apply to such applications.

(b) If it is impracticable to furnish any document or report required to be filed in electronic format at the time it is required to be filed, the electronic filer may file under the temporary hardship provision of rule 201 of Regulation S-T or may submit a written application for a continuing hardship exemption, in accordance with rule 202 of Regulation S-T. Applications for such exemptions shall be considered in accordance with the provisions of those sections and paragraphs (h) and (i) of rule 30-5.

Rule 8b-30 Additional exhibits.

A company may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

Rule 8b-31 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all *material* respects except as to the parties thereto, the dates of execution, or other details, copies of only one of such documents need be filed, with a schedule identifying the other documents omitted and setting forth the *material* details in which such documents differ from the documents filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

Rule 8b-32 [Reserved]

Rule 8f-1 Deregistration of certain registered investment companies.

A registered *investment company* that seeks a Commission order declaring that it is no longer an *investment company* may file an application with the Commission on Form N-8F (17 CFR 274.218) if the *investment company*:

- (a) Has sold substantially all of its assets to another registered *investment company* or merged into or consolidated with another registered *investment company*;
- (b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;
- (c) Qualifies for an exclusion from the definition of “*investment company*” under section 3(c)(1) or section 3(c)(7) of the Investment Company Act of 1940; or
- (d) Has become a *business development company*.

Note to rule 8f-1: Applicants who are not eligible to use Form N-8F to file an application to deregister may follow the general guidance for filing applications under rule 0-2.

Section 9. Ineligibility of certain affiliated persons and underwriters. [15 U.S.C. 80a-9]

(a) It shall be unlawful for any of the following *persons* to serve or act in the capacity of *employee*, officer, *director*, member of an *advisory board*, *investment adviser*, or depositor of any registered *investment company*, or *principal underwriter* for any registered *open-end company*, registered *unit investment trust*, or registered *face-amount certificate company*:

(1) any *person* who within 10 years has been *convicted* of any felony or misdemeanor involving the purchase or sale of any security or arising out of such *person's* conduct as an *underwriter*, *broker*, *dealer*, *investment adviser*, municipal securities *dealer*, government securities *broker*, government securities *dealer*, *bank*, transfer agent, *credit rating agency*, or entity or *person* required to be registered under the Commodity Exchange Act, or as an *affiliated person*, salesman, or *employee* of any *investment company*, *bank*, *insurance company*, or entity or *person* required to be registered under the Commodity Exchange Act;

(2) any *person* who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an *underwriter*, *broker*, *dealer*, *investment adviser*, municipal securities *dealer*, government securities *broker*, government securities *dealer*, *bank*, transfer agent, credit rating agency, or entity or *person* required to be registered under the Commodity Exchange Act, or as an *affiliated person*, salesman, or *employee* of any *investment company*, *bank*, *insurance company*, or entity or *person* required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

- (3) a company any *affiliated person* of which is ineligible, by reason of paragraph (1) or (2), to serve or act in the foregoing capacities.

For the purposes of paragraphs (1), (2) and (3) of this subsection, the term “*investment adviser*” shall include an *investment adviser* as defined in the Investment Advisers Act of 1940.

(b) The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any *person* from serving or acting as an *employee*, officer, *director*, member of an *advisory board*, *investment adviser* or depositor of, or *principal underwriter* for, a registered *investment company* or *affiliated person* of such *investment adviser*, depositor, or *principal underwriter*, if such *person*—

(1) has willfully made or caused to be made in any registration statement, application or report filed with the Commission under this title any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any *material* fact, or has omitted to state in any such registration statement, application, or report any *material* fact which was required to be stated therein;

(2) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or the Investment Advisers Act of 1940, or of this title, or of the Commodity Exchange Act, or of any rule or regulation under any of such statutes;

(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other *person* of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of the Investment Advisers Act of 1940, or of this title, or of the Commodity Exchange Act, or of any rule or regulation under any of such statutes;

(4) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a *foreign securities authority*, or in any proceeding before a *foreign securities authority* with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any *material* fact, or has omitted to state in any application or report to a *foreign securities authority* any *material* fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other *person* of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

(5) within 10 years has been *convicted* by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant *foreign government*, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

(c) Any *person* who is ineligible, by reason of subsection (a), to serve or act in the capacities enumerated in that subsection, may file with the Commission an application for an exemption from the provisions of that subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of subsection (a), as applied to such *person*, are unduly or disproportionately severe or that the conduct of such *person* has been such as not to make it against the public interest or protection of investors to grant such application.

(d) MONEY PENALTIES IN ADMINISTRATIVE PROCEEDINGS

(1) AUTHORITY OF COMMISSION

(A) IN GENERAL—

In any proceeding instituted pursuant to subsection (b) against any *person*, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest, and that such *person*—

(A)(i) has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, or this title, or the rules or regulations thereunder;

(A)(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other *person*; or

(A)(iii) has willfully made or caused to be made in any registration statement, application, or report required to be filed with the Commission under this title, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any *material* fact, or has omitted to state in any such registration statement, application, or report any *material* fact which was required to be stated therein;

(B) Cease-and-Desist Proceedings—

In any proceeding instituted pursuant to subsection (f) against any *person*, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such *person*—

- (i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or
- (ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.

(2) MAXIMUM AMOUNT OF PENALTY

(A) FIRST TIER

The maximum *amount* of penalty for each act or omission described in paragraph (1) shall be \$5,000 for a natural *person* or \$50,000 for any other *person*.

(B) SECOND TIER

Notwithstanding subparagraph (A), the maximum *amount* of penalty for each such act or omission shall be \$50,000 for a natural *person* or \$250,000 for any other *person* if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) THIRD TIER

Notwithstanding subparagraphs (A) and (B), the maximum *amount* of penalty for each such act or omission shall be \$100,000 for a natural *person* or \$500,000 for any other *person* if—

- (i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
- (ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other *persons* or resulted in substantial pecuniary gain to the *person* who committed the act or omission.

(3) DETERMINATION OF PUBLIC INTEREST

In considering under this section whether a penalty is in the public interest, the Commission may consider—

- (A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;
- (B) the harm to other *persons* resulting either directly or indirectly from such act or omission;

(C) the extent to which any *person* was unjustly enriched, taking into account any restitution made to *persons* injured by such behavior;

(D) whether such *person* previously has been found by the Commission, another appropriate regulatory agency, or a *self-regulatory organization* to have violated the Federal securities laws, State securities laws, or the rules of a *self-regulatory organization*, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been *convicted* by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 203(e)(2) of the Investment Advisers Act of 1940;

(E) the need to deter such *person* and other *persons* from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) EVIDENCE CONCERNING ABILITY TO PAY

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such *person's* ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such *person's* assets and the *amount* of such *person's* assets.

(e) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning *payments* to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) CEASE-AND-DESIST PROCEEDINGS

(1) AUTHORITY OF THE COMMISSION

If the Commission finds, after notice and opportunity for hearing, that any *person* is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such *person*, and any other *person* that is, was, or would be a cause of the violation, due to an act or omission the *person* knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a *person* to cease and desist from committing or causing a violation, require such

person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any *issuer*, or any other *person*.

(2) HEARING

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) TEMPORARY ORDER

(A) IN GENERAL

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceeding, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 40(a) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) APPLICABILITY

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a *broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer*, or transfer agent, or is, or was at the time of the alleged misconduct, an associated *person* of, or a *person* seeking to become associated with, any of the foregoing.

(4) REVIEW OF TEMPORARY ORDERS

(A) COMMISSION REVIEW

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW

Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States district court for the district in which the respondent resides or has its *principal place of business*, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) EXCLUSIVE REVIEW

Section 43 of this title shall not apply to a temporary order entered pursuant to this section.

(5) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT

In any cease-and-desist proceeding under subsection (f)(1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning *payments* to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(g) For the purposes of this section, the term “*investment adviser*” includes a corporate or other trustee performing the functions of an *investment adviser*.

Section 10. Affiliations or interest of *directors, officers and employees*. [15 U.S.C. 80a-10]

(a) No registered *investment company* shall have a board of *directors* more than 60 per centum of the members of which are *persons* who are *interested persons* of such registered company.

(b) No registered *investment company* shall—

(1) employ as regular *broker* any *director*, officer, or *employee* of such registered company, or any *person* of which any such *director*, officer, or *employee* is an *affiliated person*, unless a majority of the board of *directors* of such registered company shall be *persons* who are not such *brokers* or *affiliated persons* of any of such *brokers*;

(2) use as a *principal underwriter* of securities issued by it any *director*, officer, or *employee* of such registered company or any *person* of which any such *director*, officer, or *employee* is an *interested person*, unless a majority of the board of *directors* of such registered company shall be *persons* who are not such *principal underwriters* or *interested persons* of any of such *principal underwriters*; or

(3) have as *director*, officer, or *employee* any *investment banker*, or any *affiliated person* of an *investment banker*, unless a majority of the board of *directors* of such registered company shall be *persons* who are not *investment bankers* or *affiliated persons* of any *investment banker*. For the purposes of this paragraph, a *person* shall not be deemed an *affiliated person* of an *investment banker* solely by reason of the fact that he is an *affiliated person* of a company of the character described in section 12(d)(3)(A) and (B).

(c) No registered *investment company* shall have a majority of its board of *directors* consisting of *persons* who are officers, *directors*, or *employees* of any one *bank* (together with its affiliates and subsidiaries) or any one *bank* holding company (together with its affiliates and subsidiaries)(as such terms are defined in section 2 of the Bank Holding Company Act of 1956) or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 10 of the Home Owners’ Loan Act), except that, if on March 15, 1940, any registered *investment company* had a majority of its *directors* consisting of *persons* who are *directors*, officers, or *employees* of any one *bank*, such company may continue to have the same percentage of its board of *directors* consisting of *persons* who are *directors*, officers, or *employees* of such *bank*.

(d) Notwithstanding subsections (a) and (b)(2) of this section, a registered *investment company* may have a board of *directors* all the members of which, except one, are *interested persons* of the *investment adviser* of such company, or are officers or *employees* of such company, if—

(1) such *investment company* is an *open-end company*;

- (2) such *investment adviser* is registered under the Investment Advisers Act of 1940 and is engaged principally in the business of rendering *investment supervisory services* as defined in such Act;
- (3) no *sales load* is charged on securities issued by such *investment company*;
- (4) any premium over net asset value charged by such company upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum;
- (5) no sales or promotion expenses are incurred by such registered company; but expenses incurred in complying with laws regulating the issue or sale of securities shall not be deemed sales or promotion expenses;
- (6) such *investment adviser* is the only *investment adviser* to such *investment company*, and such *investment adviser* does not receive a management fee exceeding 1 per centum per annum of the *value* of such company's net assets averaged over the year or taken as of a definite date or dates within the year;
- (7) all executive salaries and executive expenses and office rent of such *investment company* are paid by such *investment adviser*; and
- (8) such *investment company* has only one class of securities outstanding, each unit of which has equal voting rights with every other unit.
- (e) If by reason of the death, disqualification, or bona fide resignation of any *director* or *directors*, the requirements of the foregoing provisions of this section or of section 15(f)(1) in respect of *directors* shall not be met by a registered *investment company*, the operation of such provision shall be suspended as to such registered company—
- (1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of *directors*;
 - (2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or
 - (3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.
- (f) No registered *investment company* shall knowingly purchase or otherwise *acquire*, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the *issuer*) a *principal underwriter* of which is an officer, *director*, member of an *advisory board*, *investment adviser*, or *employee* of such registered company, or is a *person* (other than a company of the character described in section 12(d)(3)(A) and (B)) of which any such officer, *director*, member of an *advisory board*, *investment adviser*, or *employee* is an *affiliated person*, unless in acquiring such security

such registered company is itself acting as a *principal underwriter* for the *issuer*. The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

(g) In the case of a registered *investment company* which has an *advisory board*, such board, as a distinct entity, shall be subject to the same restrictions as to its membership as are imposed upon a board of *directors* by this section.

(h) In the case of a registered *management company* which is an unincorporated company not having a board of *directors*, the provisions of this section shall apply as follows:

(1) the provisions of subsection (a), as modified by subsection (e), shall apply to the board of *directors* of the depositor of such company;

(2) the provisions of subsections (b) and (c), as modified by subsection (e), shall apply to the board of *directors* of the depositor and of every *investment adviser* of such company; and

(3) the provisions of subsection (f) shall apply to purchases and other acquisitions for the account of such company of securities a *principal underwriter* of which is the depositor or an *investment adviser* of such company, or an *affiliated person* of such depositor or *investment adviser*.

Rule 10b-1 *Definition of regular broker or dealer.*

The term “*regular broker or dealer*” of an *investment company* shall mean:

(a) One of the ten *brokers* or *dealers* that received the greatest dollar *amount* of *brokerage commissions* by virtue of direct or indirect participation in the company’s portfolio transactions during the company’s most recent *fiscal year*;

(b) One of the ten *brokers* or *dealers* that engaged as principal in the largest dollar *amount* of portfolio transactions of the *investment company* during the company’s most recent *fiscal year*; or

(c) One of the ten *brokers* or *dealers* that sold the largest dollar *amount* of securities of the *investment company* during the company’s most recent *fiscal year*.

Rule 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 Investment Company Act of 1940 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.

Rule 10f-1 Conditional exemption of certain underwriting transactions.

Any purchase or other acquisition by a registered *management company* acting, pursuant to a written agreement, as an *underwriter* of securities of an *issuer* which is not an *investment company* shall be exempt from the provision of Section 10(f) of the Investment Company Act of 1940 upon the following conditions:

- (a) The party to such agreement other than such registered company is a *principal underwriter* of such securities, which *principal underwriter* (1) is a *person* primarily engaged in the business of underwriting and distributing securities issued by other *persons*, selling securities to customers, or related activities, whose gross income normally is derived principally from such business or related activities, and (2) does not *control* or is not under common *control* with such registered company.
- (b) No public offering of the securities underwritten by such agreement has been made prior to the execution thereof.
- (c) Such securities have been effectively registered pursuant to the Securities Act of 1933 prior to the execution of such agreement.
- (d) In regard to any securities underwritten, whether or not purchased, by the registered company pursuant to such agreement, such company shall be allowed a rate of gross commission, spread, concession or other profit not less than the *amount* allowed to such *principal underwriter*, exclusive of any *amounts* received by such *principal underwriter* as a management fee from other *principal underwriters*.
- (e) Such agreement is authorized by resolution adopted by a vote of not less than a majority of the board of *directors* of such registered company, none of which majority is an *affiliated person* of such *principal underwriter*, of the *issuer* of the securities underwritten pursuant to such agreement or of any *person* engaged in a business described in paragraph (a)(1) of this section.
- (f) The resolution required in paragraph (e) of this section shall state that it has been adopted pursuant to this section, and shall incorporate the terms of the proposed agreement by attaching a copy thereof as an exhibit or otherwise.
- (g) A copy of the resolution required in paragraph (e) of this section, signed by each member of the board of *directors* of the registered company who voted in favor of its adoption, shall be transmitted to the Commission not later than the fifth day succeeding the date on which such agreement is executed.

Rule 10f-2 Exercise of warrants or rights received on portfolio securities.

Any purchase or other acquisition of securities by a registered *investment company* pursuant to the exercise of warrants or rights to subscribe to or to purchase securities shall be exempt from the provisions of section 10(f) of the Investment Company Act of 1940, provided, that the warrants or rights so exercised (a) were offered or issued to such company as a security holder on the same basis as all other holders of the class or classes of securities to whom such warrants or rights were offered or issued, and (b) do not exceed 5 percent of the total *amount* of such warrants or rights so issued.

Rule 10f-3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) Definitions.

(1) **Domestic Issuer** means any *issuer* other than a *foreign government*, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

(2) **Eligible Foreign Offering** means a public offering of securities, conducted under the laws of a country other than the United States, that meets the following conditions:

(i) The offering is subject to regulation by a “*foreign financial regulatory authority*,” as defined in section 2(a)(50) of the Investment Company Act of 1940, in such country;

(ii) The securities are offered at a fixed price to all purchasers in the offering (except for any rights to purchase securities that are required by law to be granted to existing security holders of the *issuer*);

(iii) Financial statements, prepared and audited in accordance with standards required or permitted by the appropriate *foreign financial regulatory authority* in such country, for the two years prior to the offering, are made available to the public and *prospective purchasers* in connection with the offering; and

(iv) If the *issuer* is a **Domestic Issuer**, it meets the following conditions:

(A) It has a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 or is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934; and

(B) It has filed all the material required to be filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 for a period of at least twelve months immediately preceding the sale of securities made in reliance upon this (or for such shorter period that the *issuer* was required to file such *material*).

(3) **Eligible Municipal Securities** means “municipal securities,” as defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)), that are suffi-

ciently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either:

- (i) Are subject to no greater than moderate credit risk; or
- (ii) If the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.

(4) **Eligible Rule 144A Offering** means an offering of securities that meets the following conditions:

- (i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933, rule 144A thereunder or rules 501-508 thereunder;
- (ii) The securities are sold to *persons* that the seller and any *person* acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in rule 144A(a)(1); and
- (iii) The seller and any *person* acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to rule 144A.

(5) **Managed Portion** of a portfolio of a registered *investment company* means a discrete portion of a portfolio of a registered *investment company* for which a *subadviser* is responsible for providing investment advice, provided that:

- (i) The *subadviser* is not an *affiliated person* of any *investment adviser, promoter, underwriter, officer, director, member of an advisory board, or employee* of the registered *investment company*; and
- (ii) The *subadviser's* advisory contract:

- (A) Prohibits it from consulting with any *subadviser* of the *investment company* that is a *principal underwriter* or an *affiliated person* of a *principal underwriter* concerning transactions of the *investment company* in securities or other assets; and
- (B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(6) **Series of a series company** means any class or series of a registered *investment company* that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series.

(7) **Subadviser** means an *investment adviser* as defined in section 2(a)(20)(B) of the Act.

(b) Exemption for purchases by series companies and investment companies with Managed Portions. For purposes of this section and section 10(f) of the Act, each *Series of a series company*, and each *Managed Portion* of a registered *investment company*, is deemed to be a separate *investment company*. Therefore, a purchase or acquisition of a security by a registered *investment company* is exempt from the prohibitions of section 10(f) of the Act if section 10(f) of the Act would not prohibit such purchase if each *Series* and each *Managed Portion* of the company were a separately registered *investment company*.

(c) Exemption for other purchases. Any purchase of securities by a registered *investment company* prohibited by section 10(f) of the Act shall be exempt from the provisions of such section if the following conditions are met:

(1) *Type of Security*. The securities to be purchased are:

- (i) Part of an issue registered under the Securities Act of 1933 that is being offered to the public;
- (ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act
- (iii) *Eligible Municipal Securities*;
- (iv) Securities sold in an *Eligible Foreign Offering*; or
- (v) Securities sold in an *Eligible Rule 144A Offering*.

(2) *Timing and Price*.

- (i) The securities are purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities (except, in the case of an *Eligible Foreign Offering*, for any rights to purchase that are required by law to be granted to existing security holders of the *issuer*); and
- (ii) If the securities are offered for subscription upon exercise of rights, the securities shall be purchased on or before the fourth day preceding the day on which the rights offering terminates.

(3) *Reasonable Reliance*. For purposes of determining compliance with paragraphs (c)(1)(v) and (c)(2)(i) of this section, an *investment company* may reasonably rely upon written statements made by the *issuer* or a syndicate manager, or by an *underwriter* or seller of the securities through which such *investment company* purchases the securities.

(4) *Continuous Operation*. If the securities to be purchased are part of an issue registered under the Securities Act of 1933 that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act), or are purchased pursuant to an *Eligible Foreign Offering* or an *Eligible Rule 144A offering*, the *issuer* of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

(5) *Firm Commitment Underwriting.* The securities are offered pursuant to an underwriting or similar agreement under which the *underwriters* are committed to purchase all of the securities being offered, except those purchased by others pursuant to a rights offering, if the *underwriters* purchase any of the securities.

(6) *Reasonable Commission.* The commission, spread or profit received or to be received by the *principal underwriters* is reasonable and fair compared to the commission, spread or profit received by other such *persons* in connection with the underwriting of similar securities being sold during a comparable period of time.

(7) *Percentage limit.* (i) *Generally.* The *amount* of securities of any class of such issue to be purchased by the *investment company*, aggregated with purchases by any other *investment company* advised by the *investment company's investment adviser*, and any purchases by another account with respect to which the *investment adviser* has investment discretion if the *investment adviser* exercised such investment discretion with respect to the purchase, does not exceed the following limits:

(A) If purchased in an offering other than an *Eligible Rule 144A Offering*, 25 percent of the principal *amount* of the offering of such class; or

(B) If purchased in an *Eligible Rule 144A Offering*, 25 percent of the total of:

(1) The principal *amount* of the offering of such class sold by *underwriters* or members of the selling syndicate to qualified institutional buyers, as defined in rule 144A(a)(1); plus

(2) The principal *amount* of the offering of such class in any concurrent public offering.

(ii) *Exemption from percentage limit.* The requirement in paragraph (c)(7)(i) of this section applies only if the *investment adviser* of the *investment company* is, or is an *affiliated person* of, a *principal underwriter* of the security; and

(iii) *Separate aggregation.* The requirement in paragraph (c)(7)(i) of this section applies independently with respect to each *investment adviser* of the *investment company* that is, or is an *affiliated person* of, a *principal underwriter* of the security.

(8) *Prohibition of Certain Affiliate Transactions.* Such *investment company* does not purchase the securities being offered directly or indirectly from an officer, *director*, member of an *advisory board*, *investment adviser* or *employee* of such *investment company* or from a *person* of which any such officer, *director*, member of an *advisory board*, *investment adviser* or *employee* is an *affiliated person*; provided, that a purchase from a syndicate manager shall not be deemed to be a purchase from a specific *underwriter* if:

(i) Such *underwriter* does not benefit directly or indirectly from the transaction; or

(ii) In respect to the purchase of *Eligible Municipal Securities*, such purchase is not designated as a group sale or otherwise allocated to the account of any *person* from whom this paragraph prohibits the purchase.

[(9) reserved.]

(10) *Board Review*. The board of *directors* of the *investment company*, including a majority of the *directors* who are not *interested persons* of the *investment company*:

(i) Has approved procedures, pursuant to which such purchases may be effected for the company, that are reasonably designed to provide that the purchases comply with all the conditions of this section;

(ii) Approves such changes to the procedures as the board deems necessary; and

(iii) Determines no less frequently than quarterly that all purchases made during the preceding quarter were effected in compliance with such procedures.

(11) *Board Composition*. The board of directors of the investment company satisfies the fund governance standards defined in rule 0-1(a)(7).

(12) *Maintenance of Records*. The *investment company*:

(i) Shall maintain and preserve permanently in an easily accessible place a written copy of the procedures, and any modification thereto, described in paragraphs (c)(10)(i) and (c)(10)(ii) of this section; and

(ii) Shall maintain and preserve for a period not less than six years from the end of the *fiscal year* in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction, setting forth from whom the securities were *acquired*, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or *materials* upon which the determination described in paragraph (c)(10)(iii) of this section was made.

Section 11. Offers of *exchange*. [15 U.S.C. 80a-11]

(a) It shall be unlawful for any registered *open-end company* or any *principal underwriter* for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end *investment company* to *exchange* his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be *exchanged*, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (A) an offer by a *principal underwriter* means an offer communicated to holders of securities of a class or series but does not include an offer made by such *principal underwriter* to an individual investor in the course of a retail business conducted by such *principal underwriter*, and (B)

the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later times as is specified in the offer.

(b) The provisions of this section shall not apply to any offer made pursuant to any plan of *reorganization*, which is submitted to and requires the approval of the holders of at least a majority of the outstanding *shares* of the class or series to which the security owned by the offeree belongs.

(c) The provisions of subsection (a) shall be applicable, irrespective of the basis of *exchange*, (1) to any offer of *exchange* of any security of a registered *open-end company* for a security of a registered *unit investment trust* or registered *face-amount certificate company*; and (2) to any type of offer of *exchange* of the securities of registered *unit investment trusts* or registered *face-amount certificate companies* for the securities of any other *investment company*.

Rule 11a-1 Definition of “exchange” for purposes of section 11 of the Act.

(a) For the purposes of section 11 of the Investment Company Act of 1940, the term “*exchange*” as used therein shall include the issuance of any security by a registered *investment company* in an *amount* equal to the proceeds, or any portion of the proceeds, paid or payable—

- (1) Upon the repurchase, by or at the instance of such *issuer*, of an outstanding security the terms of which provide for its termination, retirement or cancellation, or
- (2) Upon the termination, retirement or cancellation of an outstanding security of such *issuer* in accordance with the terms thereof.

(b) A security shall not be deemed to have been repurchased by or at the instance of the *issuer*, or terminated, retired or canceled in accordance with the terms of the security if—

- (1) The security was redeemed or repurchased at the instance of the holder; or
- (2) A security holder’s account was closed for failure to make *payments* as prescribed in the security or instruments pursuant to which the *security* was issued, and notice of intention to close the account was mailed to the *security* holder, and he had a reasonable time in which to meet the deficiency; or
- (3) Sale of the security was restricted to a specified, limited group of *persons* and, in accordance with the terms of the security or the instruments pursuant to which the security was issued, upon its being transferred by the holder to a *person* not a member of the group eligible to purchase the security, the *issuer* required the surrender of the security and paid the redemption price thereof.

(c) The provisions of paragraph (a) of this section shall not apply if, following the repurchase of an outstanding security by or at the instance of the *issuer* or the termination, retirement or cancellation of an outstanding security in accordance with the terms thereof—

(1) The proceeds are actually paid to the security holder by or on behalf of the *issuer* within 7 days, and

(2) No sale and no offer (other than by way of *exchange*) of any security of the *issuer* is made by or on behalf of the *issuer* to the *person* to whom such proceeds were paid, within 60 days after such *payment*.

(d) The provisions of paragraph (a) of this section shall not apply to the repurchase, termination, retirement, or cancellation of a security outstanding on the effective date of this section or issued pursuant to a subscription agreement or other plan of acquisition in effect on such date.

Rule 11a-2 Offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval.

(a) As used in this section:

(1) “*Deferred sales load*” shall mean any *sales load*, including a contingent *deferred sales load*, that is deducted upon redemption or annuitization of *amounts* representing all or a portion of a securityholder’s interest in a *separate account*;

(2) “*Exchanged security*” shall include not only the security or securities (or portion[s] thereof) of a securityholder actually *exchanged* pursuant to an *exchange offer* but also any security or securities (or portion[s] thereof) of the securityholder previously *exchanged* for the *exchanged security* or its predecessors;

(3) “*Front-end sales load*” shall mean any *sales load* that is deducted from one or more purchase *payments* made by a securityholder before they are invested in a *separate account*; and

(4) “*Purchase payments made for the acquired security*,” as used in paragraphs (c)(2) and (d)(2) of this section, shall not include any purchase *payments* made for the *exchanged security* or any appreciation attributable to those purchase *payments* that are transferred to the offering account in connection with an *exchange*.

(b) Notwithstanding section 11 of the Investment Company Act of 1940, any registered *separate account* or any *principal underwriter* for such an account (collectively, the “offering account”) may make or cause to be made an offer to the holder of a security of the offering account, or of any other registered *separate account* having the same *insurance company* depositor or sponsor as the offering account or having an *insurance company* depositor or sponsor that is an affiliate of the offering account’s depositor or sponsor, to *exchange* his security (or portion thereof) (the “*exchanged security*”) for a security (or

portion thereof) of the offering account (the “*acquired security*”) without the terms of such *exchange offer* first having been submitted to and approved by the Commission, as provided below:

(1) If the securities (or portions thereof) involved are variable annuity contracts, then (i) The *exchange* must be made on the basis of the relative net asset values of the securities to be *exchanged*, except that the offering account may deduct at the time of the *exchange* (A) An *administrative fee* which is disclosed in the part of the offering account’s registration statement under the Securities Act of 1933 relating to the *prospectus*, and (B) Any *front-end sales load* permitted by paragraph (c) of this section, and (ii) Any deferred *sales load* imposed on the *acquired security* by the offering account shall be calculated in the manner prescribed by paragraph (d) or (e) of this section; or

(2) If the securities (or portions thereof) involved are *variable life insurance contracts* offered by a *separate account* registered under the Act as a *unit investment trust*, then the *exchange* must be made on the basis of the relative net asset values of the securities to be *exchanged*, except that the offering account may deduct at the time of the *exchange* an *administrative fee* which is disclosed in the part of the offering account’s registration statement under the Securities Act of 1933 relating to the *prospectus*.

(c) If the offering account imposes a *front-end sales load* on the *acquired security*, then such *sales load* shall be a percentage that is no greater than the excess of the rate of the *front-end sales load* otherwise applicable to that security over the rate of any *front-end sales load* previously paid on the *exchanged security*.

(d) If the offering account imposes a *deferred sales load* on the *acquired security* and the *exchanged security* was also subject to a *deferred sales load*, then any *deferred sales load* imposed on the *acquired security* shall be calculated as if:

(1) The holder of the *acquired security* had been the holder of that security from the date on which he became the holder of the *exchanged security* and

(2) Purchase *payments* made for the *exchanged security* had been made for the *acquired security* on the date on which they were made for the *exchanged security*.

(e) If the offering account imposes a *deferred sales load* on the *acquired security* and a *front-end sales load* was paid on the *exchanged security*, then any *deferred sales load* imposed on the *acquired security* may not be imposed on purchase *payments* made for the *exchanged security* or any appreciation attributable to purchase *payments* made for the *exchanged security* that are transferred in connection with the *exchange*.

(f) Notwithstanding the foregoing, no offer of *exchange* shall be made in reliance on this section if both a *front-end sales load* and a *deferred sales load* are to be imposed on the *acquired security* or if both such *sales loads* are imposed on the *exchanged security*.

Rule 11a-3 Offers of exchange by open-end investment companies other than separate accounts.

(a) For purposes of this rule:

(1) “*Acquired security*” means the security held by a securityholder after completing an *exchange* pursuant to an *exchange offer*;

(2) “*Administrative fee*” means any fee, other than a *sales load*, *deferred sales load* or *redemption fee*, that is (i) reasonably intended to cover the costs incurred in processing *exchanges* of the type for which the fee is charged, Provided that: the *offering company* will maintain and preserve records of any determination of the costs incurred in connection with *exchanges* for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this provision shall be subject to inspection by the Commission in accordance with section 31(b) of the Investment Company Act of 1940 as if such records were records required to be maintained under rules adopted under section 31(a) of the Act; or (ii) a *nominal fee* as defined in paragraph (a)(8) of this section;

(3) “*Deferred sales load*” means any *amount* properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption;

(4) “*Exchanged security*” means (i) the security actually *exchanged* pursuant to an *exchange offer*, and (ii) any security previously *exchanged* for such security or for any of its predecessors;

(5) “*Group of investment companies*” means any two or more registered open-end *investment companies* that hold themselves out to investors as related companies for purposes of investment and investor services, and (i) that have a common *investment adviser* or *principal underwriter*, or (ii) the *investment adviser* or *principal underwriter* of one of the companies is an *affiliated person* as defined in section 2(a)(3) of the Act of the *investment adviser* or *principal underwriter* of each of the other companies;

(6) “*Offering company*” means a registered open-end *investment company* (other than a registered *separate account*) or any *principal underwriter* thereof that makes an offer (an “*exchange offer*”) to the holder of a security of that company, or of another open-end *investment company* within the same *group of investment companies* as the *offering company*, to *exchange* that security for a security of the *offering company*;

(7) “*Redemption fee*” means a fee that is imposed by the *fund* pursuant to rule 22c-2; and

(8) “*Nominal fee*” means a slight or de minimis fee.

(b) Notwithstanding section 11(a) of the Act, and except as provided in paragraphs (d) and (e) of this section, in connection with an *exchange offer* an *offering company* may cause a

securityholder to be charged a *sales load* on the *acquired security*, a *redemption fee*, an *administrative fee*, or any combination of the foregoing, Provided that:

- (1) Any *administrative fee* or scheduled variation thereof is applied uniformly to all securityholders of the class specified;
- (2) Any *redemption fee* charged with respect to the *exchanged security* or any scheduled variation thereof (i) is applied uniformly to all securityholders of the class specified, and (ii) does not exceed the *redemption fee* applicable to a redemption of the *exchanged security* in the absence of an *exchange*.
- (3) No *deferred sales load* is imposed on the *exchanged security* at the time of an *exchange*;
- (4) Any *sales load* charged with respect to the *acquired security* is a percentage that is no greater than the excess, if any, of the rate of the *sales load* applicable to that security in the absence of an *exchange* over the sum of the rates of all *sales loads* previously paid on the *exchanged security*, Provided that: (i) The percentage rate of any *sales load* charged when the *acquired security* is redeemed, that is solely the result of a *deferred sales load* imposed on the *exchanged security*, may be no greater than the excess, if any, of the applicable rate of such *sales load*, calculated in accordance with paragraph (b)(5) of this section, over the sum of the rates of all *sales loads* previously paid on the *acquired security*, and (ii) In no event may the sum of the rates of all *sales loads* imposed prior to and at the time the *acquired security* is redeemed, including any *sales load* paid or to be paid with respect to the *exchanged security*, exceed the maximum *sales load* rate, calculated in accordance with paragraph (b)(5) of this section, that would be applicable in the absence of an *exchange* to the security (*exchanged* or *acquired*) with the highest such rate;
- (5) Any *deferred sales load* charged at the time the *acquired security* is redeemed is calculated as if the holder of the *acquired security* had held that security from the date on which he became the holder of the *exchanged security*, Provided that: (i) The time period during which the *acquired security* is held need not be included when the *amount* of the *deferred sales load* is calculated, if the *deferred sales load* is (A) reduced by the *amount* of any fees collected on the *acquired security* under the terms of any plan of *distribution* adopted in accordance with rule 12b-1 under the Act (a “12b-1 plan”), and (B) Solely the result of a *sales load* imposed on the *exchanged security*, and no other *sales loads*, including *deferred sales loads*, are imposed with respect to the *acquired security*, (ii) The time period during which the *exchanged security* is held need not be included when the *amount* of the *deferred sales load* on the *acquired security* is calculated, if (A) The *deferred sales load* is reduced by the *amount* of any fees previously collected on the *exchanged security* under the terms of any 12b-1 plan, and (B) The *exchanged security* was not subject to any *sales load*, and (iii) The holding periods in this subsection may be computed as of the end of the calendar month in which a security was purchased or redeemed;

- (6) The *prospectus* of the *offering company* discloses (i) The *amount* of any *administrative* or *redemption fee* imposed on an *exchange* transaction for its securities, as well as the *amount* of any *administrative* or *redemption fee* imposed on its securityholders to *acquire* the securities of other *investment companies* in an *exchange* transaction, and (ii) If the *offering company* reserves the right to change the terms of or terminate an *exchange offer*, that the *exchange offer* is subject to termination and its terms are subject to change;
- (7) Any sales literature or advertising that mentions the existence of the *exchange offer* also discloses (i) The existence of any *administrative fee* or *redemption fee* that would be imposed at the time of an *exchange*; and (ii) If the *offering company* reserves the right to change the terms of or terminate the *exchange offer*, that the *exchange offer* is subject to termination and its terms are subject to change;
- (8) Whenever an *exchange offer* is to be terminated or its terms are to be amended *materially*, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, Provided that: (i) No such notice need be given if the only *material* effect of an amendment is to reduce or eliminate an *administrative fee*, *sales load* or *redemption fee* payable at the time of an *exchange*, and (ii) No notice need be given if, under extraordinary circumstances, either (A) There is a suspension of the redemption of the *exchanged security* under section 22(e) of the Act and the rules and regulations thereunder, or (B) The *offering company* temporarily delays or ceases the sale of the *acquired security* because it is unable to invest *amounts* effectively in accordance with applicable investment objectives, policies and restrictions; and
- (9) In calculating any *sales load* charged with respect to the *acquired security*: (i) If a securityholder *exchanges* less than all of his securities, the security upon which the highest *sales load* rate was previously paid is deemed *exchanged* first; and (ii) If the *exchanged security* was *acquired* through reinvestment of dividends or capital gains *distributions*, that security is deemed to have been sold with a *sales load* rate equal to the *sales load* rate previously paid on the security on which the dividend was paid or *distribution* made.
- (c) If either no *sales load* is imposed on the *acquired security* or the *sales load* imposed is less than the maximum allowed by paragraph (b)(4) of this section, the *offering company* may require the exchanging securityholder to have held the *exchanged security* for a minimum period of time previously established by the *offering company* and applied uniformly to all securityholders of the class specified.
- (d) Any *offering company* that has previously made an offer of *exchange* may continue to impose fees or *sales loads* permitted by an order under section 11(a) of the Act upon *shares* purchased before the earlier of (1) One year after the effective date of this section, or (2)

When the offer has been brought into compliance with the terms of this section, and upon *shares acquired* through reinvestment of dividends or capital gains *distributions* based on such shares, until such *shares* are redeemed.

(e) Any *offering company* that has previously made an offer of *exchange* cannot rely on this section to amend such prior offer unless (1) The *offering company's prospectus* disclosed, during at least the two year period prior to the amendment of the offer (or, if the *fund* is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change, or (2) The only effect of such change is to reduce or eliminate an *administrative fee, sales load* or *redemption fee* payable at the time of an *exchange*.

Section 12. Functions and activities of *investment companies*. [15 U.S.C. 80a-12]

(a) It shall be unlawful for any registered *investment company*, in contravention of such rules and regulations or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) to purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;

(2) to participate on a joint or a joint and several basis in any trading account in securities, except in connection with an underwriting in which such registered company is a *participant*; or

(3) to effect a short sale of any security, except in connection with an underwriting in which such registered company is a participant.

(b) It shall be unlawful for any registered *open-end company* (other than a company complying with the provisions of section 10(d)) to act as a distributor of securities of which it is the *issuer*, except through an *underwriter*, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c) It shall be unlawful for any registered *diversified company* to make any commitment as *underwriter*, if immediately thereafter the *amount* of its outstanding underwriting commitments, plus the *value* of its *investments* in securities of *issuers* (other than *investment companies*) of which it owns more than 10 per centum of the outstanding *voting securities*, exceeds 25 per centum of the *value* of its *total assets*.

(d)(1)(A) It shall be unlawful for any registered *investment company* (the “acquiring company”) and any company or companies *controlled* by such acquiring company to purchase or otherwise acquire any security issued by any other *investment company* (the “acquired company”), and for any *investment company* (the “acquiring company”) and any company or companies *controlled* by such acquiring company to purchase or otherwise acquire any security issued by any registered *investment company* (the “acquired

company”), if the acquiring company and any company or companies *controlled* by it immediately after such purchase or acquisition own in the aggregate—

- (i) more than 3 per centum of the total outstanding voting stock of the *acquired* company;
- (ii) securities issued by the acquired company having an aggregate *value* in excess of 5 per centum of the *value* of the *total assets* of the acquiring company; or
- (iii) securities issued by the acquired company and all other *investment companies* (other than treasury stock of the acquiring company) having an aggregate *value* in excess of 10 per centum of the *value* of the *total assets* of the acquiring company.

(B) It shall be unlawful for any registered open-end *investment company* (the “acquired company”), any *principal underwriter* therefor, or any *broker* or *dealer* registered under the Securities Exchange Act of 1934, knowingly to sell or otherwise dispose of any security issued by the acquired company to any other *investment company* (the “acquiring company”) or any company or companies *controlled* by the acquiring company, if immediately after such sale or disposition—

- (i) more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies *controlled* by it; or
- (ii) more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other *investment companies* and companies *controlled* by them.

(C) It shall be unlawful for any *investment company* (the “acquiring company”) and any company or companies *controlled* by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end *investment company*, if immediately after such purchase or acquisition the acquiring company, other *investment companies* having the same *investment adviser*, and companies *controlled* by such *investment companies*, own more than 10 per centum of the total outstanding voting stock of such *closed-end company*.

(D) The provisions of this paragraph shall not apply to a security received as a dividend or as a result of an offer of *exchange* approved pursuant to section 11 or of a plan of *reorganization* of any company (other than a plan devised for the purpose of evading the foregoing provisions).

(E) The provisions of this paragraph shall not apply to a security (or securities) purchased or acquired by an *investment company* if—

- (i) the depositor of, or *principal underwriter* for, such *investment company* is a *broker* or *dealer* registered under the Securities Exchange Act of 1934, or a *person controlled* by such a *broker* or *dealer*;

(ii) such security is the only investment security held by such *investment company* (or such securities are the only *investment securities* held by such *investment company*, if such *investment company* is a registered *unit investment trust* that issues two or more classes or series of securities, each of which provides for the accumulation of *shares* of a different *investment company*); and

(iii) the purchase or acquisition is made pursuant to an arrangement with the *issuer* of, or *principal underwriter* for the *issuer* of, the security whereby such *investment company* is obligated—

(aa) either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the *shares* held by it in the same proportion as the vote of all other holders of such security, and

(bb) in the event that such *investment company* is not a registered *investment company*, to refrain from substituting such security unless the Commission shall have approved such substitution in the manner provided in section 26 of this Act.

(F) The provisions of this paragraph shall not apply to securities purchased or otherwise acquired by a registered *investment company* if—

(i) immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such *issuer* is owned by such registered *investment company* and all *affiliated persons* of such registered *investment company*; and

(ii) such registered *investment company* has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a *principal underwriter* or otherwise at a public offering price which includes a *sales load* of more than 1½ per centum.

No *issuer* of any security purchased or acquired by a registered *investment company* pursuant to this subparagraph shall be obligated to redeem such security in an *amount* exceeding 1 per centum of such *issuer's* total outstanding securities during any period of less than thirty days. Such *investment company* shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to this subparagraph in the manner prescribed by subparagraph (E) of this subsection.

(G)(i) This paragraph does not apply to securities of a registered open-end *investment company* or a registered *unit investment trust* (hereafter in this subparagraph referred to as the “acquired company”) purchased or otherwise acquired by a registered open-end *investment company* or a registered *unit investment trust* (hereafter in this subparagraph referred to as the “acquiring company”) if—

(I) the acquired company and the acquiring company are part of the same *group of investment companies*;

(II) the securities of the *acquired* company, securities of other registered open-end *investment companies* and registered *unit investment trusts* that are part of the same *group of investment companies*, Government securities, and *short-term paper* are the only *investments* held by the acquiring company;

(III) with respect to—

(aa) securities of the acquired company, the acquiring company does not pay and is not assessed any charges or fees for *distribution*-related activities, unless the acquiring company does not charge a *sales load* or other fees or charges for *distribution*-related activities; or

(bb) securities of the acquiring company, any *sales loads* and other *distribution*-related fees charged, when aggregated with any *sales load* and *distribution*-related fees paid by the acquiring company with respect to securities of the *acquired company*, are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission;

(IV) the acquired company has a policy that prohibits it from acquiring any securities of registered open-end *investment companies* or registered *unit investment trusts* in reliance on this subparagraph or subparagraph (F); and

(V) such acquisition is not in contravention of such rules and regulations as the Commission may from time to time prescribe with respect to acquisitions in accordance with this subparagraph, as necessary and appropriate for the protection of investors.

(ii) For purposes of this subparagraph, the term “*group of investment companies*” means any 2 or more registered *investment companies* that hold themselves out to investors as related companies for purposes of investment and investor services.

(H) For the purposes of this paragraph, the *value* of an *investment company’s total assets* shall be computed as of the time of a purchase or acquisition or as closely thereto as is reasonably possible.

(I) In any action brought to enforce the provisions of this paragraph, the Commission may join as a party the *issuer* of any security purchased or otherwise acquired in violation of this paragraph, and the court may issue any order with respect to such *issuer* as may be necessary or appropriate for the enforcement of the provisions of this paragraph.

(J) The Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any *person*, security, or transaction, or any class or classes of *persons*, securities, or transactions from any

provision of this paragraph, if and to the extent that such exemption is consistent with the public interest and the protection of investors.

(2) It shall be unlawful for any registered *investment company* and any company or companies *controlled* by such registered *investment company* to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of *reorganization* of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any *insurance company* of which such registered *investment company* and any company or companies *controlled* by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies *controlled* by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such *insurance company*.

(3) It shall be unlawful for any registered *investment company* and any company or companies *controlled* by such registered *investment company* to purchase or otherwise acquire any security issued by or any other interest in the business of any *person* who is a *broker*, a *dealer*, is engaged in the business of underwriting, or is either an *investment adviser* of an *investment company* or an *investment adviser* registered under the Investment Advisers Act of 1940, unless (A) such *person* is a corporation all the outstanding securities of which (other than *short-term paper*, securities representing *bank* loans, and *directors'* qualifying shares) are, or after such acquisition will be, owned by one or more registered *investment companies*; and (B) such *person* is primarily engaged in the business of underwriting and distributing securities issued by other *persons*, selling securities to customers, or any one or more of such or related activities, and the gross income of such *person* normally is derived principally from such business or related activities.

(e) Notwithstanding any provisions of the Investment Company Act of 1940, any registered *investment company* may hereafter purchase or otherwise acquire any security issued by any one corporation engaged or proposing to engage in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of *issuers* for which no ready market is in existence, and reorganizing companies or similar activities; provided—

(1) That the securities issued by such corporation (other than *short-term paper* and securities representing *bank* loans) shall consist solely of one class of common stock and shall have been originally issued or sold for investment to registered *investment companies* only;

(2) That the aggregate cost of the securities of such corporation purchased by such registered *investment company* does not exceed 5 per centum of the *value* of the *total assets* of such registered company at the time of any purchase or acquisition of such securities; and

(3) That the aggregate paid-in capital and surplus of such corporation does not exceed \$100,000,000.

For the purpose of paragraph (1) of section 5(b) any investment in any such corporation shall be deemed to be an *investment company*.

(f) Notwithstanding any provisions of this Act, any registered *face-amount certificate company* may organize not more than two *face-amount certificate companies* and acquire and own all or any part of the capital stock thereof only if such stock is acquired and held for investment: *Provided*, that the aggregate cost to such registered company of all such stock so acquired shall not exceed six times the *amount* of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 28 for a *face-amount certificate company* organized on or after March 15, 1940: *And provided further*, that the aggregate cost to such registered company of all such capital stock issued by *face-amount certificate companies* organized or otherwise created under laws other than the laws of the United States or any State thereof shall not exceed twice the *amount* of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 28 for a company organized on or after March 15, 1940. Nothing contained in this subsection shall be deemed to prevent the sale of any such stock to any other *person* if the original purchase was made by such registered *face-amount certificate company* in good faith for investment and not for resale.

(g) Notwithstanding the provisions of this section any registered *investment company* and any company or companies *controlled* by such registered company may purchase or otherwise acquire from another *investment company* or any company or companies *controlled* by such registered company more than 10 per centum of the total outstanding voting stock of any *insurance company* owned by any such company or companies, or may acquire the securities of any *insurance company* if the Commission by order determines that such acquisition is in the public interest because the financial condition of such *insurance company* will be improved as a result of such acquisition or any plan contemplated as a result thereof. This section shall not be deemed to prohibit the promotion of a new *insurance company* or the acquisition of the securities of any newly created *insurance company* by a registered *investment company*, alone or with other *persons*. Nothing contained in this section shall in any way affect or derogate from the powers of any insurance commissioner or similar official or agency of the United States or any State, or to affect the right under State law of any *insurance company* to acquire securities of any other *insurance company* or insurance companies.

Rule 12b-1 *Distribution of shares by registered open-end management investment company.*

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management *investment company* (other than a company complying with the provisions of section 10(d) of the Investment Company Act of 1940) to act as a distributor of securities of which it is the *issuer*, except through an *underwriter*;

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the *issuer*, other than through an *underwriter*, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of *shares* issued by such company, including, but not necessarily limited to, advertising, compensation of *underwriters*, *dealers*, and sales *personnel*, the printing and mailing of *prospectuses* to other than current shareholders, and the printing and mailing of sales literature;

(b) A registered, open-end management *investment company* (“company”) may act as a distributor of securities of which it is the *issuer*: Provided, that any *payments* made by such company in connection with such *distribution* are made pursuant to a written plan describing all *material* aspects of the proposed financing of *distribution* and that all agreements with any *person* relating to implementation of the plan are in writing, and further provided, that:

(1) Such plan has been approved by a vote of at least a *majority of the outstanding voting securities* of such company, if adopted after any public offering of the company’s *voting securities* or the sale of such securities to *persons* who are not *affiliated persons* of the company, *affiliated persons* of such *persons*, *promoters* of the company, or *affiliated persons* of such *promoters*;

(2) Such plan, together with any related agreements, has been approved by a vote of the board of *directors* of such company, and of the *directors* who are not *interested persons* of the company and have no direct or indirect *financial interest* in the operation of the plan or in any agreements related to the plan, cast in *person* at a meeting called for the purpose of voting on such plan or agreements;

(3) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2) of this section;

(ii) That any *person* authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company’s board of *directors*, and the *directors* shall review, at least quarterly, a written report of the *amounts* so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of *directors* of the company who are not *interested persons* of the company and have no direct or indirect *financial interest* in the operation of the plan or in any agreements related to the plan or by vote of a *majority of the outstanding voting securities* of such company;

(iv) In the case of an agreement related to a plan: (A) That it may be terminated at any time, without the *payment* of any penalty, by vote of a majority of the mem-

bers of the board of *directors* of such company who are not *interested persons* of the company and have no direct or indirect *financial interest* in the operation of the plan or in any agreements related to the plan or by vote of a *majority of the outstanding voting securities* of such company on not more than sixty days' written notice to any other party to the agreement, and (B) For its automatic termination in the event of its *assignment*;

(4) Such plan provides that it may not be amended to increase *materially* the *amount* to be spent for *distribution* without shareholder approval and that all *material* amendments of the plan must be approved in the manner described in paragraph (b)(2) of this section; and

(5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management *investment company* may rely on the provisions of paragraph (b) of this section only if its board of *directors* satisfies the *fund* governance standards as defined in rule 0-1(a)(7);

(d) In considering whether a registered open-end management *investment company* should implement or continue a plan in reliance on paragraph (b) of this section, the *directors* of such company shall have a duty to request and evaluate, and any *person* who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the *directors* should consider and give appropriate weight to all pertinent factors, and minutes describing the factors considered and the basis for the decision to use company assets for *distribution* must be made and preserved in accordance with paragraph (f) of this section;

NOTE: *For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.*

(e) A registered open-end management *investment company* may implement or continue a plan pursuant to paragraph (b) of this section only if the *directors* who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b) of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders;

(f) A registered open-end management *investment company* must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place;

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this rule provides for any action to be

taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under rule 18f-3(f)(2)(iii); and

(h) Notwithstanding any other provision of this section, a *company* may not:

(1) Compensate a *broker* or *dealer* for any promotion or *sale* of *shares* issued by that *company* by directing to the *broker* or *dealer*:

(i) The *company's* portfolio *securities* transactions; or

(ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the *company's* portfolio transactions effected through any other *broker* (including a *government securities broker*) or *dealer* (including a municipal *securities dealer* or a *government securities dealer*); and

(2) Direct its portfolio *securities* transactions to a *broker* or *dealer* that promotes or *sells shares* issued by the *company*, unless the *company* (or its *investment adviser*):

(i) Is in compliance with the provisions of paragraph (h)(1) of this section with respect to that *broker* or *dealer*; and

(ii) Has implemented, and the *company's* board of *directors* (including a majority of *directors* who are not *interested persons* of the company) has approved, policies and procedures reasonably designed to prevent:

(A) The *persons* responsible for selecting *brokers* and *dealers* to effect the *company's* portfolio *securities* transactions from taking into account the *brokers' and dealers' promotion or sale of shares* issued by the *company* or any other registered *investment company*; and

(B) The *company*, and any *investment adviser* and *principal underwriter* of the *company*, from entering into any agreement (whether oral or written) or other understanding under which the *company* directs, or is expected to direct, portfolio *securities* transactions, or any remuneration described in paragraph (h)(1)(ii) of this section, to a *broker* (including a *government securities broker*) or *dealer* (including a municipal *securities dealer* or a *government securities dealer*) in consideration for the promotion or *sale of shares* issued by the *company* or any other registered *investment company*.

Rule 12d1-1 Exemptions for investments in money market funds.

(a) *Exemptions for acquisition of money market fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B),

12(d)(1)(G), 17(a), and 57 of the Investment Company Act of 1940, and rule 17d-1 thereunder:

(1) An *investment company* (“acquiring fund”) may purchase and redeem shares issued by a *money market fund*; and

(2) A *money market fund*, any *principal underwriter* thereof, and a *broker* or a *dealer* may sell or otherwise dispose of shares issued by the *money market fund* to any acquiring fund.

(b) Conditions.

(1) Fees. The acquiring fund pays no sales charge, as defined in FINRA Rule 2341(b)(8) (“sales charge”), or service fee, as defined in FINRA Rule 2341(b)(9), charged in connection with the purchase, sale, or redemption of securities issued by a *money market fund* (“service fee”); or the acquiring fund’s *investment adviser* waives its advisory fee in an amount necessary to offset any sales charge or service fee.

(2) Unregistered *money market funds*. If the *money market fund* is not an *investment company* registered under the Act:

(i) The acquiring fund reasonably believes that the *money market fund* satisfies the following conditions as if it were a registered open-end *investment company*:

(A) Operates in compliance with rule 2a-7;

(B) Complies with sections 17(a), (d), (e), 18, and 22(e) of the Act;

(C) Has adopted procedures designed to ensure that it complies with sections 17(a), (d), (e), 18, and 22(e) of the Act, periodically reviews and updates those procedures, and maintains books and records describing those procedures;

(D) Maintains the records required by rules 31a-1(b)(1), 31a-1(b)(2)(ii), 31a-1(b)(2)(iv), and 31a-1(b)(9); and

(E) Preserves permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs (b)(2)(i)(C) and (D) of this section, and makes those records available for examination on request by the Commission or its staff; and

(ii) The adviser to the *money market fund* is registered with the Commission as an *investment adviser* under section 203 of the Investment Advisers Act of 1940.

(c) *Exemption from certain monitoring and recordkeeping requirements under Rule 17e-1*. Notwithstanding the requirements of rules 17e-1(b)(3) and 17e-1(d)(2), the payment of a

commission, fee, or other remuneration to a *broker* shall be deemed as not exceeding the usual and customary *broker's* commission for purposes of section 17(e)(2)(A) of the Act if:

- (1) The commission, fee, or other remuneration is paid in connection with the sale of securities to or by an acquiring fund;
- (2) The *broker* and the acquiring fund are *affiliated persons* because each is an *affiliated person* of the same *money market fund*; and
- (3) The acquiring fund is an *affiliated person* of the *money market fund* solely because the acquiring fund owns, *controls*, or holds with power to vote five percent or more of the outstanding securities of the *money market fund*.

(d) Definitions.

(1) *Investment company* includes a company that would be an *investment company* under section 3(a) of the Act but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act.

(2) *Money market fund* means:

- (i) An open-end management *investment company* registered under the Act that is regulated as a *money market fund* under rule 2a-7; or
- (ii) A company that would be an *investment company* under section 3(a) of the Act but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act and that:
 - (A) Is limited to investing in the types of securities and other investments in which a *money market fund* may invest under rule 2a-7; and
 - (B) Undertakes to comply with all the other requirements of rule 2a-7, except that, if the company has no board of *directors*, the company's *investment adviser* performs the duties of the board of *directors*.

Rule 12d1-2 [Reserved]

Rule 12d1-3 *Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.*

(a) Exemption from sales charge limits. A registered *investment company* ("acquiring fund") that relies on section 12(d)(1)(F) of the Investment Company Act of 1940 to acquire securities issued by an *investment company* ("acquired fund") may offer or sell any security it issues through a *principal underwriter* or otherwise at a public offering price that includes a sales load of more than 1 ½ percent if any sales charges and service fees charged with respect to the acquiring fund's securities do not exceed the limits set forth in FINRA Rule 2341 applicable to a fund of funds.

(b) Definitions. For purposes of this section, the terms fund of funds, sales charge, and service fee have the same meanings as in FINRA Rule 2341(b).

Rule 12d1-4 Exemptions for investments in certain investment companies.

(a) *Exemptions for acquisition and sale of acquired fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(C), 17(a), 57(a)(1)-(2), and 57(d)(1)-(2) of the Investment Company Act:

(1) A registered investment company (other than a face-amount certificate company) or business development company (an “*acquiring fund*”) may purchase or otherwise acquire the securities issued by another registered investment company (other than a face-amount certificate company) or business development company (an “*acquired fund*”);

(2) An *acquired fund*, any principal underwriter thereof, and any broker or dealer registered under the Securities Exchange Act of 1934 may sell or otherwise dispose of the securities issued by the *acquired fund* to any *acquiring fund* and any *acquired fund* may redeem or repurchase any securities issued by the *acquired fund* from any *acquiring fund*; and

(3) An *acquiring fund* that is an affiliated person of an *exchange-traded fund* (or who is an affiliated person of such a fund) solely by reason of the circumstances described in rule 6c-11(b)(3)(i) and (ii), may deposit and receive the exchange traded fund’s *baskets*, provided that the acquired *exchange-traded fund* is not otherwise an affiliated person (or affiliated person of an affiliated person) of the *acquiring fund*.

(b) *Conditions.*

(1) Control.

(i) The *acquiring fund* and its *advisory group* will not control (individually or in the aggregate) an *acquired fund*;

(ii) If the *acquiring fund* and its *advisory group*, in the aggregate,

(A) hold more than 25% of the outstanding voting securities of an *acquired fund* that is a registered open-end management investment company or registered unit investment trust as a result of a decrease in the outstanding voting securities of the *acquired fund*, or

(B) hold more than 10% of the outstanding voting securities of an *acquired fund* that is a registered closed-end management investment company or business development company, each of those holders will vote its securities in the same proportion as the vote of all other holders of such securities; provided, however, that in circumstances where all holders of the outstanding voting securities of the *acquired fund* are required by this section or otherwise under section 12(d)(1) to vote securities of the *acquired fund* in the same proportion as the vote of all other holders of such securities, the *acquiring fund* will seek instructions from its security holders with regard to the voting of all proxies with respect to such *acquired fund* securities and vote such proxies only in accordance with such instructions; and

(iii) The conditions in paragraphs (b)(1)(i)—(ii) of this section do not apply if: (A) The *acquiring fund* is in the same *group of investment companies* as an *acquired fund*; or (B) The *acquiring fund*'s investment sub-adviser or any person controlling, controlled by, or under common control with such investment sub-adviser acts as an *acquired fund*'s investment adviser or depositor.

(2) Findings and Agreements.

(i) Management companies.

(A) If the *acquiring fund* is a management company, prior to the initial acquisition of an *acquired fund* in excess of the limits in section 12(d)(1)(A)(i) of the Investment Company Act, the *acquiring fund*'s investment adviser must evaluate the complexity of the structure and fees and expenses associated with the *acquiring fund*'s investment in the *acquired fund*, and find that the *acquiring fund*'s fees and expenses do not duplicate the fees and expenses of the *acquired fund*;

(B) If the *acquired fund* is a management company, prior to the initial acquisition of an *acquired fund* in excess of the limits in section 12(d)(1)(A)(i) of the Investment Company Act, the *acquired fund*'s investment adviser must find that any undue influence concerns associated with the *acquiring fund*'s investment in the *acquired fund* are reasonably addressed and, as part of this finding, the investment adviser must consider at a minimum the following items:

- (1) The scale of contemplated investments by the *acquiring fund* and any maximum investment limits;
- (2) The anticipated timing of redemption requests by the *acquiring fund*;
- (3) Whether and under what circumstances the *acquiring fund* will provide advance notification of investments and redemptions; and
- (4) The circumstances under which the *acquired fund* may elect to satisfy redemption requests in kind rather than in cash and the terms of any such redemptions in kind; and

(C) The investment adviser to each acquiring or acquired management company must report its evaluation, finding, and the basis for its evaluations or findings required by paragraphs (b)(2)(i)(A) or (B), as applicable, to the fund's board of directors, no later than the next regularly scheduled board of directors meeting.

(ii) Unit investment trusts. If the *acquiring fund* is a unit investment trust (“UIT”) and the date of initial deposit of portfolio securities into the *UIT* occurs after the effective date of this section, the *UIT*'s principal underwriter or depositor must evaluate the complexity of the structure associated with the *UIT*'s investment in *acquired funds* and, on or before such date of initial deposit, find that the *UIT*'s fees and expenses do not duplicate the fees and expenses of the *acquired funds* that the *UIT* holds or will hold at the date of deposit.

(iii) Separate accounts funding variable insurance contracts. With respect to a separate account funding variable insurance contracts that invests in an *acquiring fund*, the *acquiring fund* must obtain a certification from the insurance company offering the separate account that the insurance company has determined that the fees and expenses borne by the separate account, *acquiring fund*, and *acquired fund*, in the aggregate, are consistent with the standard set forth in section 26(f)(2)(A) of the Investment Company Act.

(iv) Fund of funds investment agreement. Unless the *acquiring fund's* investment adviser acts as the *acquired fund's* investment adviser and such adviser is not acting as the sub-adviser to either fund, the *acquiring fund* must enter into an agreement with the *acquired fund* effective for the duration of the funds' reliance on this section, which must include the following:

(A) Any material terms regarding the *acquiring fund's* investment in the *acquired fund* necessary to make the finding required under paragraph (b)(2)(i)-(ii) of this section;

(B) A termination provision whereby either the *acquiring fund* or *acquired fund* may terminate the agreement subject to advance written notice no longer than 60 days; and

(C) A requirement that the *acquired fund* provide the *acquiring fund* with information on the fees and expenses of the *acquired fund* reasonably requested by the *acquiring fund*.

(3) Complex fund structures.

(i) No investment company may rely on section 12(d)(1)(G) of the Investment Company Act or this section to purchase or otherwise acquire, in excess of the limits in section 12(d)(1)(A) of the Investment Company Act, the outstanding voting securities of an investment company (a "*second-tier fund*") that relies on this section to acquire the securities of an *acquired fund*, unless the second-tier fund makes investments permitted by paragraph (b)(3)(ii) of this section; and

(ii) No *acquired fund* may purchase or otherwise acquire the securities of an investment company or *private fund* if immediately after such purchase or acquisition, the securities of investment companies and *private funds* owned by the *acquired fund* have an aggregate value in excess of 10 percent of the value of the total assets of the *acquired fund*; provided, however, that the 10 percent limitation of this paragraph shall not apply to investments by the *acquired fund* in:

(A) Reliance on section 12(d)(1)(E) of the Investment Company Act;

(B) Reliance on rule 12d1-1;

(C) A subsidiary that is wholly-owned and controlled by the *acquired fund*;

(D) Securities received as a dividend or as a result of a plan of reorganization of a company; or

(E) Securities of another investment company received pursuant to exemptive relief from the Commission to engage in interfund borrowing and lending transactions.

(c) *Recordkeeping*. The *acquiring* and *acquired funds* relying upon this section must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place, as applicable:

(1) A copy of each fund of funds investment agreement that is in effect, or at any time within the past five years was in effect, and any amendments thereto;

(2) A written record of the evaluations and findings required by paragraph (b)(2)(i) of this section, and the basis therefor within the past five years;

(3) A written record of the finding required by paragraph (b)(2)(ii) of this section and the basis for such finding; and

(4) The certification from each insurance company required by paragraph (b)(2)(iii) of this section.

(d) Definitions. For purposes of this section:

Advisory group means either: (1) An *acquiring fund's* investment adviser or depositor, and any person controlling, controlled by, or under common control with such investment adviser or depositor; or (2) An *acquiring fund's* investment sub-adviser and any person controlling, controlled by, or under common control with such investment sub-adviser.

Baskets has the same meaning as in rule 6c-11(a)(1).

Exchange-traded fund means a fund or class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates in reliance on rule 6c-11 or under an exemptive order granted by the Commission.

Group of investment companies means any two or more registered investment companies or business development companies that hold themselves out to investors as related companies for purposes of investment and investor services.

Private fund means an issuer that would be an investment company under section 3(a) of the Act but for the exclusions from that definition provided for in section 3(c)(1) or section 3(c)(7) of the Investment Company Act.

Rule 12d2-1 *Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.*

For purposes of sections 12(d)(2) and 12(g) of the Investment Company Act of 1940, “*insurance company*” shall include a *foreign insurance company* as that term is used in rule 3a-6 under the Act.

Rule 12d3-1 *Exemption of acquisitions of securities issued by persons engaged in securities related businesses.*

(a) Notwithstanding section 12(d)(3) of the Investment Company Act of 1940, a registered *investment company*, or any company or companies *controlled* by such registered *investment company* (“acquiring company”) may acquire any security issued by any *person* that, in its most recent *fiscal year*, derived 15 percent or less of its gross revenues from *securities related activities* unless the acquiring company would *control* such *person* after the acquisition.

(b) Notwithstanding section 12(d)(3) of the Act an acquiring company may acquire any security issued by a *person* that, in its most recent *fiscal year*, derived more than 15 percent of its gross revenues from *securities related activities*, provided that

(1) immediately after the acquisition of any equity security, the acquiring company owns not more than five percent of the outstanding securities of that class of the *issuer’s* equity securities;

(2) immediately after the acquisition of any debt security, the acquiring company owns not more than ten percent of the outstanding principal *amount* of the *issuer’s* debt securities; and

(3) immediately after any such acquisition, the acquiring company has invested not more than five percent of the *value* of its *total assets* in the securities of the *issuer*.

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of:

(1) A general partnership interest; or

(2) A security issued by the acquiring company’s *promoter*, *principal underwriter*, or any *affiliated person* of such *promoter*, or *principal underwriter*; or

(3) A security issued by the acquiring company’s *investment adviser*, or an *affiliated person* of the acquiring company’s *investment adviser*, other than a security issued by a *subadviser* or an *affiliated person* of a *subadviser* of the acquiring company provided that:

(i) *Prohibited relationships*. The *subadviser* that is (or whose *affiliated person* is) the *issuer* is not, and is not an *affiliated person* of, an *investment adviser* responsible for providing advice with respect to the portion of the acquiring company that is acquiring the securities, or of any *promoter*, *underwriter*, officer, *director*, member of an *advisory board*, or *employee* of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the *subadviser* that is (or whose *affiliated person* is) the *issuer*, and any *subadviser* that is advising the portion of the acquiring company that is purchasing the securities:

(A) Prohibit them from consulting with each other concerning transactions of the acquiring company in securities or other assets, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice to providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) For purposes of this section:

(1) "*Securities related activities*" are a *person's* activities as a *broker*, a *dealer*, an *underwriter*, an *investment adviser* registered under the Investment Advisers Act of 1940, as amended, or as an *investment adviser* to a registered *investment company*.

(2) An *issuer's* gross revenues from its own *securities related activities* and from its ratable share of the *securities related activities* of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an *issuer* is engaged in *securities related activities*. Such information may be obtained from the *issuer's* annual report to shareholders, the *issuer's* annual reports or registration statement filed with the Commission, or the *issuer's* chief financial officer.

(3) "Equity security" is as defined in rule 3a-11 under the Securities Exchange Act of 1934.

(4) "Debt security" includes all securities other than equity securities.

(5) Determination of the percentage of an acquiring company's ownership of any class of outstanding equity securities of an *issuer* shall be made in accordance with the procedures described in rule 16b-1 through rule 16e-1 under the Securities Exchange Act of 1934.

(6) Where an acquiring company is considering acquiring or has acquired options, warrants, rights or convertible securities of a securities related business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights or conversion privileges had been exercised.

(7) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this section;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this section;

- (iii) Exercise of options, warrants, or rights acquired in compliance with this section;
 - (iv) Conversion of convertible securities acquired in compliance with this section; and
 - (v) Acquisition of *Demand Features* or *Guarantees*, as these terms are defined in rule 2a-7(a)(9) and rule 2a-7(a)(16) respectively, provided that, immediately after the acquisition of any *Demand Feature* or *Guarantee*, the company will not, with respect to 75 percent of the total *value* of its assets, have invested more than ten percent of the total *value* of its assets in securities underlying *Demand Features* or *Guarantees* from the same institution. For the purposes of this section, a *Demand Feature* or *Guarantee* will be considered to be from the party to whom the company will look for a *payment* of the exercise price.
- (8) Any class or series of an *investment company* that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered *investment company*.
- (9) “Subadviser” means an *investment adviser* as defined in section 2(a)(20)(B) of the Act.

Section 13. Changes in investment policy. [15 U.S.C. 80a-13]

- (a) No registered *investment company* shall, unless authorized by the vote of a majority of its outstanding *voting securities*—
- (1) change its subclassification as defined in section 5(a)(1) and (2) of the Investment Company Act of 1940 or its subclassification from a diversified to a *nondiversified company*;
 - (2) borrow money, issue *senior securities*, underwrite securities issued by other *persons*, purchase or sell real estate or commodities or make loans to other *persons*, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto;
 - (3) deviate from its policy in respect of concentration of *investments* in any particular industry or group of industries as recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 8(b)(3); or
 - (4) change the nature of its business so as to cease to be an *investment company*.
- (b) In the case of a common-law trust of the character described in section 16(c), either written approval by holders of a majority of the outstanding *shares* of beneficial interest or the vote of a majority of such outstanding *shares* cast in *person* or by proxy at a meeting

called for the purpose shall for the purposes of subsection (a) be deemed the equivalent of the vote of a *majority of the outstanding voting securities*, and the provisions of paragraph (42) of section 2(a) as to a majority shall be applicable to the votes cast at such a meeting.

(c) Limitation on Actions-

(1) In General—Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered *investment company*, or any *employee*, officer, *director*, or *investment adviser* thereof, based solely upon the *investment company* divesting from, or avoiding investing in, securities issued by persons that the *investment company* determines, using credible information available to the public—

(A) conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007; or

(B) engage in investment activities in Iran described in section 202(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

(2) Applicability—

(A) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to create, imply, diminish, change, or affect in any way whether or not a private right of action exists under subsection (a) or any other provision of this Act.

(B) DISCLOSURES.—Paragraph (1) shall not apply to a registered *investment company*, or any *employee*, officer, *director*, or *investment adviser* thereof, unless the *investment company* makes disclosures in accordance with regulations prescribed by the Commission.

(3) Person defined—For purposes of this subsection the term “person” includes the Federal Government and any State or political subdivision of a State.

Rule 13a-1 Exemption for change of status by temporarily diversified company.

A change of its subclassification by a registered *management company* from that of a *diversified company* to that of a *nondiversified company* shall be exempt from the provisions of section 13(a)(1) of the Investment Company Act of 1940, if such change occurs under the following circumstances:

(a) Such company was a *nondiversified company* at the time of its registration pursuant to section 8(a), or thereafter legally became a *nondiversified company*.

(b) After its registration and within 3 years prior to such change, such company became a *diversified company*.

(c) At the time such company became a *diversified company*, its registration statement filed pursuant to section 8(b), as supplemented and modified by any amendments and reports theretofore filed, did not state that the registrant proposed to become a *diversified company*.

Section 14. Size of *investment companies*. [15 U.S.C. 80a-14]

(a) No registered *investment company* organized after August 22, 1940, and no *principal underwriter* for such a company, shall make a public offering of securities of which such company is the *issuer*, unless—

(1) such company has a net worth of at least \$100,000;

(2) such company has previously made a public offering of its securities, and at the time of such offering had a net worth of at least \$100,000; or

(3) provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933, which in the opinion of the Commission adequately insures (A) that after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible *persons* to purchase from it securities to be issued by it for an aggregate net *amount* which plus the then net worth of the company, if any, will equal at least \$100,000; (B) that said aggregate net *amount* will be paid in to such company before any subscriptions for such securities will be accepted from any *persons* in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any *sales load*, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least \$100,000 within ninety days after such registration statement becomes effective.

At any time after the occurrence of the event specified in clause (C) of paragraph (3) of this subsection the Commission may issue a stop order suspending the effectiveness of the registration statement of such securities under the Securities Act of 1933 and may suspend or revoke the registration of such company under this title.

(b) The Commission is authorized, at such times as it deems that any substantial further increase in size of *investment companies* creates any problem involving the protection of investors or the public interest, to make a study and investigation of the effects of size on the investment policy of *investment companies* and on security markets, on concentration of *control* of wealth and industry, and on companies in which *investment companies* are interested, and from time to time to report the results of its studies and investigations and its recommendations to the Congress.

Rule 14a-1 Use of notification pursuant to Regulation E under the Securities Act of 1933.

For the purposes of section 14(a)(3) of the Investment Company Act of 1940, registration of securities under the Securities Act of 1933 by a *small business investment company* operating under the Small Business Investment Act of 1958 shall be deemed to include the filing of a notification under Rule 604 of Regulation E promulgated under said Act if provision is made in connection with such notification which in the opinion of the Commission adequately insures (a)

that after the effective date of such notification such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible *persons* to purchase from it securities to be issued by it for an aggregate net *amount* which plus the then net worth of the company, if any, will equal at least \$100,000; (b) that said aggregate net *amount* will be paid into such company before any subscriptions for such securities will be accepted from any *persons* in excess of twenty-five; (c) that arrangements will be made whereby any proceeds so paid in, as well as any *sales load*, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least \$100,000 within ninety days after such notification becomes effective.

Rule 14a-2 Exemption from section 14(a) of the Act for certain registered separate accounts and their principal underwriters.

(a) A registered *separate account*, and any *principal underwriter* for such account, shall be exempt from section 14(a) of the Investment Company Act of 1940 with respect to a public offering of variable annuity contracts participating in such account.

(b) Any registered management *investment company* which has as a *promoter* an *insurance company* and which offers its securities to *separate accounts* of such *insurance company* that offer variable annuity contracts and are registered under the Act as *unit investment trusts* (“*trust accounts*”), and any *principal underwriter* for such *investment company*, shall be exempt from section 14(a) with respect to such offering and to the offering of such securities to *trust accounts* of other insurance companies.

(c) Any registered management *investment company* exempt from section 14(a) of the Act pursuant to paragraph (b) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act, to the extent prescribed in rules 15a-3, 16a-1, and 32a-2 under the Act, provided that such *investment company* complies with the conditions set forth in those rules as if it were a *separate account*.

Rule 14a-3 Exemption from section 14(a) of the Act for certain registered unit investment trusts and their principal underwriters.

(a) A registered *unit investment trust* (hereinafter referred to as the “Trust”) engaged exclusively in the business of investing in *eligible trust securities*, and any *principal underwriter* for the Trust, shall be exempt from section 14(a) of the Investment Company Act of 1940 with respect to a public offering of Trust units: Provided, that:

(1) At the commencement of such offering the Trust holds at least \$100,000 principal *amount* of *eligible trust securities* (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a *bank* in the *amount* required for their purchase, are held by the Trust for purchase of the securities);

(2) If, within ninety days from the time that the Trust's registration statement has become effective under the Securities Act of 1933 the net worth of the Trust declines to less than \$100,000 or the Trust is terminated, the sponsor for the Trust shall—

(i) Refund, on demand and without deduction, all sales charges to any unitholders who purchased Trust units from the sponsor (or from any *underwriter* or *dealer* participating in the *distribution*), and (ii) Liquidate the eligible trust securities held by the Trust and distribute the proceeds thereof to the unitholders of the Trust;

(3) The sponsor instructs the trustee when the *eligible trust securities* are deposited in the Trust that, in the event that redemptions by the sponsor or any *underwriter* of units constituting a part of the unsold units results in the Trust having a net worth of less than 40 percent of the principal *amount* of the *eligible trust securities* (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a *bank* in the *amount* required for their purchase, are held by the Trust for purchase of the securities) initially deposited in the Trust—(i) The trustee shall terminate the Trust and distribute the assets thereof to the unitholders of the Trust, and (ii) The sponsor for the Trust shall refund, on demand and without deduction, all sales charges to any unitholder who purchased Trust units from the sponsor or from any *underwriter* or *dealer* participating in the *distribution*.

(b) For the purposes of determining the availability of the exemption provided by the foregoing subsection, the term “*eligible trust securities*” shall mean:

(1) Securities (other than convertible securities) which are issued by a corporation and which have their interest or dividend rate fixed at the time they are issued;

(2) Interest bearing obligations issued by a state, or by any agency, instrumentality, authority or political subdivision thereof;

(3) Government securities; and

(4) Units of a previously issued series of the Trust: Provided, that:

(i) The aggregate principal *amount* of units of existing series so deposited shall not exceed 10% of the aggregate principal *amount* of the portfolio of the new series;

(ii) The aggregate principal *amount* of units of any particular existing series so deposited shall not exceed 5% of the aggregate principal *amount* of the portfolio of the new series;

(iii) No units shall be so deposited which do not substantially meet investment quality criteria at least as high as those applicable to the new series in which such units are deposited;

(iv) The *value* of the *eligible trust securities* underlying units of an existing series deposited in a new series shall not, by reason of maturity of such securities accord-

ing to their terms within ten years following the date of deposit, be reduced sufficiently for such existing series to be voluntarily terminated;

(v) Units of existing series so deposited shall constitute units purchased by the sponsor as market maker and not remaining unsold units from the original *distribution* of such units; and

(vi) The sponsor shall deposit units of existing series in the new series without a sales charge.

Section 15. Investment advisory and underwriting contracts. [15 U.S.C. 80a-15]

(a) It shall be unlawful for any *person* to serve or act as *investment adviser* of a registered *investment company*, except pursuant to a written contract, which contract, whether with such registered company or with an *investment adviser* of such registered company, has been approved by the vote of a *majority of the outstanding voting securities* of such registered company, and—

(1) precisely describes all compensation to be paid thereunder;

(2) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of *directors* or by vote of a *majority of the outstanding voting securities* of such company;

(3) provides, in substance, that it may be terminated at any time, without the *payment* of any penalty, by the board of *directors* of such registered company or by vote of a *majority of the outstanding voting securities* of such company on not more than sixty days' written notice to the *investment adviser*; and

(4) provides, in substance, for its automatic termination in the event of its *assignment*.

(b) It shall be unlawful for any *principal underwriter* for a registered *open-end company* to offer for sale, sell, or deliver after sale any security of which such company is the *issuer*, except pursuant to a written contract with such company, which contract—

(1) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of *directors* or by vote of a *majority of the outstanding voting securities* of such company; and

(2) provides, in substance, for its automatic termination in the event of its *assignment*.

(c) In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for any registered *investment company* having a board of *directors* to enter into, renew, or perform any contract or agreement, written or oral, whereby a *person* undertakes regularly to serve or act as *investment adviser* of or *principal underwriter* for such company,

unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of *directors*, who are not parties to such contract or agreement or *interested persons* of any such party, cast in *person* at a meeting called for the purpose of voting on such approval. It shall be the duty of the *directors* of a registered *investment company* to request and evaluate, and the duty of an *investment adviser* to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a *person* undertakes regularly to serve or act as *investment adviser* of such company. It shall be unlawful for the *directors* of a registered *investment company*, in connection with their evaluation of the terms of any contract whereby a *person* undertakes regularly to serve or act as *investment adviser* of such company, to take into account the purchase price or other consideration any *person* may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f).

(d) In the case of a common-law trust of the character described in section 16(c), either written approval by holders of a majority of the outstanding *shares* of beneficial interest or the vote of a majority of such outstanding *shares* cast in *person* or by proxy at a meeting called for the purpose shall for the purposes of this section be deemed the equivalent of the vote of a *majority of the outstanding voting securities*, and the provisions of paragraph (42) of section 2(a) as to a majority shall be applicable to the vote cast at such a meeting.

(e) Nothing contained in this section shall be deemed to require or contemplate any action by an *advisory board* of any registered company or by any of the members of such a board.

(f)(1) An *investment adviser*, or a corporate trustee performing the functions of an *investment adviser*, of a registered *investment company* or an *affiliated person* of such *investment adviser* or corporate trustee may receive any *amount* or benefit in connection with a sale of securities of, or a sale of any other interest in, such *investment adviser* or corporate trustee which results in an *assignment* of an investment advisory contract with such company or the change in *control* of or identity of such corporate trustee, if—

(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of *directors* of such registered company or such corporate trustee (or successor thereto, by *reorganization* or otherwise) are not (i) *interested persons* of the *investment adviser* of such company or such corporate trustee, or (ii) *interested persons* of the predecessor *investment adviser* or such corporate trustee; and

(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

(2)(A) For the purpose of paragraph (1)(A) of this subsection, *interested persons* of a corporate trustee shall be determined in accordance with section 2(a)(19)(B) Provided, that no *person* shall be deemed to be an *interested person* of a corporate trustee solely by reason of (i) his being a member of its board of *directors* or *advisory board* or (ii) his membership in the immediate family of any *person* specified in clause (i) of this subparagraph.

(B) For the purpose of paragraph (1)(B) of this subsection, an unfair burden on a registered *investment company* includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the *investment adviser* or corporate trustee or predecessor or successor *investment advisers* or corporate trustee or any *interested person* of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any *person* in connection with the purchase or sale of securities or other property to, from, or on behalf of such company, other than bona fide ordinary compensation as *principal underwriter* for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

(3) If—

(A) an *assignment* of an investment advisory contract with a registered *investment company* results in a successor *investment adviser* to such company, or if there is a change in *control* of or identity of a corporate trustee of a registered *investment company*, and such adviser or trustee is then an *investment adviser* or corporate trustee with respect to other assets substantially greater in *amount* than the *amount* of assets of such company, or

(B) as a result of a *merger* of, or a sale of substantially all the assets by, a registered *investment company* with or to another registered *investment company* with assets substantially greater in *amount*, a transaction occurs which would be subject to paragraph (1)(A) of this subsection,

such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 6(c) for exemption from the provisions of paragraph (1)(A) should be granted.

(4) Paragraph (1)(A) of this subsection shall not apply to a transaction in which a *controlling* block of outstanding *voting securities* of an *investment adviser* to a registered *investment company* or of a corporate trustee performing the functions of an *investment adviser* to a registered *investment company* is—

(A) distributed to the public and in which there is, in fact, no change in the identity of the *persons* who *control* such *investment adviser* or corporate trustee, or

(B) transferred to the *investment adviser* or the corporate trustee, or an *affiliated person* or *persons* of such *investment adviser* or corporate trustee, or is transferred from the *investment adviser* or corporate trustee to an *affiliated person* or *persons* of the *investment adviser* or corporate trustee: *Provided*, that (i) each transferee (other than such adviser or trustee) is a natural *person* and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such *voting securities* for a period of at least six months prior to such transfer.

Rule 15a-1 Exemption from stockholders' approval of certain small investment advisory contracts.

An *investment adviser* of a registered *investment company* shall be exempt from the requirement of sections 15(a) and 15(e) of the Investment Company Act of 1940 that the written contract pursuant to which he acts shall have been approved by the vote of a *majority of the outstanding voting securities* of such company, if the following conditions are met:

- (a) Such *investment adviser* is not an *affiliated person* of such company (except as *investment adviser*) nor of any *principal underwriter* for such company.
- (b) His compensation as *investment adviser* of such company in any *fiscal year* of the company during which any such contract is in effect either (1) is not more than \$100 or (2) is not more than \$2,500 and not more than $\frac{1}{40}$ of 1 percent of the *value* of the company's net assets averaged over the year or taken as of a definite date or dates within the year.
- (c) The aggregate compensation of all *investment advisers* of such company exempted pursuant to this section in any *fiscal year* of the company either (1) is not more than \$200 or (2) is not more than $\frac{1}{20}$ of 1 percent of the *value* of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

Rule 15a-2 Annual continuance of contracts.

(a) For purposes of sections 15(a) and 15(b) of the Investment Company Act of 1940, the continuance of a contract for a period more than two years after the date of its execution shall be deemed to have been specifically approved at least annually by the board of *directors* or by a vote of a *majority of the outstanding voting securities* of a registered *investment company* if such approval occurs:

- (1) With respect to the first continuance of a contract, during the 90 days prior to and including the earlier of (i) the date specified in such contract for its termination in the absence of such approval, or (ii) the second anniversary of the date upon which such contract was executed; or
 - (2) With respect to any subsequent continuance of a contract, during the 90 days prior to and including the first anniversary of the date upon which the most recent previous annual continuance of such contract became effective.
- (b) The provisions of paragraph (a) of this section shall not apply to any continuance of a contract which shall have been approved not later than 90 days after the date of adoption of this section, provided that such contract shall expire, by its terms, not later than 17 months from the date of adoption of this section.

NOTE: This section does not establish the exclusive method of complying with the Act. It provides one procedure by which a registered *investment company* may comply with the

applicable provisions of sections 15(a) and 15(b) of the Act; it does not preclude any other appropriate procedure. Any annual continuance of a contract approved in accordance with the provisions of paragraph (a)(1) or (a)(2) of rule 15a-2 will constitute a renewal of such contract for the purposes of section 15(c) of the Act, and therefore such renewal must be approved by the disinterested *directors* within the times specified in the section for a continuance.

Rule 15a-3 Exemption for initial period of investment adviser of certain registered separate accounts from requirement of security holder approval of investment advisory contract.

(a) An *investment adviser* of a registered *separate account* shall be exempt from the requirement under section 15(a) of the Investment Company Act of 1940 that the initial written contract pursuant to which the *investment adviser* serves or acts shall have been approved by the vote of a *majority of the outstanding voting securities* of such registered *separate account*, subject to the following conditions:

- (1) Such registered *separate account* qualifies for exemption from section 14(a) of the Act pursuant to rule 14a-2, or is exempt therefrom by order of the Commission upon application; and
- (2) Such written contract shall be submitted to a vote of variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to variable annuity contracts participating in such account: Provided, that such meeting shall take place within 1 year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

Rule 15a-4 Temporary exemption for certain investment advisers.

(a) For purposes of this section:

- (1) *Fund* means an *investment company*, and includes a separate series of the company.
- (2) *Interim contract* means a written investment advisory contract:
 - (i) That has not been approved by a majority of the *fund's* outstanding *Voting securities*; and
 - (ii) That has a duration no greater than 150 days following the date on which the *previous contract* terminates.
- (3) *Previous contract* means an investment advisory contract that has been approved by a majority of the *fund's* outstanding *voting securities* and has been terminated.

(b) Notwithstanding section 15(a) of the Investment Company Act of 1940, a *person* may act as *investment adviser* for a *fund* under an *interim contract* after the termination of a *previous contract* as provided in paragraphs (b)(1) or (b)(2) of this section:

(1) In the case of a *previous contract* terminated by an event described in section 15(a)(3) of the Act, by the failure to renew the *previous contract*, or by an *assignment* (other than an *assignment* by an *investment adviser* or a *controlling person* of the *investment adviser* in connection with which *assignment* the *investment adviser* or a *controlling person* directly or indirectly receives money or other benefit):

(i) The compensation to be received under the *interim contract* is no greater than the compensation the adviser would have received under the *previous contract*; and

(ii) The *fund's* board of *directors*, including a majority of the *directors* who are not *interested persons* of the *fund*, has approved the *interim contract* within 10 *business days* after the termination, at a meeting in which *directors* may participate by any means of communication that allows all *directors* participating to hear each other simultaneously during the meeting.

(2) In the case of a *previous contract* terminated by an *assignment* by an *investment adviser* or a *controlling person* of the *investment adviser* in connection with which *assignment* the *investment adviser* or a *controlling person* directly or indirectly receives money or other benefit:

(i) The compensation to be received under the *interim contract* is no greater than the compensation the adviser would have received under the *previous contract*;

(ii) The board of *directors*, including a majority of the *directors* who are not *interested persons* of the *fund*, has voted in *person* to approve the *interim contract* before the *previous contract* is terminated;

(iii) The board of *directors*, including a majority of the *directors* who are not *interested persons* of the *fund*, determines that the scope and quality of services to be provided to the *fund* under the *interim contract* will be at least equivalent to the scope and quality of services provided under the *previous contract*;

(iv) The *interim contract* provides that the *fund's* board of *directors* or a majority of the *fund's* outstanding *voting securities* may terminate the contract at any time, without the *payment* of any penalty, on not more than 10 calendar days' written notice to the *investment adviser*;

(v) The *interim contract* contains the same terms and conditions as the *previous contract*, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi) of this section, and any other differences in terms and conditions that the board of *directors*, including a majority of the *directors* who are not *interested persons* of the *fund*, finds to be *immaterial*;

- (vi) The *interim contract* contains the following provisions:
- (A) The compensation earned under the contract will be held in an interest-bearing escrow account with the *fund's custodian* or a *bank*;
 - (B) If a majority of the *fund's* outstanding *voting securities* approve a contract with the *investment adviser* by the end of the 150-day period, the *amount* in the escrow account (including interest earned) will be paid to the *investment adviser*; and
 - (C) If a majority of the *fund's* outstanding *voting securities* do not approve a contract with the *investment adviser*, the *investment adviser* will be paid, out of the escrow account, the lesser of:
 - (1) Any costs incurred in performing the *interim contract* (plus interest earned on that *amount* while in escrow); or
 - (2) The total *amount* in the escrow account (plus interest earned); and
- (vii) The board of *directors* of the *investment company* satisfies the *fund* governance standards defined in rule 0-1(a)(7).

Section 16. Changes in board of *directors*; provisions relative to strict trusts. [15 U.S.C. 80a-16]

(a) No *person* shall serve as a *director* of a registered *investment company* unless elected to that office by the holders of the outstanding *voting securities* of such company, at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the *directors* then holding office shall have been elected to such office by the holders of the outstanding *voting securities* of the company at such an annual or special meeting. In the event that at any time less than a majority of the *directors* of such company holding office at that time were so elected by the holders of the outstanding *voting securities*, the board of *directors* or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing *directors* to fill any existing vacancies in the board of *directors* unless the Commission shall by order extend such period. The foregoing provisions of this subsection shall not apply to members of an *advisory board*.

Nothing herein shall, however, preclude a registered *investment company* from dividing its *directors* into classes if its *charter*, certificate of incorporation, articles of association, by-laws, trust indenture, or other instrument or the law under which it is organized, so provides and prescribes the tenure of office of the several classes: Provided, that no class shall be elected for a shorter period than one year or for a longer period than five years and the term of office of at least one class shall expire each year.

(b) Any vacancy on the board of *directors* of a registered *investment company* which occurs in connection with compliance with section 15(f)(1)(A) and which must be filled by a

person who is not an interested person of either party to a transaction subject to section 15(f)(1)(A) shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such company who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a).

(c) The foregoing provisions of this section shall not apply to a common-law trust existing on the date of enactment of this title [August 22, 1940], under an indenture of trust which does not provide for the election of trustees by the shareholders. No natural *person* shall serve as trustee of such a trust, which is registered as an *investment company*, after the holders of record of not less than two-thirds of the outstanding *shares* of beneficial interests in such trust have declared that he be removed from that office either by declaration in writing filed with the *custodian* of the securities of the trust or by votes cast in *person* or by proxy at a meeting called for the purpose. Solicitation of such a declaration shall be deemed a solicitation of a proxy within the meaning of section 20(a).

The trustees of such a trust shall promptly call a meeting of shareholders for the purpose of voting upon the question of removal of any such trustee or trustees when requested in writing so to do by the record holders of not less than 10 per centum of the outstanding shares.

Whenever ten or more shareholders of record who have been such for at least six months preceding the date of application, and who hold in the aggregate either *shares* having a net asset value of at least \$25,000 or at least 1 per centum of the outstanding shares, whichever is less, shall apply to the trustees in writing, stating that they wish to communicate with other shareholders with a view to obtaining signatures to a request for a meeting pursuant to this subsection (c) and accompanied by a form of communication and request which they wish to transmit, the trustees shall within five *business days* after receipt of such application either—

- (1) afford to such applicants access to a list of the names and addresses of all shareholders as recorded on the books of the trust; or
- (2) inform such applicants as to the approximate number of shareholders of record, and the approximate cost of mailing to them the proposed communication and form of request.

If the trustees elect to follow the course specified in paragraph (2) of this subsection (c) the trustees, upon the written request of such applicants, accompanied by a tender of the material to be mailed and of the reasonable expenses of mailing, shall, with reasonable promptness, mail such material to all shareholders of record at their addresses as recorded on the books, unless within five *business days* after such tender the trustees shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement signed by at least a majority of the trustees to the effect that in their

opinion either such material contains untrue statements of fact or omits to state facts necessary to make the statements contained therein not misleading, or would be in violation of applicable law, and specifying the basis of such opinion.

After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by the trustees or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, the trustees shall mail copies of such *material* to all shareholders with reasonable promptness after the entry of such order and the renewal of such tender.

Rule 16a-1 Exemption for initial period of directors of certain registered accounts from requirements of election by security holders.

(a) *Persons* serving as the *directors* of a registered *separate account* shall, prior to the first meeting of such account's variable annuity contract owners, be exempt from the requirement of section 16(a) of the Investment Company Act of 1940 that such *persons* be elected by the holders of outstanding *voting securities* of such account at an annual or special meeting called for that purpose, subject to the following conditions:

- (1) Such registered *separate account* qualifies for exemption from section 14(a) of the Act pursuant to rule 14a-1 or is exempt therefrom by order of the Commission upon application; and
- (2) Such *persons* have been appointed *directors* of such account by the establishing *insurance company*; and
- (3) An election of *directors* for such account shall be held at the first meeting of variable annuity contract owners after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts participating in such account: Provided, that such meeting shall take place within 1 year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

Section 17. Transactions of certain *affiliated persons* and *underwriters*. [15 U.S.C. 80a-17]

(a) It shall be unlawful for any *affiliated person* or *promoter* of or *principal underwriter* for a registered *investment company* (other than a company of the character described in section 12(d)(3)(A) and (B)), or any *affiliated person* of such a *person, promoter, or principal underwriter*, acting as principal—

- (1) knowingly to sell any security or other property to such registered company or to any company *controlled* by such registered company, unless such sale involves solely (A)

securities of which the buyer is the *issuer*, (B) securities of which the seller is the *issuer* and which are part of a general offering to the holders of a class of its securities, or (C) securities deposited with the trustee of a *unit investment trust* or periodic payment plan by the depositor thereof;

(2) knowingly to purchase from such registered company, or from any company *controlled* by such registered company, any security or other property (except securities of which the seller is the *issuer*);

(3) to borrow money or other property from such registered company or from any company *controlled* by such registered company (unless the borrower is *controlled* by the lender) except as permitted in section 21(b); or

(4) to loan money or other property to such registered company, or to any company *controlled* by such registered company, in contravention of such rules, regulations, or orders as the Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), prescribe or issue consistent with the protection of investors.

(b) Notwithstanding subsection (a), any *person* may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of that subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any *person* concerned;

(2) the proposed transaction is consistent with the policy of each registered *investment company* concerned, as recited in its registration statement and reports filed under this title; and

(3) the proposed transaction is consistent with the general purposes of this title.

(c) Notwithstanding subsection (a), a *person* may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any *person* and furnish the services incident thereto.

(d) It shall be unlawful for any *affiliated person* of or *principal underwriter* for a registered *investment company* (other than a company of the character described in section 12(d)(3)(A) and (B)), or any *affiliated person* of such a *person* or *principal underwriter*, acting as principal to effect any transaction in which such registered company, or a company *controlled* by such registered company, is a joint or a joint and several participant with such *person*, *principal underwriter*, or *affiliated person*, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or *controlled* company on a basis different from or less advantageous than that of

such other participant. Nothing contained in this subsection shall be deemed to preclude any *affiliated person* from acting as manager of any underwriting syndicate or other group in which such registered or *controlled* company is a participant and receiving compensation therefor.

(e) It shall be unlawful for any *affiliated person* of a registered *investment company*, or any *affiliated person* of such *person*—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company or any *controlled* company thereof, except in the course of such *person's* business as an *underwriter* or *broker*; or

(2) acting as *broker*, in connection with the sale of securities to or by such registered company or any *controlled* company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds (A) the usual and customary *broker's commission* if the sale is effected on a securities *exchange*, or (B) 2 per centum of the sales price if the sale is effected in connection with a secondary *distribution* of such securities, or (C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

(f) CUSTODY OF SECURITIES—(1) Every registered *management company* shall place and maintain its securities and similar *investments* in the custody of:

(A) a *bank* or *banks* having the qualifications prescribed in paragraph (1) of section 26(a) for the trustees of *unit investment trusts*; or

(B) a company which is a member of a *national securities exchange* as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or

(C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered *management company* or any such *custodian*, with the consent of the registered *management company* for which it acts as *custodian*, may deposit all or any part of the securities owned by such registered *management company* in a system for the central handling of securities established by a *national securities exchange* or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other *person* as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any *issuer* deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, *employees* and agents of the Commission, and such other *persons* as the Commission may designate.

(4) No member of a *national securities exchange* which trades in securities for its own account may act as *custodian* except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar *investments* in the custody of a qualified *bank* or *banks*, the cash proceeds from the sale of such securities and similar *investments* and other cash assets of the company shall likewise be kept in the custody of such a *bank* or *banks*, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a *bank* or *banks* having the qualifications prescribed in paragraph (1) of section 26 (a) for the trustees of *unit investment trusts* with the balance of such account or the aggregate balances of such accounts at no time in excess of the *amount* of the fidelity bond, maintained pursuant to section 17(g) of this title, covering the officers or *employees* authorized to draw on such account or accounts.

(6) The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a *bank*, or an *affiliated person* of a *bank*, either of which is an *affiliated person*, *promoter*, organizer, or sponsor of, or *principal underwriter* for, a registered *management company*, may serve as *custodian* of that registered *management company*.

(g) The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or *employee* of a registered management *investment company* who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or *employee* has such access solely through his position as an officer or *employee* of a *bank*) be bonded by a reputable fidelity *insurance company* against larceny and embezzlement in such reasonable minimum *amounts* as the Commission may prescribe.

(h) After one year from the effective date of this title, neither the *charter*, certificate of incorporation, articles of association, indenture of trust, nor the by-laws of any registered *investment company*, nor any other instrument pursuant to which such a company is organized or administered, shall contain any provision which protects or purports to protect

any *director* or officer of such company against any liability to the company or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

(i) After one year from the effective date of this title no contract or agreement under which any *person* undertakes to act as *investment adviser* of, or *principal underwriter* for, a registered *investment company* shall contain any provision which protects or purports to protect such *person* against any liability to such company or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of his duties, or by reason of his reckless disregard of his obligations and duties under such contract or agreement.

(j) It shall be unlawful for any *affiliated person* of or *principal underwriter* for a registered *investment company* or any *affiliated person* of an *investment adviser* of or *principal underwriter* for a registered *investment company*, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such *person* of any *security held or to be acquired* by such registered *investment company* in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered *investment companies* and *investment advisers* of, and *principal underwriters* for, such *investment companies* establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business.

Rule 17a-1 Exemption of certain underwriting transactions exempted by Rule 10f-1.

Any transaction exempted pursuant to rule 10f-1 shall be exempt from the provisions of section 17(a)(1) of the Investment Company Act of 1940.

Rule 17a-2 Exemption of certain purchase, sale, or borrowing transactions.

Purchase, sale or borrowing transactions occurring in the usual course of business between *affiliated persons* of registered *investment companies* shall be exempt from section 17(a) of the Investment Company Act of 1940 provided (a) the transactions involve notes, drafts, time payment contracts, bills of exchange, acceptances or other property of a commercial character rather than of an investment character; (b) the buyer or lender is a *bank*; and (c) the seller or borrower is a *bank* or is engaged principally in the business of installment financing.

Rule 17a-3 Exemption of transactions with fully owned subsidiaries.

(a) The following transactions shall be exempt from section 17(a) of the Investment Company Act of 1940:

(1) Transactions solely between a registered *investment company* and one or more of its fully owned subsidiaries or solely between two or more fully owned subsidiaries of such company.

(2) Transactions solely between any *subsidiary* of a registered *investment company* and one or more fully owned subsidiaries of such *subsidiary* or solely between two or more fully owned subsidiaries of such *subsidiary*.

(b) The term “*fully owned subsidiary*” as used in this section, means a *subsidiary* (1) all of whose outstanding securities, other than *directors’* qualifying shares, are owned by its *parent* and/or *parent’s* other *fully owned subsidiaries*, and (2) which is not indebted to any *person* other than its *parent* and/or the *parent’s* other *fully owned subsidiaries* in an *amount* which is *material* in relation to the particular *subsidiary*, excepting (i) indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and (ii) any other indebtedness to one or more *banks* or insurance companies.

Rule 17a-4 Exemption of transactions pursuant to certain contracts.

Transactions pursuant to a contract shall be exempt from section 17(a) of the Investment Company Act of 1940 if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of said section 17(a).

Rule 17a-5 Pro rata distribution neither “sale” nor “purchase”.

When a company makes a pro rata *distribution* in cash or in kind among its common stockholders without giving any election to any stockholder as to the specific assets which such stockholder shall receive, such *distribution* shall not be deemed to involve a sale to or a purchase from such distributing company as those terms are used in section 17(a) of the Investment Company Act of 1940.

Rule 17a-6 Exemption for transactions with portfolio affiliates.

(a) A transaction to which a *Fund*, or a company *controlled* by a *Fund*, and a *portfolio affiliate* of the *Fund* are parties is exempt from the provisions of section 17(a) of the Act, provided that none of the following *persons* is a party to the transaction, or has a direct or indirect *financial interest* in a party to the transaction other than the *Fund*:

- (1) An officer, *director*, *employee*, *investment adviser*, member of an *advisory board*, depositor, *promoter* of or *principal underwriter* for the *Fund*;
- (2) A *person* directly or indirectly *controlling* the *Fund*;
- (3) A *person* directly or indirectly owning, *controlling* or holding with power to vote five percent or more of the outstanding *voting securities* of the *Fund*;
- (4) A *person* directly or indirectly under common *control* with the *Fund*, other than:
 - (i) A *portfolio affiliate* of the *Fund*; or

- (ii) A *Fund* whose sole interest in the transaction or a party to the transaction is an interest in the *portfolio affiliate*; or
- (5) An *affiliated person* of any of the *persons* mentioned in paragraphs (a)(1)—(4) of this section, other than the *Fund* or a *portfolio affiliate* of the *Fund*.
- (b) Definitions.
- (1) *Financial interest*.
- (i) The term *financial interest* as used in this section does not include:
- (A) Any interest through ownership of securities issued by the *Fund*;
 - (B) Any interest of a *wholly-owned subsidiary* of a *Fund*;
 - (C) Usual and ordinary fees for services as a *director*;
 - (D) An interest of a non-executive *employee*;
 - (E) An interest of an *insurance company* arising from a loan or policy made or issued by it in the ordinary course of business to a natural *person*;
 - (F) An interest of a *bank* arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural *person*, unless it arises from a loan to a *person* who is an officer, *director* or executive of a company which is a party to the transaction, or from a loan to a *person* who directly or indirectly owns, *controls*, or holds with power to vote, five percent or more of the outstanding *voting securities* of a company which is a party to the transaction;
 - (G) An interest *acquired* in a transaction described in paragraph (d)(3) of rule 17d-1; or
 - (H) Any other interest that the board of *directors* of the *Fund*, including a majority of the *directors* who are not *interested persons* of the *Fund*, finds to be not *material*, provided that the *directors* record the basis for that finding in the minutes of their meeting.
- (ii) A *person* has a *financial interest* in any party in which it has a *financial interest*, in which it had a *financial interest* within six months prior to the transaction, or in which it will acquire a *financial interest* pursuant to an arrangement in existence at the time of the transaction.
- (2) *Fund* means a registered *investment company* or separate series of a registered *investment company*.
- (3) *Portfolio affiliate* of a *Fund* means a *person* that is an *affiliated person* (or an *affiliated person* of an *affiliated person*) of a *Fund* solely because the *Fund*, a *Fund* under common *control* with the *Fund*, or both:
- (i) *Controls* such *person* (or an *affiliated person* of such *person*); or

- (ii) Owns, *controls*, or holds with power to vote five percent or more of the outstanding *voting securities* of such *person* (or an *affiliated person* of such *person*).

Rule 17a-7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

A purchase or sale transaction between registered *investment companies* or separate series of registered *investment companies*, which are *affiliated persons*, or *affiliated persons* of *affiliated persons*, of each other, between separate series of a registered *investment company*, or between a registered *investment company* or a separate series of a registered *investment company* and a *person* which is an *affiliated person* of such registered *investment company* (or *affiliated person* of such *person*) solely by reason of having a common *investment adviser* or *investment advisers* which are *affiliated persons* of each other, common *directors*, and/or common officers, is exempt from section 17(a) of the Investment Company Act of 1940; Provided, that:

- (a) The transaction is a purchase or sale, for no consideration other than cash *payment* against prompt delivery of a security for which market quotations are readily available;
- (b) The transaction is effected at the independent *current market price* of the security. For purposes of this paragraph the “*current market price*” shall be:
 - (1) If the security is an “NMS stock” as that term is defined in rule 600 of Regulation NMS, the last sale price with respect to such security reported in the consolidated transaction reporting system (“consolidated system”) or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to rule 602 of Regulation NMS) if there are no reported transactions in the consolidated system that day; or
 - (2) If the security is not a reported security, and the principal market for such security is an *exchange*, then the last sale on such *exchange* or the average of the highest current independent bid and lowest current independent offer on such *exchange* if there are no reported transactions on such *exchange* that day; or
 - (3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or
 - (4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry;
- (c) The transaction is consistent with the policy of each registered *investment company* and separate series of a registered *investment company* participating in the transaction, as recited in its registration statement and reports filed under the Act;
- (d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

- (e) The board of *directors* of the *investment company*, including a majority of the *directors* who are not *interested persons* of such *investment company*, (1) adopts procedures pursuant to which such purchase or sale transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section in paragraphs (a) through (d) have been complied with, (2) makes and approves such changes as the board deems necessary; and (3) determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures;
- (f) The board of *directors* of the *investment company* satisfies the *fund* governance standards defined in rule 0-1(a)(7); and
- (g) The *investment company* (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) maintains and preserves for a period not less than six years from the end of the *fiscal year* in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the *person* on the other side of the transaction, the terms of the purchase or sale transaction, and the information or *materials* upon which the determinations described in paragraph (e)(3) of this section were made.

Rule 17a-8 Mergers of affiliated companies.

(a) Exemption of affiliated *mergers*. A *Merger* of a registered *investment company* (or a series thereof) and one or more other registered *investment companies* (or series thereof) or *Eligible Unregistered Funds* is exempt from sections 17(a)(1) and (2) of the Investment Company Act of 1940 if:

(1) *Surviving Company*. The *Surviving Company* is a registered *investment company* (or a series thereof).

(2) *Board Determinations*. As to any registered *investment company* (or series thereof) participating in the *Merger* (“Merging Company”):

(i) The board of *directors*, including a majority of the *directors* who are not *interested persons* of the Merging Company or of any other company or series participating in the *Merger*, determines that:

(A) Participation in the *Merger* is in the best interests of the Merging Company; and

(B) The interests of the Merging Company’s existing shareholders will not be diluted as a result of the *Merger*.

Note to paragraph (a)(2)(i): For a discussion of factors that may be relevant to the determinations in paragraph (a)(2)(i) of this section, see Investment Company Act Release No. 25666, July 18, 2002.

- (ii) The *directors* have requested and evaluated such information as may reasonably be necessary to their determinations in paragraph (a)(2)(i) of this section, and have considered and given appropriate weight to all pertinent factors.
- (iii) The *directors*, in making the determination in paragraph (a)(2)(i)(B) of this section, have approved procedures for the valuation of assets to be conveyed by each *Eligible Unregistered Fund* participating in the *Merger*. The approved procedures provide for the preparation of a report by an *Independent Evaluator*, to be considered in assessing the *value* of any securities (or other assets) for which market quotations are not readily available, that sets forth the fair *value* of each such asset as of the date of the *Merger*.
- (iv) The determinations required in paragraph (a)(2)(i) of this section and the bases thereof, including the factors considered by the *directors* pursuant to paragraph (a)(2)(ii) of this section, are recorded fully in the minute books of the Merging Company.
- (3) *Shareholder approval*. Participation in the *Merger* is approved by the vote of a *majority of the outstanding voting securities* (as provided in section 2(a)(42) of the Act) of any Merging Company that is not a *Surviving Company*, unless
- (i) No policy of the Merging Company that under section 13 of the Act could not be changed without a vote of a majority of its outstanding *voting securities*, is *materially* different from a policy of the *Surviving Company*;
- (ii) No advisory contract between the Merging Company and any *investment adviser* thereof is *materially* different from an advisory contract between the *Surviving Company* and any *investment adviser* thereof, except for the identity of the *investment companies* as a party to the contract;
- (iii) *Directors* of the Merging Company who are not *interested persons* of the Merging Company and who were elected by its shareholders, will comprise a majority of the *directors* of the *Surviving Company* who are not *interested persons* of the *Surviving Company*; and
- (iv) Any *distribution* fees (as a percentage of the *fund's* average net assets) authorized to be paid by the *Surviving Company* pursuant to a plan adopted in accordance with rule 12b-1 are no greater than the *distribution* fees (as a percentage of the *fund's* average net assets) authorized to be paid by the Merging Company pursuant to such a plan.
- (4) *Board Composition*. The board of *directors* of the Merging Company satisfies the *fund* governance standards defined in rule 0-1(a)(7).
- (5) *Merger Records*. Any *Surviving Company* preserves written records that describe the *Merger* and its terms for six years after the *Merger* (and for the first two years in an easily accessible place).

(b) Definitions. For purposes of this section:

(1) **Merger** means the merger, consolidation, or purchase or sale of substantially all of the assets between a registered *investment company* (or a series thereof) and another company;

(2) **Eligible Unregistered Fund** means:

(i) A collective trust *fund*, as described in section 3(c)(11) of the Act;

(ii) A *common trust fund* or similar *fund*, as described in section 3(c)(3) of the Act; or

(iii) A *separate account*, as described in section 2(a)(37) of the Act, that is neither registered under section 8 of the Act, nor required to be so registered;

(3) **Independent Evaluator** means a *person* who has expertise in the valuation of securities and other *financial assets* and who is not an *interested person*, as defined in section 2(a)(19) of the Act, of the *Eligible Unregistered Fund* or any affiliate thereof except the Merging Company; and

(4) **Surviving Company** means a company in which shareholders of a Merging Company will obtain an interest as a result of a **Merger**.

Rule 17a-9 Purchase of certain securities from a money market fund by an affiliate or an affiliate of an affiliate

The purchase of a security from the portfolio of an open-end investment company holding itself out as a money market *fund* by any *affiliated person* or promoter of or principal underwriter for the money market *fund* or any *affiliated person* of such person shall be exempt from section 17(a) of the Act; provided that:

(a) In the case of a portfolio security that has ceased to be an *Eligible Security* (as defined in § 270.2a-7(a)(12)), or has defaulted (other than an immaterial *default* unrelated to the financial condition of the *issuer*):

(1) The purchase price is paid in cash; and

(2) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

(b) In the case of any other portfolio security:

(1) The purchase price meets the requirements of paragraph (a)(1) and (2) of this section; and

(2) In the event that the purchaser thereafter sells the security for a higher price than the purchase price paid to the money market *fund*, the purchaser shall promptly pay to the *fund* the *amount* by which the subsequent sale price exceeds the purchase price paid to the *fund*.

Rule 17a-10 Exemption for transactions with certain subadvisory affiliates.

(a) *Exemption.* A *person* that is prohibited by section 17(a) of the Investment Company Act of 1940 from entering into a transaction with a *Fund* solely because such *person* is, or is an *affiliated person* of, a *subadviser* of the *Fund*, or a *subadviser* of a *Fund* that is under common *control* with the *Fund*, may nonetheless enter into such transaction, if:

(1) *Prohibited Relationship.* The *person* is not, and is not an *affiliated person* of, an *investment adviser* responsible for providing advice with respect to the portion of the *Fund* for which the transaction is entered into, or of any *promoter, underwriter, officer, director, member of an advisory board, or employee of the Fund.*

(2) *Prohibited Conduct.* The advisory contracts of the *subadviser* that is (or whose *affiliated person* is) entering into the transaction, and any *subadviser* that is advising the *Fund* (or portion of the *Fund*) entering into the transaction:

(i) Prohibit them from consulting with each other concerning transactions for the *Fund* in securities or other assets; and

(ii) If both such *subadvisers* are responsible for providing investment advice to the *Fund*, limit the *subadvisers'* responsibility in providing advice with respect to a discrete portion of the *Fund's* portfolio.

(b) *Definitions.*

(1) *Fund* means a registered *investment company* and includes a separate series of a registered *investment company*.

(2) *Subadviser* means an *investment adviser* as defined in section 2(a)(20)(B) of the Act.

Rule 17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

(a) No *affiliated person* of or *principal underwriter* for any registered *investment company* (other than a company of the character described in section 12(d)(3)(A) and (B) of the Investment Company Act of 1940) and no *affiliated person* of such a *person* or *principal underwriter*, acting as principal, shall participate in, or effect any transaction in connection with, any *joint enterprise or other joint arrangement or profit-sharing plan* in which any such registered company, or a company *controlled* by such registered company, is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted, except that the provisions of this rule shall not preclude any *affiliated person* from acting as manager of any underwriting syndicate or other group in which such registered or *controlled* company is a participant and receiving compensation therefor.

(b) In passing upon such applications, the Commission will consider whether the participation of such registered or *controlled* company in such *joint enterprise, joint arrangement or profit-sharing plan* on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

(c) “*Joint enterprise or other joint arrangement or profit-sharing plan*” as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered *investment company* or a *controlled* company thereof and any *affiliated person* of or a *principal underwriter* for such registered *investment company*, or any *affiliated person* of such a *person* or *principal underwriter*, have a joint or a joint and several participation, or *share* in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to section 15 of the Act.

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this section with respect to any of the following:

(1) Any profit-sharing, stock option or stock purchase plan provided by any *controlled* company which is not an *investment company* for its officers, *directors* or *employees*, or the purchase of stock or the granting, modification or exercise of options pursuant to such a plan, provided:

(i) No individual participates therein who is either: (a) An *affiliated person* of any *investment company* which is an *affiliated person* of such *controlled* company; or (b) an *affiliated person* of the *investment adviser* or *principal underwriter* of such *investment company*; and

(ii) No participant has been an *affiliated person* of such *investment company*, its *investment adviser* or *principal underwriter* during the life of the plan and for six months prior to, as the case may be: (a) institution of the profit-sharing plan; (b) the purchase of stock pursuant to a stock purchase plan; or (c) the granting of any options pursuant to a stock option plan.

(2) Any plan provided by any registered *investment company* or any *controlled* company for its officers or *employees* if such plan has been qualified under section 401 of the Internal Revenue Code of 1954 and all contributions paid under said plan by the employer qualify as deductible under section 404 of said Code.

(3) Any loan or advance of credit to, or *acquisition* of securities or other property of, a small business concern, or any agreement to do any of the foregoing (“Investments”), made by a *bank* and a *small business investment company* (SBIC) licensed under the Small Business Investment Act of 1958, whether such transactions are contemporaneous or separated in time, where the *bank* is an *affiliated person* of either (i) the SBIC or

(ii) an *affiliated person* of the SBIC; but reports containing pertinent details as to *investments* and transactions relating thereto shall be made at such time, on such forms and by such *persons* as the Commission may from time to time prescribe.

(4) The issuance by a registered *investment company* which is licensed by the Small Business Administration pursuant to the Small Business Investment Act of 1958 of stock options which qualify under section 422 of the Internal Revenue Code, as amended, and which conform to § 107.805(b) of Chapter I of Title 13 of the Code of Federal Regulations.

(5) Any *joint enterprise or other joint arrangement or profit-sharing plan* (“joint enterprise”) in which a registered *investment company* or a company *controlled* by such a company, is a participant, and in which a *portfolio affiliate* (as defined in rule 17a-6(b)(3)) of such registered *investment company* is also a participant, provided that:

(i) None of the *persons* identified in rule 17a-6(a) is a participant in the joint enterprise, or has a direct or indirect *financial interest* in a participant in the joint enterprise (other than the registered *investment company*);

(ii) *Financial interest.*

(A) The term *financial interest* as used in this section does not include:

(1) Any interest through ownership of securities issued by the registered *investment company*;

(2) Any interest of a *wholly-owned subsidiary* of the registered *investment company*;

(3) Usual and ordinary fees for services as a *director*;

(4) An interest of a non-executive *employee*;

(5) An interest of an *insurance company* arising from a loan or policy made or issued by it in the ordinary course of business to a natural *person*;

(6) An interest of a *bank* arising from a loan to a *person* who is an officer, *director*, or executive of a company which is a participant in the joint transaction or from a loan to a *person* who directly or indirectly owns, *controls*, or holds with power to vote, five percent or more of the outstanding *voting securities* of a company which is a participant in the joint transaction;

(7) An interest *acquired* in a transaction described in paragraph (d)(3) of this rule; or

(8) Any other interest that the board of *directors* of the *investment company*, including a majority of the *directors* who are not *interested persons* of the *investment company*, finds to be not *material*, provided that the *directors* record the basis for that finding in the minutes of their meeting.

(B) A *person* has a *financial interest* in any party in which it has a *financial interest*, in which it had a *financial interest* within six months prior to the *investment company's* participation in the enterprise, or in which it will acquire a *financial interest* pursuant to an arrangement in existence at the time of the *investment company's* participation in the enterprise.

(6) The receipt of securities and/or cash by an *investment company* or a *controlled* company thereof and an *affiliated person* of such *investment company* or an *affiliated person* of such *person* pursuant to a plan of *reorganization*: *Provided*, That no *person* identified in rule 17a-6(a)(1) or any company in which such a *person* has a direct or indirect *financial interest* (as defined in paragraph (d)(5)(ii) of this section):

(i) Has a direct or indirect financial interest in the corporation under reorganization, except owning securities of each class or classes owned by such investment company or controlled company;

(ii) Receives pursuant to such plan any securities or other property, except securities of the same class and subject to the same terms as the securities received by such investment company or controlled company, and/or cash in the same proportion as is received by the investment company or controlled company based on securities of the company under reorganization owned by such persons; and

(iii) Is, or has a direct or indirect financial interest in any person (other than such investment company or controlled company) who is:

(A) Purchasing assets from the company under reorganization; or

(B) Exchanging shares with such person in a transaction not in compliance with the standards described in this paragraph (d)(6).

(7) Any arrangement regarding liability insurance policies (other than a bond required pursuant to rule 17g-1 under the Act); *Provided*, that

(i) The *investment company's* participation in the joint liability insurance policy is in the best interests of the *investment company*;

(ii) The proposed premium for the joint liability insurance policy to be allocated to the *investment company*, based upon its proportionate share of the sum of the premiums that would have been paid if such insurance coverage were purchased separately by the insured parties, is fair and reasonable to the *investment company*;

(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;

- (iv) The board of *directors* of the *investment company*, including a majority of the *directors* who are not *interested persons* with respect thereto, determine no less frequently than annually that the standards described in paragraphs (d)(7)(i) and (ii) of this section have been satisfied; and
 - (v) The board of *directors* of the *investment company* satisfies the *fund* governance standards defined in rule 0-1(a)(7).
- (8) An *investment adviser's* bearing expenses in connection with a *merger*, consolidation or purchase or sale of substantially all of the assets of a company which involves a registered *investment company* of which it is an *affiliated person*.

Rule 17d-2 Form for report by small business investment company and affiliated bank.

Form N-17D-1 is hereby prescribed as the form for reports required by paragraph (d)(3) of rule 17d-1.

Rule 17d-3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.

An *affiliated person* of, or *principal underwriter* for, a registered open-end management *investment company* and an *affiliated person* of such a *person* or *principal underwriter* shall be exempt from section 17(d) of the Investment Company Act of 1940 and rule 17d-1 thereunder, to the extent necessary to permit any such *person* or *principal underwriter* to enter into a written agreement with such company whereby the company will make *payments* in connection with the *distribution* of its shares, Provided, that:

- (a) Such agreement is made in compliance with the provisions of rule 12b-1; and
- (b) No other registered management *investment company* which is either an *affiliated person* of such company or an *affiliated person* of such a *person* is a party to such agreement.

Rule 17e-1 Brokerage transactions on a securities exchange.

For purposes of section 17(e)(2)(A) of the Investment Company Act of 1940, a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary *broker's* commission, if:

- (a) The commission, fee, or other remuneration received or to be received is reasonable and fair compared to the commission, fee or other remuneration received by other *brokers* in connection with comparable transactions involving similar securities being purchased or sold on a securities *exchange* during a comparable period of time;
- (b) The board of *directors*, including a majority of the *directors* of the *investment company* who are not *interested persons* thereof:
 - (1) Has adopted procedures which are reasonably designed to provide that such commission, fee or other remuneration is consistent with the standard described in paragraph (a) of this section;

- (2) Makes and approves such changes as the board deems necessary; and
 - (3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the *person* acting as *broker* is a *person* permitted to enter into a transaction with the *investment company* by rule 17a-10) were effected in compliance with such procedures;
- (c) The board of *directors* of the *investment company* satisfies the *fund* governance standards defined in rule 0-1(a)(7); and
- (d) The *investment company*:
- (1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and
 - (2) Shall maintain and preserve for a period not less than six years from the end of the *fiscal year* in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the *person* acting as *broker* is a *person* permitted to enter into a transaction with the *investment company* by rule 17a-10) setting forth the *amount* and source of the commission, fee or other remuneration received or to be received, the identity of the *person* acting as *broker*, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

Rule 17f-1 Custody of securities with members of national securities exchanges.

- (a) No registered management *investment company* shall place or maintain any of its securities or similar *investments* in the custody of a company which is a member of a *national securities exchange* as defined in the Securities Exchange Act of 1934 (whether or not such company trades in securities for its own account) except pursuant to a written contract which shall have been approved, or if executed before January 1, 1941, shall have been ratified not later than that date, by a majority of the board of *directors* of such *investment company*.
- (b) The contract shall require, and the securities and *investments* shall be maintained in accordance with the following:
- (1) The securities and similar *investments* held in such custody shall at all times be individually segregated from the securities and *investments* of any other *person* and marked in such manner as to clearly identify them as the property of such registered *management company*, both upon physical inspection thereof and upon examination of the books of the *custodian*. The physical segregation and marking of such securities and *investments* may be accomplished by putting them in separate containers bearing the name of such registered management *investment company* or by attaching tags or labels to such securities and investments.

(2) The *custodian* shall have no power or authority to assign, hypothecate, pledge or otherwise to dispose of any such securities and investments, except pursuant to the direction of such registered *management company* and only for the account of such registered *investment company*.

(3) Such securities and *investments* shall be subject to no lien or charge of any kind in favor of the *custodian* or any *persons* claiming through the *custodian*.

(4) Such securities and *investments* shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the *investment company*, and shall be examined by such accountant at least one other time, chosen by the accountant, during each *fiscal year*. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N-17f-1 and transmitted to the Commission promptly after each examination.

(5) Such securities and *investments* shall, at all times, be subject to inspection by the Commission through its *employees* or agents.

(6) The provisions of paragraphs (b)(1), (2) and (3) of this section shall not apply to securities and similar *investments* bought for or sold to such *investment company* by the company which is *custodian* until the securities have been reduced to the physical possession of the *custodian* and have been paid for by such *investment company*: Provided, that the company which is *custodian* shall take possession of such securities at the earliest practicable time. Nothing in this subparagraph shall be construed to relieve any company which is a member of a *national securities exchange* of any obligation under existing law or under the rules of any *national securities exchange*.

(c) A copy of any contract executed or ratified pursuant to paragraph (a) of this section shall be transmitted to the Commission promptly after execution or ratification unless it has been previously transmitted.

(d) Any contract executed or ratified pursuant to paragraph (a) of this section shall be ratified by the board of *directors* of the registered management *investment company* at least annually thereafter.

Rule 17f-2 Custody of investments by registered management investment company.

(a) The securities and similar *investments* of a registered management *investment company* may be maintained in the custody of such company only in accordance with the provisions of this section. *Investments* maintained by such a company with a *bank* or other company whose functions and physical facilities are supervised by Federal or State authority under any arrangement whereunder the *directors*, officers, *employees* or agents of such company are authorized or permitted to withdraw such *investments* upon their mere receipt, are deemed to be in the custody of such company and may be so maintained only upon compliance with the provisions of this section.

(b) Except as provided in paragraph (c) of this section, all such securities and similar *investments* shall be deposited in the safekeeping of, or in a vault or other depository maintained by, a *bank* or other company whose functions and physical facilities are supervised by Federal or State authority. *Investments* so deposited shall be physically segregated at all times from those of any other *person* and shall be withdrawn only in connection with transactions of the character described in paragraph (c) of this section.

(c) The first sentence of paragraph (b) of this section shall not apply to securities on loan which are collateralized to the extent of their full market *value*, or to securities hypothecated, pledged, or placed in escrow for the account of such *investment company* in connection with a loan or other transaction authorized by specific resolution of its board of *directors*, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or other transactions necessary or appropriate in the ordinary course of business relating to the management of securities.

(d) Except as otherwise provided by law, no *person* shall be authorized or permitted to have access to the securities and similar *investments* deposited in accordance with paragraph (b) of this section, except pursuant to a resolution of the board of *directors* of such *investment company*. Each such resolution shall designate not more than five *persons* who shall be either officers or responsible *employees* of such company, and shall provide that access to such *investments* shall be had only by two or more such *persons* jointly, at least one of whom shall be an officer; except that access to such *investments* shall be permitted (1) to properly authorized officers and *employees* of the *bank* or other company in whose safekeeping the *investments* are placed and (2) for the purpose of paragraph (f) of this section to the independent public accountant jointly with any two *persons* so designated or with such officer or *employee* of such *bank* or such other company. Such *investments* shall at all times be subject to inspection by the Commission through its authorized *employees* or agents accompanied, unless otherwise directed by order of the Commission, by one or more of the *persons* designated pursuant to this paragraph.

(e) Each *person* when depositing such securities or similar *investments* in or withdrawing them from the depository or when ordering their withdrawal and delivery from the safekeeping of the *bank* or other company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (1) the date and time of the deposit, withdrawal or order, (2) the title and *amount* of the securities or other *investments* deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (3) the manner of acquisition of the securities or similar *investments* deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (4) if withdrawn and delivered to another *person* the name of such person. *Such notation shall be transmitted promptly to an officer or director of the investment company designated by its board of directors who shall not be a person designated for the purpose of paragraph (d) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year.*

(f) Such securities and similar *investments* shall be verified by actual examination by an independent public accountant retained by the *investment company* at least three times during each *fiscal year*, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and *investments* has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N-17f-2 and transmitted to the Commission promptly after each examination.

Rule 17f-3 *Free cash accounts for investment companies with bank custodians.*

No registered *investment company* having a *bank custodian* shall hold free cash except, upon resolution of its board of *directors*, a petty cash account may be maintained in an *amount* not to exceed \$500: Provided, that such account is operated under the imprest system and is maintained subject to adequate controls approved by the board of *directors* over disbursements and reimbursements including, but not limited to fidelity bond coverage of *persons* having access to such funds.

Rule 17f-4 *Custody of investment company assets with a securities depository.*

(a) *Custody arrangement with a securities depository.* A *Fund's custodian* may place and maintain *financial assets*, corresponding to the *Fund's security entitlements*, with a *Securities Depository* or *intermediary custodian*, if the *custodian*:

- (1) Is at a minimum obligated to exercise due care in accordance with reasonable commercial standards in discharging its duty as a *securities intermediary* to obtain and thereafter maintain such *financial assets*;
- (2) Is required to provide, promptly upon request by the *Fund*, such reports as are available concerning the internal accounting controls and financial strength of the *custodian*; and
- (3) Requires any *intermediary custodian* at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a *securities intermediary* to obtain and thereafter maintain *financial assets* corresponding to the *security entitlements* of its entitlement holders.

(b) *Direct dealings with securities depository.* A *Fund* may place and maintain *financial assets*, corresponding to the *Fund's security entitlements*, directly with a *Securities Depository*, if:

- (1) The *Fund's* contract with the *Securities Depository* or the *Securities Depository's* written rules for its participants:
 - (i) Obligate the *Securities Depository* at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a *securities intermediary* to obtain and thereafter maintain *financial assets* corresponding to the *fund's security entitlements*; and

- (ii) Requires the *Securities Depository* to provide, promptly upon request by the *Fund*, such reports as are available concerning the internal accounting controls and financial strength of the *Securities Depository*; and
- (2) The *Fund* has implemented internal control systems reasonably designed to prevent unauthorized *officer's instructions* (by providing at least for the form, content and means of giving, recording and reviewing all *officer's instructions*).
- (c) Definitions. For purposes of this section the terms:
- (1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in § 8-102, § 8-103, and §§ 8-501 through 8-511 of the Uniform Commercial Code, 2002 Official Text and Comments, which are incorporated by reference in this section pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Uniform Commercial Code from the National Conference of Commissioners on Uniform State Laws, 211 East Ontario Street, Suite 1300, Chicago, IL 60611. You may inspect a copy at the following addresses: Louis Loss Library, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202 741 6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.
- (2) *Custodian* means a *bank* or other *person* authorized to hold assets for the *Fund* under section 17(f) of the Investment Company Act of 1940 or Commission rules in this chapter, but does not include a *Fund* itself, a foreign *custodian* whose use is governed by rule 17f-5 or rule 17f-7, or a vault, safe deposit box, or other repository for safekeeping maintained by a *bank* or other company whose functions and physical facilities are supervised by a federal or state authority if the *Fund* maintains its own assets there in accordance with rule 17f-2.
- (3) *Fund* means an *investment company* registered under the Act and, where the context so requires with respect to a *Fund* that is a *unit investment trust* or a *face-amount certificate company*, includes the *Fund's* trustee.
- (4) *Intermediary custodian* means any *subcustodian* that is a *securities intermediary* and is qualified to act as a *custodian*.
- (5) *Officer's instruction* means a request or direction to a *Securities Depository* or its operator, or to a registered transfer agent, in the name of the *Fund* by one or more *persons* authorized by the *Fund's* board of *directors* (or by the *Fund's* trustee, if the *Fund* is a *unit investment trust* or a *face-amount certificate company*) to give the request or direction.

(6) *Securities Depository* means a *clearing corporation* that is:

- (i) Registered with the Commission as a clearing agency under section 17A of the Securities Exchange Act of 1934, or
- (ii) A Federal Reserve Bank or other *person* authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

Rule 17f-5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is a *Qualified Foreign Bank* or a majority-owned direct or indirect *subsidiary* of a *U.S. Bank* or *bank*-holding company.

(2) *Foreign Assets* means any *investments* (including foreign currencies) for which the primary market is outside the United States, and any cash and cash equivalents that are reasonably necessary to effect the *Fund's* transactions in those investments.

(3) *Foreign Custody Manager* means a *Fund's* or a *Registered Canadian Fund's* board of *directors* or any *person* serving as the board's delegate under paragraphs (b) or (d) of this section.

(4) *Fund* means a management *investment company* registered under the Investment Company Act of 1940 and incorporated or organized under the laws of the United States or of a state.

(5) *Qualified Foreign Bank* means a *banking* institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(6) *Registered Canadian Fund* means a management *investment company* incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of rule 7d-1.

(7) *U.S. Bank* means an entity that is:

- (i) A *banking* institution organized under the laws of the United States;
- (ii) A member *bank* of the Federal Reserve System;
- (iii) Any other *banking* institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national *banks* under the authority of the Comptroller of the Currency, and which is

supervised and examined by state or federal authority having supervision over *banks*, and which is not operated for the purpose of evading the provisions of this section; or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A *Fund's* board of *directors* may delegate to the *Fund's investment adviser* or officers or to a *U.S. Bank* or to a *Qualified Foreign Bank* the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, provided that:

(1) *Reasonable Reliance.* The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) *Reporting.* The board requires the delegate to provide written reports notifying the board of the placement of *Foreign Assets* with a particular *custodian* and of any *material* change in the *Fund's* foreign custody arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the *Fund's* arrangements; and

(3) *Exercise of Care.* The delegate agrees to exercise reasonable care, prudence and diligence such as a *person* having responsibility for the safekeeping of the *Fund's Foreign Assets* would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Maintaining Assets with an Eligible Foreign Custodian.* A *Fund* or its *Foreign Custody Manager* may place and maintain the *Fund's Foreign Assets* in the care of an *Eligible Foreign Custodian*, provided that:

(1) *General Standard.* The *Foreign Custody Manager* determines that the *Foreign Assets* will be subject to reasonable care, based on the standards applicable to *custodians* in the relevant market, if maintained with the *Eligible Foreign Custodian*, after considering all factors relevant to the safekeeping of the *Foreign Assets*, including, without limitation:

(i) The *Eligible Foreign Custodian's* practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the *Eligible Foreign Custodian* has the requisite financial strength to provide reasonable care for *Foreign Assets*;

(iii) The *Eligible Foreign Custodian's* general reputation and standing; and

(iv) Whether the *Fund* will have jurisdiction over and be able to enforce judgments against the *Eligible Foreign Custodian*, such as by virtue of the existence of offices in the United States or consent to service of process in the United States.

(2) *Contract.* The arrangement with the *Eligible Foreign Custodian* is governed by a written contract that the *Foreign Custody Manager* has determined will provide reason-

able care for *Foreign Assets* based on the standards specified in paragraph (c)(1) of this rule.

(i) The contract must provide:

(A) For indemnification or insurance arrangements (or any combination) that will adequately protect the *Fund* against the risk of loss of *Foreign Assets* held in accordance with the contract;

(B) That the *Foreign Assets* will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the *Eligible Foreign Custodian* or its creditors, except a claim of *payment* for their safe custody or administration or, in the case of cash deposits, liens or rights in favor of creditors of the *custodian* arising under *bankruptcy*, insolvency, or similar laws;

(C) That *beneficial ownership* of the *Foreign Assets* will be freely transferable without the *payment* of money or *value* other than for safe custody or administration;

(D) That adequate records will be maintained identifying the *Foreign Assets* as belonging to the *Fund* or as being held by a third party for the benefit of the *Fund*;

(E) That the *Fund's* independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the *Fund* will receive periodic reports with respect to the safekeeping of the *Foreign Assets*, including, but not limited to, notification of any transfer to or from the *Fund's* account or a third party account containing assets held for the benefit of the *Fund*.

(ii) The contract may contain, in lieu of any or all of the provisions specified in paragraph (c)(2)(i) of this section, other provisions that the *Foreign Custody Manager* determines will provide, in their entirety, the same or a greater level of care and protection for the *Foreign Assets* as the specified provisions, in their entirety.

(3) (i) *Monitoring the Foreign Custody Arrangements.* The *Foreign Custody Manager* has established a system to monitor the appropriateness of maintaining the *Foreign Assets* with a particular *custodian* under paragraph (c)(1) of this section, and to monitor performance of the contract under paragraph (c)(2) of this section.

(ii) If an arrangement with an *Eligible Foreign Custodian* no longer meets the requirements of this section, the *Fund* must withdraw the *Foreign Assets* from the *Eligible Foreign Custodian* as soon as reasonably practicable.

(d) **Registered Canadian Funds.** Any **Registered Canadian Fund** may place and maintain its **Foreign Assets** outside the United States in accordance with the requirements of this section, provided:

- (1) The **Foreign Assets** are placed in the care of an overseas branch of a **U.S. Bank** that has aggregate capital, surplus, and undivided profits of a specified **amount**, which must not be less than \$500,000; and
- (2) The **Foreign Custody Manager** is the **Fund's** board of **directors**, its **investment adviser** or officers, or a **U.S. Bank**.

NOTE to rule 17f-5: When a **Fund's** (or its **custodian's**) custody arrangement with an **Eligible Securities Depository** (as defined in Rule 17f-7) involves one or more **Eligible Foreign Custodians** through which assets are maintained with the **Eligible Securities Depository**, rule 17f-5 will govern the **Fund's** (or its **custodian's**) use of each **Eligible Foreign Custodian**, while rule 17f-7 will govern an **Eligible Foreign Custodian's** use of the **Eligible Securities Depository**.

Rule 17f-6 Custody of investment company assets with futures commission merchants and commodity clearing organizations

(a) A **Fund** may place and maintain cash, securities, and similar **investments** with a **Futures Commission Merchant** in **amounts** necessary to effect the **Fund's** transactions in **Exchange-Traded Futures Contracts and Commodity Options**, Provided that:

- (1) The manner in which the **Futures Commission Merchant** maintains the **Fund's** assets shall be governed by a written contract, which provides that:
 - (i) The **Futures Commission Merchant** shall comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act and the rules thereunder or, if applicable, the secured **amount** requirements of rule 30.7 under the Commodity Exchange Act;
 - (ii) The **Futures Commission Merchant**, as appropriate to the **Fund's** transactions and in accordance with the Commodity Exchange Act and the rules and regulations thereunder, may place and maintain the **Fund's** assets to effect the **Fund's** transactions with another **Futures Commission Merchant**, a **Clearing Organization**, a **U.S. or Foreign Bank**, or a member of a foreign board of trade, and shall obtain an acknowledgement, as required under rules 1.20(a) or 30.7(c) under the Commodity Exchange Act, as applicable, that such assets are held on behalf of the **Futures Commission Merchant's** customers in accordance with the provisions of the Commodity Exchange Act; and
 - (iii) The **Futures Commission Merchant** shall promptly furnish copies of or extracts from the **Futures Commission Merchant's** records or such other information pertaining to the **Fund's** assets as the Commission through its **employees** or agents may request.

- (2) Any gains on the *Fund's* transactions, other than de minimis *amounts*, may be maintained with the *Futures Commission Merchant* only until the next *business day* following receipt.
- (3) If the custodial arrangement no longer meets the requirements of this rule, the *Fund* shall withdraw its assets from the *Futures Commission Merchant* as soon as reasonably practicable.
- (b) For purposes of this section:
- (1) *Clearing Organization* means a clearing organization as defined in rule 1.3(d) under the Commodity Exchange Act and includes a clearing organization for a foreign board of trade.
- (2) *Exchange-Traded Futures Contracts and Commodity Options* means commodity futures contracts, options on commodity futures contracts, and options on *physical commodities* traded on or subject to the rules of:
- (i) any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or
 - (ii) any board of trade or *exchange* outside the United States, as contemplated in Part 30 under the Commodity Exchange Act.
- (3) *Fund* means an *investment company* registered under the Investment Company Act of 1940.
- (4) *Futures Commission Merchant* means any *person* that is registered as a futures commission merchant under the Commodity Exchange Act and that is not an *affiliated person* of the *Fund* or an *affiliated person* of such *person*.
- (5) *U.S. or Foreign Bank* means a *bank*, as defined in section 2(a)(5) of the Act, or a *banking* institution or trust company that is incorporated or organized under the laws of a country other than the United States and that is regulated as such by the country's government or an agency thereof.

Rule 17f-7 Custody of investment company assets with a foreign securities depository.

- (a) *Custody arrangement with an Eligible Securities Depository.* A Fund, including a *Registered Canadian Fund*, may place and maintain its *Foreign Assets* with an *Eligible Securities Depository*, provided that:
- (1) *Risk-limiting safeguards.* The custody arrangement provides reasonable safeguards against the custody risks associated with maintaining assets with the *Eligible Securities Depository*, including:
- (i) *Risk analysis and monitoring.*
 - (A) The *Fund* or its *investment adviser* has received from the *Primary Custodian* (or its agent) an analysis of the custody risks associated with maintaining assets with the *Eligible Securities Depository*; and

(B) The contract between the *Fund* and the *Primary Custodian* requires the *Primary Custodian* (or its agent) to monitor the custody risks associated with maintaining assets with the *Eligible Securities Depository* on a continuing basis, and promptly notify the *Fund* or its *investment adviser* of any *material* change in these risks.

(ii) *Exercise of care.* The contract between the *Fund* and the *Primary Custodian* states that the *Primary Custodian* will agree to exercise reasonable care, prudence, and diligence in performing the requirements of paragraphs (a)(1)(i)(A) and (B) of this section, or adhere to a higher standard of care.

(2) *Withdrawal of assets from Eligible Securities Depository.* If a custody arrangement with an *Eligible Securities Depository* no longer meets the requirements of this section, the *Fund's Foreign Assets* must be withdrawn from the depository as soon as reasonably practicable.

(b) *Definitions.* The terms *Foreign Assets*, *Fund*, *Qualified Foreign Bank*, *Registered Canadian Fund*, and *U.S. Bank* have the same meanings as in rule 17f-5. In addition:

(1) *Eligible Securities Depository* means a system for the central handling of securities as defined in rule 17f-4 that:

(i) Acts as or operates a system for the central handling of securities or equivalent book-entries in the country where it is incorporated, or a transnational system for the central handling of securities or equivalent book-entries;

(ii) Is regulated by a *foreign financial regulatory authority* as defined under section 2(a)(50) of the Investment Company Act of 1940;

(iii) Holds assets for the *custodian* that participates in the system on behalf of the *Fund* under safekeeping conditions no less favorable than the conditions that apply to other participants;

(iv) Maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants;

(v) Provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and

(vi) Is subject to periodic examination by regulatory authorities or independent accountants.

(2) *Primary Custodian* means a *U.S. Bank* or *Qualified Foreign Bank* that contracts directly with a *Fund* to provide custodial services related to maintaining the *Fund's* assets outside the United States.

NOTE to rule 17f-7: When a *Fund's* (or its *custodian's*) custody arrangement with an *Eligible Securities Depository* involves one or more *Eligible Foreign Custodians* (as defined in rule 17f-5) through which assets are maintained with the *Eligible Securities*

Depository, rule 17f-5 will govern the *Fund's* (or its *custodian's*) use of each *Eligible Foreign Custodian*, while rule 17f-7 will govern an *Eligible Foreign Custodian's* use of the *Eligible Securities Depository*.

Rule 17g-1 Bonding of officers and employees of registered management investment companies.

(a) Each registered management *investment company* shall provide and maintain a bond which shall be issued by a reputable fidelity *insurance company*, authorized to do business in the place where the bond is issued, against larceny and embezzlement, covering each officer and *employee* of the *investment company*, who may singly, or jointly with others, have access to securities or funds of the *investment company*, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities, unless the officer or *employee* has such access solely through his position as an officer or *employee* of a *bank* (hereinafter referred to as "covered persons").

(b) The bond may be in the form of (1) an individual bond for each covered person or a schedule or blanket bond covering such persons, (2) a blanket bond which names the registered management *investment company* as the only insured (hereinafter referred to as "*single insured bond*") or (3) a bond which names the registered management *investment company* and one or more other parties as insureds (hereinafter referred to as a "*joint insured bond*"), such other insured parties being limited to (i) *persons* engaged in the management or *distribution* of the *shares* of the registered *investment company*, (ii) other registered *investment companies* which are managed and/or whose *shares* are distributed by the same *persons* (or affiliates of such *persons*), (iii) *persons* who are engaged in the management and/or *distribution* of *shares* of companies included in paragraph (b)(3)(i) of this section, (iv) *affiliated persons* of any registered management *investment company* named in the bond or of any *person* included in paragraph (b)(3)(i) or (b)(3)(iii) of this section who are engaged in the administration of any registered management *investment company* named as insured in the bond, and (v) any trust, pension, profit-sharing or other benefit plan for officers, *directors* or *employees* of *persons* named in the bond.

(c) A bond of the type described in paragraph (b)(1) or (b)(2) of this section shall provide that it shall not be cancelled, terminated or modified except after written notice shall have been given by the acting party to the affected party and to the Commission not less than sixty days prior to the effective date of cancellation, termination or modification. A *joint insured bond* described in paragraph (b)(3) of this section shall provide, that (1) it shall not be cancelled, terminated or modified except after written notice shall have been given by the acting party to the affected party, and by the fidelity *insurance company* to all registered *investment companies* named as insureds and to the Commission, not less than sixty days prior to the effective date of cancellation, termination, or modification and (2) the fidelity *insurance company* shall furnish each registered management *investment company* named as an insured with (i) a copy of the bond and any amendment thereto promptly after the execution thereof, (ii) a copy of each formal filing of a claim under the bond by any

other named insured promptly after the receipt thereof, and (iii) notification of the terms of the settlement of each such claim prior to the execution of the settlement.

(d) The bond shall be in such reasonable form and *amount* as a majority of the board of *directors* of the registered management *investment company* who are not “*interested persons*” of such *investment company* as defined by section 2(a)(19) of the Investment Company Act of 1940 shall approve as often as their fiduciary duties require, but not less than once every twelve months, with due consideration to all relevant factors including, but not limited to, the *value* of the aggregate assets of the registered management *investment company* to which any covered person may have access, the type and terms of the arrangements made for the custody and safekeeping of such assets, and the nature of the securities in the company’s portfolio; Provided, however, that:

(1) the *amount* of a *single insured bond* shall be at least equal to an *amount* computed in accordance with the following schedule:

Amount of Registered Management Investment Company Gross Assets—at the end of the most recent fiscal quarter prior to date of determination (in Dollars)	Minimum Amount of Bond (In Dollars)
Up to 500,000	50,000
500,000 to 1,000,000	75,000
1,000,000 to 2,500,000	100,000
2,500,000 to 5,000,000	125,000
5,000,000 to 7,500,000	150,000
7,500,000 to 10,000,000	175,000
10,000,000 to 15,000,000	200,000
15,000,000 to 20,000,000	225,000
20,000,000 to 25,000,000	250,000
25,000,000 to 35,000,000	300,000
35,000,000 to 50,000,000	350,000
50,000,000 to 75,000,000	400,000
75,000,000 to 100,000,000	450,000
100,000,000 to 150,000,000	525,000
150,000,000 to 250,000,000	600,000
250,000,000 to 500,000,000	750,000
500,000,000 to 750,000,000	900,000
750,000,000 to 1,000,000,000	1,000,000
1,000,000,000 to 1,500,000,000	1,250,000
1,500,000,000 to 2,000,000,000	1,500,000
Over 2,000,000,000	1,500,000 plus 200,000 for each 500,000,000 of gross assets up to a maximum bond of 2,500,000

(2) A *joint insured bond* shall be in an *amount* at least equal to the sum of (i) the total *amount* of coverage which each registered management *investment company* named as an insured would have been required to provide and maintain individually pursuant to the schedule hereinabove had each such registered management *investment company* not been named under a *joint insured bond*, plus (ii) the *amount* of each bond which each named insured other than a registered management *investment company* would have been required to provide and maintain pursuant to federal statutes or regulations had it not been named as an insured under a *joint insured bond*.

(e) No premium may be paid for any *joint insured bond* or any amendment thereto unless a majority of the board of *directors* of each registered management *investment company* named as an insured therein who are not “*interested persons*” of such company shall approve the portion of the premium to be paid by such company, taking all relevant factors into consideration including, but not limited to, the number of the other parties named as insured, the nature of the business activities of such other parties, the *amount* of the *joint insured bond*, and the *amount* of the premium for such bond, the ratable allocation of the premium among all parties named as insureds, and the extent to which the share of the premium allocated to the *investment company* is less than the premium such company would have had to pay if it had provided and maintained a *single insured bond*.

(f) Each registered management *investment company* named as an insured in a *joint insured bond* shall enter into an agreement with all of the other named insureds providing that in the event recovery is received under the bond as a result of a loss sustained by the registered management *investment company* and one or more other named insureds, the registered management *investment company* shall receive an equitable and proportionate share of the recovery, but at least equal to the *amount* which it would have received had it provided and maintained a *single insured bond* with the minimum coverage required by paragraph (d)(1) of this section.

(g) Each registered management *investment company* shall:

(1) File with the Commission (i) within 10 days after receipt of an executed bond of the type described in paragraph (b)(1) or (b)(2) of this section or any amendment thereof, (a) a copy of the bond, (b) a copy of the resolution of a majority of the board of *directors* who are not “*interested persons*” of the registered management *investment company* approving the form and *amount* of the bond, and (c) a statement as to the period for which premiums have been paid; (ii) within 10 days after receipt of an executed *joint insured bond*, or any amendment thereof, (a) a copy of the bond, (b) a copy of the resolution of a majority of the board of *directors* who are not “*interested persons*” of the registered management *investment company* approving the *amount*, type, form and coverage of the bond and the portion of the premium to be paid by such company, (c) a statement showing the *amount* of the *single insured bond* which the *investment company* would have provided and maintained had it not been named as an insured under a *joint insured bond*, (d) a statement as to the period for which premiums

have been paid, and (e) a copy of each agreement between the *investment company* and all of the other named insureds entered into pursuant to paragraph (f) of this section; and (iii) a copy of any amendment to the agreement entered into pursuant to paragraph (f) of this section within 10 days after the execution of such amendment,

(2) File with the Commission, in writing, within five days after the making of any claim under the bond by the *investment company*, a statement of the nature and *amount* of the claim,

(3) File with the Commission, within five days of the receipt thereof, a copy of the terms of the settlement of any claim made under the bond by the *investment company*, and

(4) Notify by registered mail each member of the board of *directors* of the *investment company* at his last known residence address of (i) any cancellation, termination or modification of the bond, not less than forty-five days prior to the effective date of the cancellation or termination or modification, (ii) the filing and of the settlement of any claim under the bond by the *investment company*, at the time the filings required by paragraph (g)(2) and (3) of this section are made with the Commission, and (iii) the filing and of the proposed terms of settlement of any claim under the bond by any other named insured, within five days of the receipt of a notice from the fidelity *insurance company*.

(h) Each registered management *investment company* shall designate an officer thereof who shall make the filings and give the notices required by paragraph (g) of this section.

(i) Where the registered management *investment company* is an unincorporated company managed by a depositor, trustee or *investment adviser*, the terms “officer” and “*employee*” shall include, for the purposes of this rule, the officers and *employees* of the depositor, trustee, or *investment adviser*.

(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 Investment Company Act of 1940 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) The board of *directors* of the *investment company* satisfies the *fund* governance standards defined in rule 0-1(a)(7).

(k) At the next anniversary date of an existing fidelity bond, but not later than one year from the effective date of this rule, arrangements between registered management *investment companies* and fidelity insurance companies and arrangements between registered management *investment companies* and other parties named as insureds under *joint*

insured bonds which would not permit compliance with the provisions of this rule shall be modified by the parties so as to effect such compliance.

Rule 17j-1 Personal investment activities of investment company personnel.

(a) **Definitions.** For purposes of this section:

(1) *Access person* means:

(i) Any *Advisory Person* of a *Fund* or of a *Fund's investment adviser*. If an *investment adviser's* primary business is advising *Funds* or other advisory clients, all of the *investment adviser's directors*, officers, and general partners are presumed to be *Access Persons* of any *Fund* advised by the *investment adviser*. All of a *Fund's directors*, officers, and general partners are presumed to be *Access Persons* of the *Fund*.

(ii) Any *director*, officer or general partner of a *principal underwriter* who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of *Covered Securities* by the *Fund* for which the *principal underwriter* acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the *Fund* regarding the purchase or sale of *Covered Securities*.

(2) *Advisory Person* of a *Fund* or of a *Fund's investment adviser* means:

(i) Any director, officer, general partner or *employee* of the *Fund* or *investment adviser* (or of any company in a *control* relationship to the *Fund* or *investment adviser*) who, in connection with his or her regular functions or duties, makes, participates in, or obtains information regarding the purchase or sale of *Covered Securities* by a *Fund*, or whose functions relate to the making of any recommendations with respect to such purchases or sales; and

(ii) Any natural *person* in a *control* relationship to the *Fund* or *investment adviser* who obtains information concerning recommendations made to the *Fund* with regard to the purchase or sale of *Covered Securities* by the *Fund*.

(3) *Control* has the same meaning as in section 2(a)(9) of the Investment Company Act of 1940.

(4) *Covered Security* means a security as defined in section 2(a)(36) of the Act, except that it does not include:

(i) Direct obligations of the Government of the United States;

(ii) *Bankers'* acceptances, *bank* certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements; and

(iii) *Shares* issued by open-end *Funds*.

- (5) *Fund* means an *investment company* registered under the Act.
- (6) An *Initial Public Offering* means an offering of securities registered under the Securities Act of 1933, the *issuer* of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934.
- (7) *Investment Personnel* of a *Fund* or of a *Fund's investment adviser* means:
- (i) Any *employee* of the *Fund* or *investment adviser* (or of any company in a *control* relationship to the *Fund* or *investment adviser*) who, in connection with his or her regular functions or duties, makes or participates in making recommendations regarding the purchase or sale of securities by the *Fund*.
 - (ii) Any natural *person* who *controls* the *Fund* or *investment adviser* and who obtains information concerning recommendations made to the *Fund* regarding the purchase or sale of securities by the *Fund*.
- (8) A *Limited Offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(a)(2) or section 4(a)(5) or pursuant to rule 504 or rule 506 under the Securities Act of 1933.
- (9) *Purchase or sale of a Covered Security* includes, among other things, the writing of an option to purchase or sell a *Covered Security*.
- (10) *Security held or to be acquired* by a *Fund* means:
- (i) Any *Covered Security* which, within the most recent 15 days:
 - (A) Is or has been held by the *Fund*; or
 - (B) Is being or has been considered by the *Fund* or its *investment adviser* for purchase by the *Fund*; and
 - (ii) Any option to purchase or sell, and any security convertible into or *exchangeable* for, a *Covered Security* described in paragraph (a)(10)(i) of this section.
- (11) *Automatic Investment Plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An Automatic Investment Plan includes a dividend reinvestment plan.
- (b) **Unlawful Actions.** It is unlawful for any *affiliated person* of or *principal underwriter* for a *Fund*, or any *affiliated person* of an *investment adviser* of or *principal underwriter* for a *Fund*, in connection with the purchase or sale, directly or indirectly, by the *person* of a *Security held or to be acquired* by the *Fund*:
- (1) To employ any device, scheme or artifice to defraud the *Fund*;

- (2) To make any untrue statement of a *material* fact to the *Fund* or omit to state a *material* fact necessary in order to make the statements made to the *Fund*, in light of the circumstances under which they are made, not misleading;
 - (3) To engage in any act, practice or course of business that operates or would operate as a fraud or deceit on the *Fund*; or
 - (4) To engage in any manipulative practice with respect to the *Fund*.
- (c) Code of Ethics.

(1) *Adoption and Approval of Code of Ethics.*

(i) Every *Fund* (other than a money market *Fund* or a *Fund* that does not invest in *Covered Securities*) and each *investment adviser* of and *principal underwriter* for the *Fund*, must adopt a written code of ethics containing provisions reasonably necessary to prevent its *Access Persons* from engaging in any conduct prohibited by paragraph (b) of this section.

(ii) The board of *directors* of a *Fund*, including a majority of *directors* who are not *interested persons*, must approve the code of ethics of the *Fund*, the code of ethics of each *investment adviser* and *principal underwriter* of the *Fund*, and any *material* changes to these codes. The board must base its approval of a code and any *material* changes to the code on a determination that the code contains provisions reasonably necessary to prevent *Access Persons* from engaging in any conduct prohibited by paragraph (b) of this section. Before approving a code of a *Fund*, *investment adviser* or *principal underwriter* or any amendment to the code, the board of *directors* must receive a certification from the *Fund*, *investment adviser* or *principal underwriter* that it has adopted procedures reasonably necessary to prevent *Access Persons* from violating the *Fund's investment adviser's* or *principal underwriter's* code of ethics. The *Fund's* board must approve the code of an *investment adviser* or *principal underwriter* before initially retaining the services of the *investment adviser* or *principal underwriter*. The *Fund's* board must approve a *material* change to a code no later than six months after adoption of the *material* change.

(iii) If a *Fund* is a *unit investment trust*, the *Fund's principal underwriter* or depositor must approve the *Fund's* code of ethics, as required by paragraph (c)(1)(ii) of this section. If the *Fund* has more than one *principal underwriter* or depositor, the *principal underwriters* and depositors may designate, in writing, which *principal underwriter* or depositor must conduct the approval required by paragraph (c)(1)(ii) of this section, if they obtain written consent from the designated *principal underwriter* or depositor.

(2) *Administration of Code of Ethics.*

(i) The *Fund*, *investment adviser* and *principal underwriter* must use reasonable diligence and institute procedures reasonably necessary to prevent violations of its code of ethics.

- (ii) No less frequently than annually, every *Fund* (other than a *unit investment trust*) and its *investment advisers* and *principal underwriters* must furnish to the *Fund's* board of *directors*, and the board of *directors* must consider, a written report that:
- (A) Describes any issues arising under the code of ethics or procedures since the last report to the board of *directors*, including, but not limited to, information about *material* violations of the code or procedures and sanctions imposed in response to the *material* violations; and
 - (B) Certifies that the *Fund*, *investment adviser* or *principal underwriter*, as applicable, has adopted procedures reasonably necessary to prevent *Access Persons* from violating the code.
- (3) *Exception for Principal Underwriters.* The requirements of paragraphs (c)(1) and (c)(2) of this section do not apply to any *principal underwriter* unless:
- (i) The *principal underwriter* is an *affiliated person* of the *Fund* or of the *Fund's investment adviser*; or
 - (ii) An officer, *director* or general partner of the *principal underwriter* serves as an officer, *director* or general partner of the *Fund* or of the *Fund's investment adviser*.
- (d) **Reporting Requirements of Access Persons.**
- (1) *Reports Required.* Unless excepted by paragraph (d)(2) of this section, every *Access Person* of a *Fund* (other than a money market *Fund* or a *Fund* that does not invest in *Covered Securities*) and every *Access Person* of an *investment adviser* or *principal underwriter* for the *Fund*, must report to that *Fund*, *investment adviser* or *principal underwriter*:
- (i) *Initial Holdings Reports.* No later than 10 days after the *person* becomes an *Access Person* (which information must be current as of a date no more than 45 days prior to the date the *person* becomes an *Access Person*):
 - (A) The title, number of *shares* and principal *amount* of each *Covered Security* in which the *Access Person* had any direct or indirect *beneficial ownership* when the *person* became an *Access Person*;
 - (B) The name of any *broker*, *dealer* or *bank* with whom the *Access Person* maintained an account in which any securities were held for the direct or indirect benefit of the *Access Person* as of the date the *person* became an *Access Person*; and
 - (C) The date that the report is submitted by the *Access Person*.

(ii) *Quarterly Transaction Reports.* No later than 30 days after the end of a calendar quarter, the following information:

(A) With respect to any transaction during the quarter in a *Covered Security* in which the *Access Person* had any direct or indirect *beneficial ownership*:

- (1) The date of the transaction, the title, the interest rate and maturity date (if applicable), the number of *shares* and the principal *amount* of each *Covered Security* involved;
- (2) The nature of the transaction (*i.e.*, purchase, sale or any other type of acquisition or disposition);
- (3) The price of the *Covered Security* at which the transaction was effected;
- (4) The name of the *broker, dealer* or *bank* with or through which the transaction was effected; and
- (5) The date that the report is submitted by the *Access Person*.

(B) With respect to any account established by the *Access Person* in which any securities were held during the quarter for the direct or indirect benefit of the *Access Person*:

- (1) The name of the *broker, dealer* or *bank* with whom the *Access Person* established the account;
- (2) The date the account was established; and
- (3) The date that the report is submitted by the *Access Person*.

(iii) *Annual Holdings Reports.* Annually, the following information (which information must be current as of a date no more than 45 days before the report is submitted):

(A) The title, number of *shares* and principal *amount* of each *Covered Security* in which the *Access Person* had any direct or indirect *beneficial ownership*;

(B) The name of any *broker, dealer* or *bank* with whom the *Access Person* maintains an account in which any securities are held for the direct or indirect benefit of the *Access Person*; and

(C) The date that the report is submitted by the *Access Person*.

(2) *Exceptions from Reporting Requirements.*

(i) A *person* need not make a report under paragraph (d)(1) of this section with respect to transactions effected for, and *Covered Securities* held in, any account over which the *person* has no direct or indirect influence or *control*.

- (ii) A *director* of a *Fund* who is not an “*interested person*” of the *Fund* within the meaning of section 2(a)(19) of the Act, and who would be required to make a report solely by reason of being a *Fund director*, need not make:
- (A) An initial holdings report under paragraph (d)(1)(i) of this section and an annual holdings report under paragraph (d)(1)(iii) of this section; and
 - (B) A quarterly transaction report under paragraph (d)(1)(ii) of this section, unless the *director* knew or, in the ordinary course of fulfilling his or her official duties as a *Fund director*, should have known that during the 15-day period immediately before or after the *director’s* transaction in a *Covered Security*, the *Fund* purchased or sold the *Covered Security*, or the *Fund* or its *investment adviser* considered purchasing or selling the *Covered Security*.
- (iii) An *Access Person* to a *Fund’s principal underwriter* need not make a report to the *principal underwriter* under paragraph (d)(1) of this section if:
- (A) The *principal underwriter* is not an *affiliated person* of the *Fund* (unless the *Fund* is a *unit investment trust*) or any *investment adviser* of the *Fund*; and
 - (B) The *principal underwriter* has no officer, *director* or general partner who serves as an officer, *director* or general partner of the *Fund* or of any *investment adviser* of the *Fund*.
- (iv) An *Access Person* to an *investment adviser* need not make a separate report to the *investment adviser* under paragraph (d)(1) of this section to the extent the information in the report would duplicate information required to be recorded under rule 204-2(a)(13) under the Investment Advisers Act of 1940.
- (v) An *Access Person* need not make a quarterly transaction report under paragraph (d)(1)(ii) of this section if the report would duplicate information contained in *broker* trade confirmations or account statements received by the *Fund*, *investment adviser* or *principal underwriter* with respect to the *Access Person* in the time period required by paragraph (d)(1)(ii), if all of the information required by that paragraph is contained in the *broker* trade confirmations or account statements, or in the records of the *Fund*, *investment adviser* or *principal underwriter*.
- (vi) An *Access Person* need not make a quarterly transaction report under paragraph (d)(1)(ii) of this section with respect to transactions effected pursuant to an *Automatic Investment Plan*.
- (3) *Review of Reports.* Each *Fund*, *investment adviser* and *principal underwriter* to which reports are required to be made by paragraph (d)(1) of this section must institute procedures by which appropriate management or compliance *personnel* review these reports.
- (4) *Notification of Reporting Obligation.* Each *Fund*, *investment adviser* and *principal underwriter* to which reports are required to be made by paragraph (d)(1) of

this section must identify all *Access Persons* who are required to make these reports and must inform those *Access Persons* of their reporting obligation.

(5) *Beneficial Ownership*. For purposes of this section, *beneficial ownership* is interpreted in the same manner as it would be under rule 16a-1(a)(2) in determining whether a *person* is the *beneficial owner* of a security for purposes of section 16 of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any report required by paragraph (d) of this section may contain a statement that the report will not be construed as an admission that the *person* making the report has any direct or indirect *beneficial ownership* in the *Covered Security* to which the report relates.

(e) *Pre-approval of Investments in IPOs and Limited Offerings*. Investment *personnel* of a *Fund* or its *investment adviser* must obtain approval from the *Fund* or the *Fund's investment adviser* before directly or indirectly acquiring *beneficial ownership* in any securities in an *Initial Public Offering* or in a *Limited Offering*.

(f) *Recordkeeping Requirements*.

(1) Each *Fund*, *investment adviser* and *principal underwriter* that is required to adopt a code of ethics or to which reports are required to be made by *Access Persons* must, at its *principal place of business*, maintain records in the manner and to the extent set out in this paragraph (f), and must make these records available to the Commission or any representative of the Commission at any time and from time to time for reasonable periodic, special or other examination:

(A) A copy of each code of ethics for the organization that is in effect, or at any time within the past five years was in effect, must be maintained in an easily accessible place;

(B) A record of any violation of the code of ethics, and of any action taken as a result of the violation, must be maintained in an easily accessible place for at least five years after the end of the *fiscal year* in which the violation occurs;

(C) A copy of each report made by an *Access Person* as required by this section, including any information provided in lieu of the reports under paragraph (d)(2)(v) of this section, must be maintained for at least five years after the end of the *fiscal year* in which the report is made or the information is provided, the first two years in an easily accessible place;

(D) A record of all *persons*, currently or within the past five years, who are or were required to make reports under paragraph (d) of this section, or who are or were responsible for reviewing these reports, must be maintained in an easily accessible place; and

(E) A copy of each report required by paragraph (c)(2)(ii) of this section must be maintained for at least five years after the end of the *fiscal year* in which it is made, the first two years in an easily accessible place.

(2) A *Fund* or *investment adviser* must maintain a record of any decision, and the reasons supporting the decision, to approve the acquisition by investment *personnel* of securities under paragraph (e), for at least five years after the end of the *fiscal year* in which the approval is granted.

Section 18. Capital structure. [15 U.S.C. 80a-18]

(a) It shall be unlawful for any registered *closed-end company* to issue any class of *senior security*, or to sell any such security of which it is the *issuer*, unless—

(1) if such class of *senior security* represents an indebtedness—

(A) immediately after such issuance or sale, it will have an *asset coverage* of at least 300 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the *issuer*), or the declaration of any other *distribution*, upon any class of the capital stock of such *investment company*, or the purchase of any such capital stock, unless, in every such case, such class of *senior securities* has at the time of the declaration of any such dividend or *distribution* or at the time of any such purchase an *asset coverage* of at least 300 per centum after deducting the *amount* of such dividend, *distribution*, or purchase price, as the case may be, except that dividends may be declared upon any preferred stock if such *senior security* representing indebtedness has an *asset coverage* of at least 200 per centum at the time of declaration thereof after deducting the *amount* of such dividend; and

(C) provision is made either—

(i) that, if on the last *business day* of each of twelve consecutive calendar months such class of *senior securities* shall have an *asset coverage* of less than 100 per centum, the holders of such securities voting as a class shall be entitled to elect at least a majority of the members of the board of *directors* of such registered company, such voting right to continue until such class of *senior security* shall have an *asset coverage* of 110 per centum or more on the last *business day* of each of three consecutive calendar months, or

(ii) that, if on the last *business day* of each of twenty-four consecutive calendar months such class of *senior securities* shall have an *asset coverage* of less than 100 per centum, an event of *default* shall be deemed to have occurred;

(2) if such class of *senior security* is a stock—

(A) immediately after such issuance or sale it will have an *asset coverage* of at least 200 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the *issuer*), or the declaration of any other

distribution, upon the common stock of such *investment company*, or the purchase of any such common stock, unless in every such case such class of *senior security* has at the time of the declaration of any such dividend or *distribution* or at the time of any such purchase an *asset coverage* of at least 200 per centum after deducting the *amount* of such dividend, *distribution* or purchase price, as the case may be;

(C) provision is made to entitle the holders of such *senior securities*, voting as a class, to elect at least two *directors* at all times, and, subject to the prior rights, if any, of the holders of any other class of *senior securities* outstanding, to elect a majority of the *directors* if at any time dividends on such class of securities shall be unpaid in an *amount* equal to two full years' dividends on such securities, and to continue to be so represented until all dividends in arrears shall have been paid or otherwise provided for;

(D) provision is made requiring approval by the vote of a majority of such securities, voting as a class, of any plan of *reorganization* adversely affecting such securities or of any action requiring a vote of security holders as in section 13(a) provided; and

(E) such class of stock shall have complete priority over any other class as to *distribution* of assets and *payment* of dividends, which dividends shall be cumulative.

(b) The *asset coverage* in respect of a *senior security* provided for in subsection (a) may be determined on the basis of *values* calculated as of a time within forty-eight hours (not including Sundays or holidays) next preceding the time of such determination. The time of issue or sale shall, in the case of an offering of such securities to existing stockholders of the *issuer*, be deemed to be the first date on which such offering is made, and in all other cases shall be deemed to be the time as of which a firm commitment to issue or sell and to take or purchase such securities shall be made.

(c) Notwithstanding the provisions of subsection (a) it shall be unlawful for any registered closed-end *investment company* to issue or sell any *senior security* representing indebtedness if immediately thereafter such company will have outstanding more than one class of *senior security* representing indebtedness, or to issue or sell any *senior security* which is a stock if immediately thereafter such company will have outstanding more than one class of *senior security* which is a stock, except that (1) any such class of indebtedness or stock may be issued in one or more series: Provided, that no such series shall have a preference or priority over any other series upon the *distribution* of the assets of such registered *closed-end company* or in respect of the *payment* of interest or dividends, and (2) promissory notes or other evidences of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a *bank* or other *person* and privately arranged, and not intended to be publicly distributed, shall not be deemed to

be a separate class of *senior securities* representing indebtedness within the meaning of this subsection (c).

(d) It shall be unlawful for any registered *management company* to issue any warrant or right to subscribe to or purchase a security of which such company is the *issuer*, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders; except that any warrant may be issued in *exchange* for outstanding warrants in connection with a plan of *reorganization*.

(e) The provisions of this section 18 shall not apply to any *senior securities* issued or sold by any registered *closed-end company*—

(1) for the purpose of *refunding* through *payment*, purchase, redemption, retirement, or *exchange*, any *senior security* of such registered *investment company* except that no *senior security* representing indebtedness shall be so issued or sold for the purpose of *refunding* any *senior security* which is a stock; or

(2) pursuant to any plan of *reorganization* (other than for *refunding* as referred to in subsection (e)(1)), provided—

(A) that such *senior securities* are issued or sold for the purpose of substituting or exchanging such *senior securities* for outstanding *senior securities*, and if such *senior securities* represent indebtedness they are issued or sold for the purpose of substituting or exchanging such *senior securities* for outstanding *senior securities* representing indebtedness, of any registered *investment company* which is a party to such plan of *reorganization*; or

(B) that the total *amount* of such *senior securities* so issued or sold pursuant to such plan does not exceed the total *amount* of *senior securities* of all the companies which are parties to such plan, and the total *amount* of *senior securities* representing indebtedness so issued or sold pursuant to such plan does not exceed the total *amount* of *senior securities* representing indebtedness of all such companies, or, alternatively, the total *amount* of such *senior securities* so issued or sold pursuant to such plan does not have the effect of increasing the ratio of *senior securities* representing indebtedness to the securities representing stock or the ratio of *senior securities* representing stock to securities junior thereto when compared with such ratios as they existed before such *reorganization*.

(f)(1) It shall be unlawful for any registered *open-end company* to issue any class of *senior security* or to sell any *senior security* of which it is the *issuer*, except that any such registered company shall be permitted to borrow from any *bank*: Provided, that immediately after any such borrowing there is an *asset coverage* of at least 300 per centum for all borrowings of such registered company: And provided further, that in the event that such *asset coverage* shall at any time fall below 300 per centum such registered company shall, within three days

thereafter (not including Sundays and holidays) or such longer period as the Commission may prescribe by rules and regulations, reduce the *amount* of its borrowings to an extent that the *asset coverage* of such borrowings shall be at least 300 per centum.

(2) “*Senior security*” shall not, in the case of a registered *open-end company*, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: Provided, that (A) such company has outstanding no class or series of stock which is not so preferred over all other classes or series, or (B) the only other outstanding class of the *issuer’s* stock consists of a common stock upon which no dividend (other than a liquidating dividend) is permitted to be paid and which in the aggregate represents not more than one-half of 1 per centum of the *issuer’s* outstanding *voting securities*. For the purpose of insuring fair and equitable treatment of the holders of the outstanding *voting securities* of each class or series of stock of such company, the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding *voting securities* of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding *voting securities* of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

(g) Unless otherwise provided: “*Senior security*” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to *distribution* of assets or *payment* of dividends; and “*senior security* representing indebtedness” means any *senior security* other than stock.

The term “*senior security*”, when used in subparagraphs (B) and (C) of paragraph (1) of subsection (a), shall not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a *bank* or other *person* and privately arranged, and not intended to be publicly distributed; nor shall such term, when used in this section 18, include any such promissory note or other evidence of indebtedness in any case where such a loan is for temporary purposes only and in an *amount* not exceeding 5 per centum of the *value* of the *total assets* of the *issuer* at the time when the loan is made. A loan shall be presumed to be for temporary purposes if it is repaid within sixty days and is not extended or renewed; otherwise it shall be presumed not to be for temporary purposes. Any such presumption may be rebutted by evidence.

(h) “*Asset coverage*” of a class of *senior security* representing an indebtedness of an *issuer* means the ratio which the *value* of the *total assets* of such *issuer*, less all liabilities and indebtedness not represented by *senior securities*, bears to the aggregate *amount* of *senior securities* representing indebtedness of such *issuer*. “*Asset coverage*” of a class of *senior security* of an *issuer* which is a stock means the ratio which the *value* of the *total assets* of such *issuer*, less all liabilities and indebtedness not represented by *senior*

securities, bears to the aggregate *amount* of *senior securities* representing indebtedness of such *issuer* plus the aggregate of the involuntary liquidation preference of such class of *senior security* which is a stock. The involuntary liquidation preference of a class of *senior security* which is a stock shall be deemed to mean the *amount* to which such class of *senior security* would be entitled on involuntary liquidation of the *issuer* in preference to a security junior to it.

(i) Except as provided in subsection (a) of this section, or as otherwise required by law, every *share* of stock hereafter issued by a registered *management company* (except a common-law trust of the character described in section 16(c)) shall be a voting stock and have equal voting rights with every other outstanding voting stock: Provided, that this subsection shall not apply to *shares* issued pursuant to the terms of any warrant or subscription right outstanding on March 15, 1940, or any firm contract entered into before March 15, 1940, to purchase such securities from such company nor to *shares* issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

(j) Notwithstanding any provision of this title, it shall be unlawful, after August 22, 1940, for any registered *face-amount certificate company*—

(1) to issue, except in accordance with such rules, regulations, or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors, any security other than (A) a *face-amount certificate*; (B) a common stock having a par *value* and being without preference as to dividends or *distributions* and having at least equal voting rights with any outstanding security of such company; or (C) short-term *payment* or promissory notes or other indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a *bank* or other *person* and privately arranged and not intended to be publicly offered;

(2) if such company has outstanding any security, other than such *face-amount certificates*, common stock, promissory notes, or other evidence of indebtedness, to make any *distribution* or declare or pay any dividend on any capital security in contravention of such rules and regulations or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors or to insure the financial integrity of such company, to prevent the impairment of the company's ability to meet its obligations upon its *face-amount certificates*; or

(3) to issue any of its securities except for cash or securities including securities of which such company is the *issuer*.

(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to *investment companies* operating under the Small Business Investment Act of 1958, and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of *senior security* shall be held or *guaranteed* by the Small Business Administration.

Rule 18c-1 Exemption of privately held indebtedness.

The issuance or sale of more than one class of *senior securities* representing indebtedness by a *small business investment company*, licensed under the Small Business Investment Act of 1958, shall not be prohibited by section 18(c) so long as such *small business investment company* does not have outstanding any publicly held indebtedness, and all securities of any such class are (a) privately held by the Small Business Administration, or *banks*, insurance companies or other institutional investors, (b) not intended to be publicly distributed, and (c) not convertible into, exchangeable for, or accompanied by any option to acquire, any equity security.

Rule 18c-2 Exemptions of certain debentures issued by small business investment companies.

(a) The issuance or sale of any class of *senior security* representing indebtedness by a *small business investment company* licensed under the Small Business Investment Act of 1958 shall not be prohibited by section 18(c) of the Investment Company Act of 1940 provided such *senior security* representing indebtedness is: (1) not convertible into, *exchangeable* for, or accompanied by an option to acquire any equity security; (2) fully *guaranteed* as to timely *payment* of all principal and interest by the Small Business Administration and backed by the full faith and credit of the United States; and (3) subordinated to any other debt securities not issued pursuant to this section or, if such security is not so subordinated, that such security, according to its own terms, will not be preferred over any other unsecured debt securities in the *payment* of principal and interest: And further provided, that all other debt securities then outstanding issued by such *small business investment company* were issued as permitted by rule 18c-1 or this rule.

(b) Any security issued and sold as permitted by paragraph (a) of this section shall be deemed for purposes of rule 18c-1 to be privately held by the Small Business Administration and for purposes of rule 18c-1 shall not be deemed to be publicly held outstanding indebtedness.

(c) The issuance or sale of any security as permitted by paragraph (a) of this section shall not be deemed to be a sale to any *person* other than the Small Business Administration by any *small business investment company* licensed under the Small Business Investment Company Act of 1958 which is exempt from any provision of the Investment Company Act of 1940, if such exemption is conditioned on such company not offering or selling its securities to any *person* other than the Small Business Administration.

Rule 18f-1 Exemption from certain requirements of section 18(f)(1) for registered open-end investment companies which have the right to redeem in kind.

(a) A registered open-end *investment company* which has the right to redeem securities of which it is the *issuer* in assets other than cash may file with the Commission at any time a notification of election on Form N-18F-1 committing itself to pay in cash all requests for redemption by any shareholder of record, limited in *amount* with respect to each shareholder during any 90-day period to the lesser of

- (1) \$250,000 or
 - (2) 1 percent of the net asset value of such company at the beginning of such period.
- (b) An election pursuant to paragraph (a) of this section:
- (1) shall be described in either the *prospectus* or the Statement of Additional Information, at the discretion of the *investment company*, and
 - (2) shall be irrevocable while this rule 18f-1 is in effect unless the Commission by order upon application permits the withdrawal of such notification of election as being appropriate in the public interest and consistent with the protection of investors.
- (c) Upon making the election described in paragraph (a) of this section an *investment company* shall be exempt from the requirements of section 18(f)(1) of the Investment Company Act of 1940 to the extent necessary for such company to effectuate redemptions in the manner set forth in such paragraph.

Rule 18f-2 Fair and equitable treatment for holders of each class or series of stock of series investment companies.

- (a) For purposes of this rule 18f-2 a series company is a registered open-end *investment company* which, in accordance with the provisions of section 18(f)(2) of the Investment Company Act of 1940, issues two or more classes or series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series. Any matter required to be submitted by the provisions of the Act or of applicable State law, or otherwise, to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon unless approved by the holders of a *majority of the outstanding voting securities* of each class or series of stock affected by such matter.
- (b) For the purposes of paragraph (a) of this rule 18f-2, a class or series of stock will be deemed to be affected by such a matter, unless (1) the interests of each class or series in the matter are substantially identical, or (2) the matter does not affect any interest of such class or series.
- (c)(1) With respect to the submission of an investment advisory contract to the holders of the outstanding *voting securities* of a series company for the approval required by section 15(a) of the Act, such matter shall be deemed to be effectively acted upon with respect to any class or series of securities of such company if a *majority of the outstanding voting securities* of such class or series vote for the approval of such matter, notwithstanding (i) that such matter has not been approved by the holders of a *majority of the outstanding voting securities* of any other class or series affected by such matter, and (ii) that such matter has not been approved by the vote of a *majority of the outstanding voting securities* of such company, provided that if such a majority is required by State law or otherwise, such requirement shall apply.

- (2) If any class or series of securities of a series company fails to approve an investment advisory contract in the manner required by paragraph (c)(1) of this section, the *investment adviser* of such company may continue to serve or act in such capacity for the period of time pending such required approval of such contract, of a new contract with the same or different adviser, or other definitive action: Provided, that the compensation received by such *investment adviser* during such period is equal to no more than its actual costs incurred in furnishing investment advisory services to such class or series or the *amount* it would have received under the advisory contract, whichever is less.
- (d) With respect to the submission of a change in investment policy to the holders of the outstanding *voting securities* of a series company for the approval required by section 13 of the Act, such matter shall be deemed to have been effectively acted upon with respect to any class or series of such company if a *majority of the outstanding voting securities* of such class or series vote for the approval of such matter, notwithstanding (1) that such matter has not been approved by the holders of a *majority of the outstanding voting securities* of any other class or series affected by such matter, and (2) that such matter has not been approved by the vote of a *majority of the outstanding voting securities* of such company: Provided, that if such a majority is required by State law or otherwise, such requirement shall apply.
- (e) The submission to shareholders of the selection of the independent public accountant of a series company required by section 32(a) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this rule 18f-2.
- (f) The submission to shareholders of a contract with a *principal underwriter* of a series company required by section 15(b) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this rule 18f-2.
- (g) The submission to shareholders of nominees for election as *directors* required by Section 16(a) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this rule 18f-2.
- (h) For the purposes of this rule 18f-2 a “*majority of the outstanding voting securities*” of a class or series: (1) when used with respect to a matter required by any provision of the Act to be submitted to the outstanding *voting securities* of a series company, shall have the same meaning as a “*majority of the outstanding voting securities* of a company” as defined in section 2(a)(42) of the Act; and (2) when used with respect to any other matter required to be submitted to the outstanding *voting securities* of a series company, shall mean the lesser of (i) the minimum vote of the outstanding *voting securities* of a company required by applicable State law or other applicable requirement, or (ii) the minimum vote specified by paragraph (1) of this paragraph (h), unless State law requires approval of such matters by a specified percentage of the outstanding *voting securities* of a particular class or series, in which case, State law shall apply.

Rule 18f-3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Investment Company Act of 1940, a registered open-end management *investment company* or series or class thereof established in accordance with section 18(f)(2) of the Act whose *shares* are registered on Form N-1A (“company”) may issue more than one class of voting stock, provided that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the *distribution* of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different *share* of other expenses, not including advisory or custodial fees or other expenses related to the management of the company’s assets, if these expenses are actually incurred in a different *amount* by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in *amount* paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company’s adviser, *underwriter*, or any other provider of services to the company.

(c)(1) Income, realized gains and losses, unrealized appreciation and depreciation, and *Fundwide Expenses* shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company (“relative net assets”);

(ii) To each class based on the *Simultaneous Equations Method*;

(iii) To each class based on the *Settled Shares Method*, provided that the company is a *Daily Dividend Fund* (such a company may allocate income and *Fundwide Expenses* based on the *Settled Shares Method* and realized gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each *share* without regard to class, provided that the company is a *Daily Dividend Fund* that maintains the same net asset value per *share* in each class; that

the company has received undertakings from its adviser, *underwriter*, or any other provider of services to the company, agreeing to waive or reimburse the company for *payments* to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; and that *payments* waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, provided that a majority of the *directors* of the company, and a majority of the *directors* who are not *interested persons* of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring *distributions* of net *income* daily, including any money market *fund* that operates in compliance with rule 2a-7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the *value* of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and *Fundwide Expenses* and reallocation to each class of undistributed net *investment income*, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs from that of the other classes only by the expense differentials among the classes.

(d) Any *payments* made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or *exchange* privileges. Before the first issuance of a *share* of any class in reliance upon this section, and before any *material* amendment of a plan, a majority of the *directors* of the company, and a majority of the *directors* who are not *interested persons* of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an exist-

ing order of exemption. Before any vote on the plan, the *directors* shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

(e) The board of *directors* of the *investment company* satisfies the *fund* governance standards defined in rule 0-1(a)(7).

(f) Nothing in this section prohibits a company from offering any class with:

(1) An *exchange* privilege providing that securities of the class may be *exchanged* for certain securities of another company; or

(2) A conversion feature providing that *shares* of one class of the company (the “purchase class”) will be *exchanged* automatically for *shares* of another class of the company (the “target class”) after a *specified period* of time, provided that:

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any *sales load*, fee, or other charge;

(ii) The expenses, including *payments* authorized under a plan adopted pursuant to rule 12b-1 (“rule 12b-1 plan”), for the target class are not higher than the expenses, including *payments* authorized under a rule 12b-1 plan, for the purchase class; and

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

(3) A conversion feature providing that *shares* of a class in which an investor is no longer eligible to participate may be converted to *shares* of a class in which that investor is eligible to participate, provided that:

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any *sales load*, fee, or other charge.

Rule 18f-4 Exemption from the requirements of section 18 and section 61 for certain senior securities transactions.

(a) *Definitions.* For purposes of this section:

Absolute VaR test means that (1) the *VaR* of the *fund’s* portfolio does not exceed 20% of the value of the *fund’s* net assets or (2) in the case of a closed-end company that has issued to investors and has then outstanding shares of a class of *senior security* that is a stock, that the *VaR* of the *fund’s* portfolio does not exceed 25% of the value of the *fund’s* net assets.

Derivatives exposure means the sum of (1) the gross notional amounts of the *fund's derivatives transactions* described in paragraph (1) of the definition of the term “*derivatives transaction*” and (2) in the case of short sale borrowings, the value of the assets sold short. If a *fund's derivatives transactions* include reverse repurchase agreements or similar financing transactions under paragraph (d)(1)(ii) of this section, the *fund's derivatives exposure* also includes, for each transaction, the proceeds received but not yet repaid or returned, or for which the associated liability has not been extinguished, in connection with the transaction. In determining *derivatives exposure* a *fund* may (1) convert the notional amount of interest rate derivatives to 10-year bond equivalents and delta adjust the notional amounts of options contracts and (2) exclude any closed-out positions, if those positions were closed out with the same counterparty and result in no credit or market exposure to the *fund*.

Derivatives risks means the risks associated with a *fund's derivatives transactions* or its use of *derivatives transactions*, including leverage, market, counterparty, liquidity, operational, and legal risks and any other risks the *derivatives risk manager* (or, in the case of a *fund* that is a limited derivatives user as described in paragraph (c)(4) of this section, the *fund's investment adviser*) deems material.

Derivatives risk manager means an officer or officers of the *fund's investment adviser* responsible for administering the *program* and policies and procedures required by paragraph (c)(1) of this section, provided that the *derivatives risk manager*: (1) May not be a portfolio manager of the fund, or if multiple officers serve as *derivatives risk manager*, may not have a majority composed of portfolio managers of the fund; and (2) Must have relevant experience regarding the management of derivatives risk.

Derivatives transaction means: (1) Any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument (“*derivatives instrument*”), under which a *fund* is or may be required to make any payment or delivery of cash or other assets during the life of the instrument or at maturity or early termination, whether as margin or settlement payment or otherwise; (2) Any short sale borrowing; and (3) If a *fund* relies on paragraph (d)(1)(ii) of this section, any reverse repurchase agreement or similar financing transaction.

Designated index means an unleveraged index that: (1) is approved by the *derivatives risk manager* for purposes of the *relative VaR test* and that reflects the markets or asset classes in which the *fund* invests and (2) is not administered by an organization that is an *affiliated person* of the *fund*, its *investment adviser*, or *principal underwriter*, or created at the request of the *fund* or its *investment adviser*, unless the index is widely recognized and used. In the case of a blended index, none of the indexes that compose the blended index may be administered by an organization that is an affiliated person of the fund, its *investment adviser*, or *principal underwriter*, or created at the request of the *fund* or its *investment adviser*, unless the index is widely recognized and used.

Designated reference portfolio means a *designated index* or the *fund's securities portfolio*. Notwithstanding the first sentence of the definition of *designated index* of this section, if the *fund's* investment objective is to track the performance (including a *leverage multiple* or *inverse multiple*) of an unleveraged index, the *fund* must use that index as its *designated reference portfolio*.

Fund means a registered open-end or closed-end company or a business development company, including any separate series thereof, but does not include a registered open-end company that is regulated as a money market fund under Rule 2a-7 [under the Investment Company Act of 1940].

Leveraged/inverse fund means a *fund* that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple (“*leverage multiple*”), or to provide investment returns that have an inverse relationship to the performance of a market index (“*inverse multiple*”), over a pre-determined period of time.

Relative VaR test means that (1) the *VaR* of the *fund's* portfolio does not exceed 200% of the *VaR* of the *designated reference portfolio* or (2) in the case of a closed-end company that has issued to investors and has then outstanding shares of a class of *senior security* that is a stock, that the *VaR* of the *fund's* portfolio does not exceed 250% of the *VaR* of the *designated reference portfolio*.

Securities portfolio means the *fund's* portfolio of securities and other investments, excluding any *derivatives transactions*, that is approved by the *derivatives risk manager* for purposes of the *relative VaR test*, provided that the *fund's securities portfolio* reflects the markets or asset classes in which the *fund* invests (i.e., the markets or asset classes in which the *fund* invests directly through securities and other investments and indirectly through *derivatives transactions*).

Unfunded commitment agreement means a contract that is not a *derivatives transaction*, under which a *fund* commits, conditionally or unconditionally, to make a loan to a company or to invest equity in a company in the future, including by making a capital commitment to a private *fund* that can be drawn at the discretion of the *fund's* general partner.

Value-at-risk or VaR means an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio's assets (or net assets when computing a *fund's VaR*), over a specified time horizon and at a given confidence level, provided that any *VaR* model used by a *fund* for purposes of determining the *fund's* compliance with the *relative VaR test* or the *absolute VaR test* must:

- (1) Take into account and incorporate all significant, identifiable market risk factors associated with a *fund's* investments, including, as applicable: (i) Equity price risk, interest rate risk, credit spread risk, foreign currency risk and commodity price risk;

- (ii) Material risks arising from the nonlinear price characteristics of a *fund's* investments, including options and positions with embedded optionality; and (iii) The sensitivity of the market value of the *fund's* investments to changes in volatility;
 - (2) Use a 99% confidence level and a time horizon of 20 trading days; and
 - (3) Be based on at least three years of historical market data.
- (b) *Derivatives transactions.* If a *fund* satisfies the conditions of paragraph (c) of this section, the *fund* may enter into *derivatives transactions*, notwithstanding the requirements of sections 18(a)(1), 18(c), 18(f)(1), and 61 of the Investment Company Act and *derivatives transactions* entered into by the *fund* in compliance with this section will not be considered for purposes of computing asset coverage, as defined in section 18(h) of the Investment Company Act.
- (c) *Conditions.*
- (1) *Derivatives risk management program.* The *fund* adopts and implements a written *derivatives risk* management *program* (“*program*”), which must include policies and procedures that are reasonably designed to manage the *fund's derivatives risks* and to reasonably segregate the functions associated with the *program* from the portfolio management of the fund. The *program* must include the following elements:
 - (i) *Risk identification and assessment.* The *program* must provide for the identification and assessment of the *fund's derivatives risks*. This assessment must take into account the *fund's derivatives transactions* and other investments.
 - (ii) *Risk guidelines.* The *program* must provide for the establishment, maintenance, and enforcement of investment, risk management, or related guidelines that provide for quantitative or otherwise measurable criteria, metrics, or thresholds of the *fund's derivatives risks*. These guidelines must specify levels of the given criterion, metric, or threshold that the *fund* does not normally expect to exceed, and measures to be taken if they are exceeded.
 - (iii) *Stress testing.* The *program* must provide for stress testing to evaluate potential losses to the *fund's* portfolio in response to extreme but plausible market changes or changes in market risk factors that would have a significant adverse effect on the *fund's* portfolio, taking into account correlations of market risk factors and resulting payments to derivatives counterparties. The frequency with which the stress testing under this paragraph is conducted must take into account the *fund's* strategy and investments and current market conditions, provided that these stress tests must be conducted no less frequently than weekly.
 - (iv) *Backtesting.* The *program* must provide for backtesting to be conducted no less frequently than weekly, of the results of the VaR calculation model used by the *fund* in connection with the *relative VaR test* or the *absolute VaR test* by comparing the

fund's gain or loss that occurred on each business day during the backtesting period with the corresponding *VaR* calculation for that day, estimated over a one-trading day time horizon, and identifying as an exception any instance in which the *fund* experiences a loss exceeding the corresponding *VaR* calculation's estimated loss.

(v) *Internal reporting and escalation.*

(A) *Internal reporting.* The *program* must identify the circumstances under which persons responsible for portfolio management will be informed regarding the operation of the *program*, including exceedances of the guidelines specified in paragraph (c)(1)(ii) of this section and the results of the stress tests specified in paragraph (c)(1)(iii) of this section.

(B) *Escalation of material risks.* The *derivatives risk manager* must inform in a timely manner persons responsible for portfolio management of the fund, and also directly inform the *fund's* board of directors as appropriate, of material risks arising from the *fund's derivatives transactions*, including risks identified by the *fund's* exceedance of a criterion, metric, or threshold provided for in the *fund's* risk guidelines established under paragraph (c)(1)(ii) of this section or by the stress testing described in paragraph (c)(1)(iii) of this section.

(vi) *Periodic review of the program.* The *derivatives risk manager* must review the *program* at least annually to evaluate the *program's* effectiveness and to reflect changes in risk over time. The periodic review must include a review of the *VaR* calculation model used by the *fund* under paragraph (c)(2) of this section (including the backtesting required by paragraph (c)(1)(iv) of this section) and any *designated reference portfolio* to evaluate whether it remains appropriate.

(2) *Limit on fund leverage risk.*

(i) The *fund* must comply with the *relative VaR test* unless the *derivatives risk manager* reasonably determines that a *designated reference portfolio* would not provide an appropriate reference portfolio for purposes of the *relative VaR test*, taking into account the *fund's* investments, investment objectives, and strategy. A *fund* that does not apply the *relative VaR test* must comply with the *absolute VaR test*.

(ii) The *fund* must determine its compliance with the applicable *VaR* test at least once each business day. If the *fund* determines that it is not in compliance with the applicable *VaR* test, the *fund* must come back into compliance promptly after such determination, in a manner that is in the best interests of the *fund* and its shareholders.

(iii) If the *fund* is not in compliance with the applicable *VaR* test within five business days:

(A) The *derivatives risk manager* must provide a written report to the *fund's* board of directors and explain how and by when (i.e., number of business days)

the *derivatives risk manager* reasonably expects that the *fund* will come back into compliance;

(B) The *derivatives risk manager* must analyze the circumstances that caused the *fund* to be out of compliance for more than five business days and update any *program* elements as appropriate to address those circumstances; and

(C) The *derivatives risk manager* must provide a written report within thirty calendar days of the exceedance to the *fund's* board of directors explaining how the *fund* came back into compliance and the results of the analysis and updates required under paragraph (c)(2)(iii)(B) of this section. If the *fund* remains out of compliance with the applicable *VaR* test at that time, the *derivatives risk manager's* written report must update the report previously provided under paragraph (c)(2)(iii)(A) of this section and the *derivatives risk manager* must update the board of directors on the *fund's* progress in coming back into compliance at regularly scheduled intervals at a frequency determined by the board.

(3) *Board oversight and reporting.*

(i) *Approval of the derivatives risk manager.* A *fund's* board of directors, including a majority of directors who are not interested persons of the fund, must approve the designation of the *derivatives risk manager*.

(ii) *Reporting on program implementation and effectiveness.* On or before the implementation of the *program*, and at least annually thereafter, the *derivatives risk manager* must provide to the board of directors a written report providing a representation that the *program* is reasonably designed to manage the *fund's derivatives risks* and to incorporate the elements provided in paragraphs (c)(1)(i)–(vi) of this section. The representation may be based on the *derivatives risk manager's* reasonable belief after due inquiry. The written report must include the basis for the representation along with such information as may be reasonably necessary to evaluate the adequacy of the *fund's program* and, for reports following the *program's* initial implementation, the effectiveness of its implementation. The written report also must include, as applicable, the *derivatives risk manager's* basis for the approval of any *designated reference portfolio* or any change in the *designated reference portfolio* during the period covered by the report; or an explanation of the basis for the *derivatives risk manager's* determination that a *designated reference portfolio* would not provide an appropriate reference portfolio for purposes of the *relative VaR test*.

(iii) *Regular board reporting.* The *derivatives risk manager* must provide to the board of directors, at a frequency determined by the board, a written report regarding the *derivatives risk manager's* analysis of exceedances described in paragraph (c)(1)(ii) of this section, the results of the stress testing conducted under paragraph (c)(1)(iii) of this section, and the results of the backtesting conducted under paragraph (c)(1)(iv) of this section since the last report to the board. Each report under this paragraph must

include such information as may be reasonably necessary for the board of directors to evaluate the *fund's* response to exceedances and the results of the *fund's* stress testing.

(4) *Limited derivatives users.*

(i) A *fund* is not required to adopt a *program* as prescribed in paragraph (c)(1) of this section, comply with the limit on *fund* leverage risk in paragraph (c)(2) of this section, or comply with the board oversight and reporting requirements as prescribed in paragraph (c)(3) of this section, if:

(A) The *fund* adopts and implements written policies and procedures reasonably designed to manage the *fund's derivatives risk*; and

(B) The *fund's derivatives exposure* does not exceed 10 percent of the *fund's* net assets, excluding, for this purpose, currency or interest rate derivatives that hedge currency or interest rate risks associated with one or more specific equity or fixed-income investments held by the *fund* (which must be foreign-currency-denominated in the case of currency derivatives), or the *fund's* borrowings, provided that the currency or interest rate derivatives are entered into and maintained by the *fund* for hedging purposes and that the notional amounts of such derivatives do not exceed the value of the hedged investments (or the par value thereof, in the case of fixed income investments, or the principal amount, in the case of borrowing) by more than 10 percent.

(ii) If a *fund's derivatives exposure* exceeds 10 percent of its net assets, as calculated in accordance with paragraph (c)(4)(i)(B) of this section, and the *fund* is not in compliance with that paragraph within five business days, the *fund's investment adviser* must provide a written report to the *fund's* board of directors informing them whether the *investment adviser* intends either:

(A) To reduce the *fund's derivatives exposure* to less than 10 percent of the *fund's* net assets promptly, but within no more than thirty calendar days of the exceedance, in a manner that is in the best interests of the *fund* and its shareholders; or

(B) For the *fund* to establish a *program* as prescribed in paragraph (c)(1) of this section, comply with the limit on *fund* leverage risk in paragraph (c)(2) of this section, and comply with the board oversight and reporting requirements as prescribed in paragraph (c)(3) of this section, as soon as reasonably practicable.

(5) *Leveraged/Inverse Funds.* A *leveraged/inverse fund* that cannot comply with the limit on *fund* leverage risk in paragraph (c) is not required to comply with the limit on *fund* leverage risk if, in addition to complying with all other applicable requirements of this section:

(i) As of October 28, 2020, the *fund* is in operation; has outstanding shares issued in one or more public offerings to investors; and discloses in its prospectus a *leverage*

multiple or *inverse multiple* that exceeds 200% of the performance or the inverse of the performance of the underlying index;

(ii) The *fund* does not change the underlying market index or increase the level of leveraged or inverse market exposure the *fund* seeks, directly or indirectly, to provide; and

(iii) The *fund* discloses in its prospectus that it is not subject to the limit on *fund* leverage risk in paragraph (c)(2) of this section.

(6) *Recordkeeping.*

(i) *Records to be maintained.* A *fund* must maintain a written record documenting, as applicable:

(A) The *fund's* written policies and procedures required by paragraph (c)(1) of this section, along with:

(1) The results of the *fund's* stress tests under paragraph (c)(1)(iii) of this section;

(2) The results of the backtesting conducted under paragraph (c)(1)(iv) of this section;

(3) Records documenting any internal reporting or escalation of material risks under paragraph (c)(1)(v)(B) of this section; and

(4) Records documenting the reviews conducted under paragraph (c)(1)(vi) of this section.

(B) Copies of any materials provided to the board of directors in connection with its approval of the designation of the *derivatives risk manager*, any written reports provided to the board of directors relating to the *program*, and any written reports provided to the board of directors under paragraphs (c)(2)(iii)(A) and (c)(2)(iii)(C) of this section.

(C) Any determination and/or action the *fund* made under paragraphs (c)(2)(i)-(ii) of this section, including a *fund's* determination of: the *VaR* of its portfolio; the *VaR* of the *fund's designated reference portfolio*, as applicable; the *fund's VaR* ratio (the value of the *VaR* of the *fund's* portfolio divided by the *VaR* of the *designated reference portfolio*), as applicable; and any updates to any *VaR* calculation models used by the *fund* and the basis for any material changes thereto.

(D) If applicable, the *fund's* written policies and procedures required by paragraph (c)(4) of this section, along with copies of any written reports provided to the board of directors under paragraph (c)(4)(ii) of this section.

(ii) *Retention periods.*

(A) A *fund* must maintain a copy of the written policies and procedures that the *fund* adopted under paragraphs (c)(1) or (c)(4) of this section that are in effect, or at any time within the past five years were in effect, in an easily accessible place.

(B) A *fund* must maintain all records and materials that paragraphs (c)(6)(i)(A)(1)-(4) and (c)(6)(i)(B)-(D) of this section describe for a period of not less than five years (the first two years in an easily accessible place) following each determination, action, or review that these paragraphs describe.

(7) *Current reports.* A *fund* that experiences an event specified in the parts of Form N-RN [referenced in 17 CFR 274.223] titled “*Relative VaR Test Breaches*,” “*Absolute VaR Test Breaches*,” or “*Compliance with VaR Test*” must file with the Commission a report on Form N-RN within the period and according to the instructions specified in that form.

(d) *Reverse repurchase agreements.*

(1) A *fund* may enter into reverse repurchase agreements or similar financing transactions, notwithstanding the requirements of sections 18(c) and 18(f)(1) of the Investment Company Act, if the *fund*:

(i) Complies with the asset coverage requirements of section 18, and combines the aggregate amount of indebtedness associated with all reverse repurchase agreements or similar financing transactions with the aggregate amount of any other senior securities representing indebtedness when calculating the asset coverage ratio; or

(ii) Treats all reverse repurchase agreements or similar financing transactions as *derivatives transactions* for all purposes under this section.

(2) A *fund* relying on paragraph (d) of this section must maintain a written record documenting whether the *fund* is relying on paragraph (d)(1)(i) or (d)(1)(ii) of this section for a period of not less than five years (the first two years in an easily accessible place) following the determination.

(e) *Unfunded commitment agreements.*

(1) A *fund* may enter into an *unfunded commitment agreement*, notwithstanding the requirements of sections 18(a), 18(c), 18(f)(1), and 61 of the Investment Company Act, if the *fund* reasonably believes, at the time it enters into such agreement, that it will have sufficient cash and cash equivalents to meet its obligations with respect to all of its *unfunded commitment agreements*, in each case as they come due. In forming a reasonable belief, the *fund* must take into account its reasonable expectations with respect to other obligations (including any obligation with respect to senior securities or redemptions), and may not take into account cash that may become available from the sale or disposition of any investment at a price that deviates significantly from the mar-

ket value of those investments, or from issuing additional equity. *Unfunded commitment agreements* entered into by the *fund* in compliance with this section will not be considered for purposes of computing asset coverage, as defined in section 18(h) of the Investment Company Act.

(2) For each *unfunded commitment agreement* that a *fund* enters into under paragraph (e)(1) of this section, a *fund* must document the basis for its reasonable belief regarding the sufficiency of its cash and cash equivalents to meet its *unfunded commitment agreement* obligations, and maintain a record of this documentation for a period of not less than five years (the first two years in an easily accessible place) following the date that the *fund* entered into the agreement.

(f) *When issued, forward-settling, and non-standard settlement cycle securities transactions.* Notwithstanding the requirements of sections 18(a)(1), 18(c), 18(f)(1), and 61 of the Investment Company Act, a *fund* or registered open-end company that is regulated as a money market fund under Rule 2a-7 [under the Investment Company Act of 1940] may invest in a security on a when-issued or forward-settling basis, or with a non-standard settlement cycle, and the transaction will be deemed not to involve a senior security, provided that: (i) the *fund* intends to physically settle the transaction; and (ii) the transaction will settle within 35 days of its trade date.

Section 19. Dividends. [15 U.S.C. 80a-19]

(a) It shall be unlawful for any registered *investment company* to pay any dividend, or to make any *distribution* in the nature of a dividend *payment*, wholly or partly from any source other than—

(1) such company's accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized upon the sale of securities or other properties; or

(2) such company's net income so determined for the current or preceding *fiscal year*; unless such *payment* is accompanied by a written statement which adequately discloses the source or sources of such *payment*. The Commission may prescribe the form of such statement by rules and regulations in the public interest and for the protection of investors.

(b) It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered *investment company* to distribute long-term capital gains, as defined in the Internal Revenue Code of 1954, more often than once every twelve months.

Rule 19a-1 *Written statement to accompany dividend payments by management companies.*

(a) Every written statement made pursuant to section 19 by or on behalf of a *management company* shall be made on a separate paper and shall clearly indicate what portion of the *payment per share* is made from the following sources:

(1) Net income for the current or preceding *fiscal year*, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties.

(2) Accumulated undistributed net profits from the sale of securities or other properties (except that an *open-end company* may treat as a separate source its net profits from such sales during its current *fiscal year*).

(3) Paid-in surplus or other capital source.

To the extent that a *payment* is properly designated as being made from a source specified in paragraph (a)(1) or (2) of this section, it need not be designated as having been made from a source specified in this paragraph.

(b) If the *payment* is made in whole or in part from a source specified in paragraph (a)(2) of this section the written statement shall indicate, after giving effect to the part of such *payment* so specified, the deficit, if any, in the aggregate of (1) accumulated undistributed realized profits less losses on the sale of securities or other properties and (2) the net unrealized appreciation or depreciation of portfolio securities, all as of a date reasonably close to the end of the period as of which the dividend is paid. Any statement made pursuant to the preceding sentence shall specify the *amount*, if any, of such deficit which represents unrealized depreciation of portfolio securities.

(c) Accumulated undistributed net income and accumulated undistributed net profits from the sale of securities or other properties shall be determined, at the option of the company, either (1) from the date of the organization of the company, (2) from the date of a *reorganization*, as defined in clause (A) or (B) of section 2(a)(33) of the Investment Company Act 1940, (3) from the date as of which a write-down of portfolio securities was made in connection with a corporate readjustment, approved by stockholders, of the type known as “quasi-reorganization,” or (4) from January 1, 1925, to the close of the period as of which the dividend is paid, without giving effect to such *payment*.

(d) For the purpose of this section, *open-end companies* which upon the sale of their *shares* allocate to undistributed income or other similar account that portion of the consideration received which represents the approximate per *share amount* of undistributed net income included in the sales price, and make a corresponding deduction from undistributed net income upon the purchase or redemption of shares, need not treat the *amounts* so allocated as paid-in surplus or other capital source.

(e) For the purpose of this section, the source or sources from which a dividend is paid shall be determined (or reasonably estimated) to the close of the period as of which it is

paid without giving effect to such *payment*. If any such estimate is subsequently ascertained to be inaccurate in a significant *amount*, a correction thereof shall be made by a written statement pursuant to section 19(a) of the Act or in the first report to stockholders following discovery of the inaccuracy.

(f) Insofar as a written statement made pursuant to section 19(a) of the Act relates to a dividend on preferred stock paid for a period of less than a year, a company may elect to indicate only that portion of the *payment* which is made from sources specified in paragraph (a)(1) of this section, and need not specify the sources from which the remainder was paid. Every company which in any *fiscal year* elects to make a statement pursuant to the preceding sentence shall transmit to the holders of such preferred stock, at a date reasonably near the end of the last dividend period in such *fiscal year*, a statement meeting the requirements of paragraph (a) of this section on an annual basis.

(g) The purpose of this section, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend *payments* are made. Nothing in this section shall be construed to prohibit the inclusion in any written statement of additional information in explanation of the information required by this section. Nothing in this section shall be construed to permit a dividend *payment* in violation of any State law or to prevent compliance with any requirement of State law regarding dividends consistent with this rule.

Rule 19b-1 Frequency of distribution of capital gains.

(a) No registered *investment company* which is a “regulated *investment company*” as defined in section 851 of the Internal Revenue Code of 1986 (“Code”) shall distribute more than one capital gain dividend (“*distribution*”), as defined in section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, other than a *distribution* otherwise permitted by this rule or made pursuant to section 855 of the Code which is supplemental to the prior *distribution* with respect to the same taxable year of the company and which does not exceed 10% of the aggregate *amount* distributed for such taxable year.

(b) No registered *investment company* which is not a “regulated *investment company*” as defined in section 851 of the Code shall make more than one *distribution* of long-term capital gains, as defined in the Code, in any one taxable year of the company; Provided, that a *unit investment trust* may distribute capital gain dividends received from a “regulated *investment company*” within a reasonable time after receipt.

(c) The provisions of this rule shall not apply to a *unit investment trust* (hereinafter referred to as the “Trust”) engaged exclusively in the business of investing in *eligible trust*

securities (as defined in rule 14a-3(b) under the Investment Company Act of 1940); Provided, that:

- (1) The capital gain *distribution* is a result of—
 - (i) An *issuer's* calling or redeeming an eligible trust security held by the Trust,
 - (ii) The sale of an eligible trust security by the Trust to provide funds for redemption of Trust units when the *amount* received by the Trust for such sale exceeds the *amount* required to satisfy the redemption *distribution*,
 - (iii) The sale of an eligible trust security to maintain qualification of the Trust as a “regulated *investment company*” under section 851 of the Code,
 - (iv) Regular *distributions* of principal and *prepayment* of principal on *eligible trust securities*, or
 - (v) The sale of an eligible trust security in order to maintain the investment stability of the Trust; and
- (2) Capital gains *distributions* are clearly described as such in a report to the unitholder which accompanies each such *distribution*.
- (d) For purposes of paragraph (c) of this section, sales made to maintain the investment stability of the Trust means sales made to prevent deterioration of the *value* of the *eligible trust securities* held in the Trust portfolio when one or more of the following factors exist:
 - (1) A *default* in the *payment* of principal or interest on an eligible trust security;
 - (2) An action involving the *issuer* of an eligible trust security which adversely affects the ability of such *issuer* to continue *payment* of principal or interest on its *eligible trust securities*; or
 - (3) A change in market, revenue or credit factors which adversely affects the ability of such *issuer* to continue *payment* of principal or interest on its *eligible trust securities*.
- (e) If a registered *investment company* because of unforeseen circumstances in a particular taxable year proposes to make a *distribution* which would be prohibited by the provisions of this section, it may file a request with the Commission for authorization to make such a *distribution*. Such request shall comply with the requirements of rule 0-2 under the Act and shall set forth the pertinent facts and explain the circumstances which the company believes justify such *distribution*. The request shall be deemed granted unless the Commission within 15 days after receipt thereof shall deny such request as not being necessary or appropriate in the public interest or for the protection of investors and notify the company in writing of such denial.
- (f) A registered *investment company* may make one additional *distribution* of long-term capital gains, as defined in the Code, with respect to any one taxable year of the com-

pany, which *distribution* is made, in whole or in part, for the purpose of not incurring any tax under section 4982 of the Code. Such additional *distribution* may be made prior or subsequent to any *distribution* otherwise permitted by paragraph (a) of this section.

Section 20. Proxies; voting trusts; circular ownership. [15 U.S.C. 80a-20]

(a) It shall be unlawful for any *person*, by use of the mails or any *means or instrumentality of interstate commerce* or otherwise, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security of which a registered *investment company* is the *issuer* in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) It shall be unlawful for any registered *investment company* or *affiliated person* thereof, any *issuer* of a voting-trust certificate relating to any security of a registered *investment company*, or any *underwriter* of such a certificate, by use of the mails or any *means or instrumentality of interstate commerce*, or otherwise, to offer for sale, sell, or deliver after sale, in connection with a public offering, any such voting-trust certificate.

(c) No registered *investment company* shall purchase any *voting security* if, to the knowledge of such registered company, cross-ownership or circular ownership exists, or after such *acquisition* will exist, between such registered company and the *issuer* of such security. Cross-ownership shall be deemed to exist between two companies when each of such companies beneficially owns more than 3 per centum of the outstanding *voting securities* of the other company. Circular ownership shall be deemed to exist between two companies if such companies are included within a group of three or more companies, each of which—

(1) beneficially owns more than 3 per centum of the outstanding *voting securities* of one or more other companies of the group; and

(2) has more than 3 per centum of its own outstanding *voting securities* beneficially owned by another company, or by each of two or more other companies, of the group.

(d) If cross-ownership or circular ownership between a registered *investment company* and any other company or companies comes into existence upon the purchase by a registered *investment company* of the securities of another company, it shall be the duty of such registered company, within one year after it first knows of the existence of such cross-ownership or circular ownership, to eliminate the same.

Rule 20a-1 Solicitation of proxies, consents and authorizations.

(a) No *person* shall solicit or permit the use of his or her name to solicit any proxy, consent or authorization with respect to any security issued by a registered *fund*, except

upon compliance with Regulation 14A (Rule 14a-1), Schedule 14A and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered pursuant to section 12 of the Securities Exchange Act of 1934. Unless the solicitation is made in respect of a security registered on a *national securities exchange*, none of the soliciting material need be filed with such *exchange*.

(b) If the solicitation is made by or on behalf of the management of the *investment company*, then the *investment adviser* or any prospective *investment adviser* and any *affiliated person* thereof as to whom information is required in the solicitation shall upon request of the *investment company* promptly transmit to the *investment company* all information necessary to enable the management of such company to comply with the rules and regulations applicable to such solicitation. If the solicitation is made by any *person* other than the management of the *investment company*, on behalf of and with the consent of the *investment adviser* or prospective *investment adviser*, then the *investment adviser* or prospective *investment adviser* and any *affiliated person* thereof as to whom information is required in the solicitation shall upon request of the *person* making the solicitation promptly transmit to such *person* all information necessary to enable such *person* to comply with the rules and regulations applicable to the solicitation.

Instruction. Registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited pursuant to the requirements of this section should refer to section 14(c) of the Securities Exchange Act of 1934 and the information statement requirements set forth in the rules thereunder.

Rule 20a-2-Rule 20a-4 [Reserved]

[NOTE: Rules 20a-2 and 20a-3 were replaced by Item 22 of Schedule 14A under the Securities and Exchange Act of 1934. In addition, the SEC has revised Item 9 of Schedule 14A to address auditor independence issues.]

Section 21. Loans. [15 U.S.C. 80a-21]

It shall be unlawful for any registered *management company* to *lend* money or property to any *person*, directly or indirectly, if—

- (a) the investment policies of such registered company, as recited in its registration statement and reports filed under this title, do not permit such a loan; or
- (b) such *person controls* or is under common *control* with such registered company; except that the provisions of this paragraph shall not apply to any loan from a registered company to a company which owns all of the outstanding securities of such registered company, except *directors'* qualifying shares.

Section 22. *Distribution, redemption, and repurchase of redeemable securities.* [15 U.S.C. 80a-22]

(a) A securities association registered under Section 15A of the Securities Exchange Act of 1934 may prescribe, by rules adopted and in effect in accordance with said section and subject to all provisions of said section applicable to the rules of such an association—

(1) a method or methods for computing the minimum price at which a member thereof may purchase from any *investment company*, any *redeemable security* issued by such company and the maximum price at which a member may sell to such company any *redeemable security* issued by it or which he may receive for such security upon redemption, so that the price in each case will bear such relation to the *current net asset value* of such security computed as of such time as the rules may prescribe; and

(2) a minimum period of time which must elapse after the sale or issue of such security before any resale to such company by a member or its redemption upon surrender by a member;

in each case for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the *value* of other outstanding securities of such company or any other result of such purchase, redemption, or sale which is unfair to holders of such other outstanding securities; and said rules may prohibit the members of the association from purchasing, selling, or surrendering for redemption any such *redeemable securities* in contravention of said rules.

(b)(1) Such a securities association may also, by rules adopted and in effect in accordance with said Section 15A, and notwithstanding the provisions of subsection (b)(6) thereof but subject to all other provisions of said section applicable to the rules of such an association, prohibit its members from purchasing, in connection with a primary *distribution of redeemable securities* of which any registered *investment company* is the *issuer*, any such security from the *issuer* or from any *principal underwriter* except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering price, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive *sales load* but shall allow for reasonable compensation for sales *personnel, broker-dealers, and underwriters*, and for reasonable *sales loads* to investors. The Commission shall on application or otherwise, if it appears that smaller companies are subject to relatively higher operating costs, make due allowance therefor by granting any such company or class of companies appropriate qualified exemptions from the provisions of this section.

(2) At any time after the expiration of eighteen months from the date of enactment of the Investment Company Amendments Act of 1970 [December 14, 1970] (or if earlier, after a securities association has adopted for purposes of paragraph (1) any rule respecting excessive sales loads), the Commission may alter or supplement the rules of

any securities association as may be necessary to effectuate the purposes of this subsection in the manner provided by Section 19(c) of the Securities Exchange Act of 1934.

(3) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on the date this subsection takes effect [December 14, 1970], the provisions of this subsection shall prevail.

(c) The Commission may make rules and regulations applicable to registered *investment companies* and to *principal underwriters* of, and *dealers* in, the *redeemable securities* of any registered *investment company*, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in subsection (a) of this section in respect of the rules which may be made by a registered securities association governing its members. Any rules and regulations so made by the Commission, to the extent that they may be inconsistent with the rules of any such association, shall so long as they remain in force supersede the rules of the association and be binding upon its members as well as all other *underwriters* and *dealers* to whom they may be applicable.

(d) No registered *investment company* shall sell any *redeemable security* issued by it to any *person* except either to or through a *principal underwriter* for *distribution* or at a current public offering price described in the *prospectus*, and, if such class of security is being currently offered to the public by or through an *underwriter*, no *principal underwriter* of such security and no *dealer* shall sell any such security to any *person* except a *dealer*, a *principal underwriter*, or the *issuer*, except at a current public offering price described in the *prospectus*. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of *exchange* permitted by Section 11 including any offer made pursuant to Section 11(b); (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash *distribution* made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of Section 12.

(e) No registered *investment company* shall suspend the right of redemption, or postpone the date of *payment* or satisfaction upon redemption of any *redeemable security* in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption, except—

(1) for any period (A) during which the New York Stock Exchange is closed other than customary weekend and holiday closings or (B) during which trading on the New York Stock Exchange is restricted;

(2) for any period during which an emergency exists as a result of which (A) disposal by the company of securities owned by it is not reasonably practicable or (B) it is not reasonably practicable for such company fairly to determine the *value* of its net assets; or

(3) for such other periods as the Commission may by order permit for the protection of security holders of the company.

The Commission shall by rules and regulations determine the conditions under which (i) trading shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection.

(f) No registered *open-end company* shall restrict the transferability or negotiability of any security of which it is the *issuer* except in conformity with the statements with respect thereto contained in its registration statement nor in contravention of such rules and regulations as the Commission may prescribe in the interests of the holders of all of the outstanding securities of such *investment company*.

(g) No registered *open-end company* shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the *issuer*), except as a dividend or *distribution* to its security holders or in connection with a *reorganization*.

Rule 22c-1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) No registered *investment company* issuing any *redeemable security*, no *person* designated in such *issuer's prospectus* as authorized to consummate transactions in any such security, and no *principal underwriter* of, or *dealer* in, any such security shall sell, redeem, or repurchase any such security except at a price based on the *current net asset value* of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security; Provided, that:

(1) This paragraph shall not prevent a sponsor of a *unit investment trust* (hereinafter referred to as the "Trust") engaged exclusively in the business of investing in *eligible trust securities* (as defined in Rule 14a-3(b)) from selling or repurchasing Trust units in a secondary market at a price based on the offering side evaluation of the *eligible trust securities* in the Trust's portfolio, determined at any time on the last *business day* of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a *qualified evaluator* stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last *business day* of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last *business day* of the previous week, is not more than one-half of one percent (\$5.00 on a unit representing \$1,000 principal *amount of eligible trust securities*) greater than the current offering price.

(2) This paragraph shall not prevent any registered *investment company* from adjusting the price of its *redeemable securities* sold pursuant to a *merger*, consolidation or

purchase of substantially all of the assets of a company which meets the conditions specified in Rule 17a-8.

(3) Notwithstanding this paragraph (a), a registered open-end management *investment company* (but not a registered open-end management *investment company* that is regulated as a *money market fund* under Rule 2a-7 or an *exchange-traded fund* as defined in paragraph (a)(3)(v)(A) of this section) (a “*fund*”) may use swing pricing to adjust its *current net asset value* per share to mitigate dilution of the value of its outstanding *redeemable securities* as a result of shareholder purchase or redemption activity, provided that it has established and implemented swing pricing policies and procedures in compliance with the paragraphs (a)(3)(i) through (v) of this section.

(i) The *fund*'s swing pricing policies and procedures must:

(A) Provide that the *fund* must adjust its net asset *value* per *share* by a single swing factor or multiple factors that may vary based on the swing threshold(s) crossed once the level of net purchases into or net redemptions from such *fund* has exceeded the applicable swing threshold for the *fund*. In determining whether the *fund*'s level of net purchases or net redemptions has exceeded the applicable swing threshold(s), the *person(s) responsible for administering swing pricing* shall be permitted to make such determination based on receipt of sufficient information about the *fund* investors' daily purchase and redemption activity (“*investor flow*”) to allow the *fund* to reasonably estimate whether it has crossed the swing threshold(s) with high confidence, and shall exclude any purchases or redemptions that are made in kind and not in cash. This *investor flow* information may consist of individual, aggregated, or netted orders, and may include reasonable estimates where necessary.

(B) Specify the process for how the *fund*'s swing threshold(s) shall be determined, considering:

(1) The size, frequency, and volatility of historical net purchases or net redemptions of *fund* shares during normal and stressed periods;

(2) The *fund*'s investment strategy and the liquidity of the *fund*'s portfolio investments;

(3) The *fund*'s holdings of cash and cash equivalents, and borrowing arrangements and other funding sources; and

(4) The costs associated with transactions in the markets in which the *fund* invests.

(C) Specify the process for how the swing factor(s) shall be determined, which must include: The establishment of an upper limit on the swing factor(s) used, which may not exceed two percent of net asset value per share; and the

determination that the factor(s) used are reasonable in relationship to the costs discussed in this paragraph. In determining the swing factor(s) and the upper limit, the *person(s) responsible for administering swing pricing* may take into account only the near-term costs expected to be incurred by the *fund* as a result of net purchases or net redemptions that occur on the day the swing factor(s) is used, including spread costs, transaction fees and charges arising from asset purchases or asset sales resulting from those purchases or redemptions, and borrowing-related costs associated with satisfying redemptions.

(ii) The *fund's* board of *directors*, including a majority of *directors* who are not *interested persons* of the *fund* must:

(A) Approve the *fund's* swing pricing policies and procedures;

(B) Approve the *fund's* swing threshold(s) and the upper limit on the swing factor(s) used, and any changes to the swing threshold(s) or the upper limit on the swing factor(s) used;

(C) Designate the *fund's investment adviser*, officer, or officers responsible for administering the swing pricing policies and procedures ("*person(s) responsible for administering swing pricing*"). The administration of swing pricing must be reasonably segregated from portfolio management of the *fund* and may not include portfolio managers; and

(D) Review, no less frequently than annually, a written report prepared by the *person(s) responsible for administering swing pricing* that describes:

(1) its review of the adequacy of the *fund's* swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution;

(2) any material changes to the *fund's* swing pricing policies and procedures since the date of the last report; and

(3) its review and assessment of the *fund's* swing threshold(s), swing factor(s), and swing factor upper limit considering the requirements of paragraphs (a)(3)(i)(B) and (C) of this section, including the information and data supporting the determination of the swing threshold(s), swing factor(s), and swing factor upper limit.

(iii) The *fund* shall maintain the policies and procedures adopted by the *fund* under this paragraph (a)(3) that are in effect, or at any time within the past six years were in effect, in an easily accessible place, and shall maintain a written copy of the report provided to the board under paragraph (a)(3)(ii)(C) for six years, the first two in an easily accessible place.

(iv) Any *fund* (a "*feeder fund*") that invests, pursuant to section 12(d)(1)(E) of the Act, in another *fund* (a "*master fund*") may not use swing pricing to adjust the

feeder fund's net asset value per *share*; however, a *master fund* may use swing pricing to adjust the *master fund's* net asset value per *share*, pursuant to the requirements set forth in this paragraph (a)(3).

(v) For purposes of this paragraph (a)(3):

(A) *Exchange-traded fund* means an open-end management *investment company* (or series or class thereof), the shares of which are listed and traded on a *national securities exchange*, and that has formed and operates under an exemptive order under the Act granted by the *Commission* or in reliance on an exemptive rule adopted by the *Commission*.

(B) Swing factor means the amount, expressed as a percentage of the *fund's* net asset value and determined pursuant to the *fund's* swing pricing policies and procedures, by which a *fund* adjusts its net asset value per share once a *fund's* applicable swing threshold has been exceeded.

(C) Swing pricing means the process of adjusting a *fund's* current net asset value per share to mitigate dilution of the value of its outstanding redeemable *securities* as a result of shareholder purchase and redemption activity, pursuant to the requirements set forth in this paragraph (a)(3).

(D) Swing threshold means an amount of net purchases or net redemptions, expressed as a percentage of the *fund's* net asset value, that triggers the application of swing pricing.

(E) Transaction fees and charges means brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio asset purchases and sales.

(b) For the purposes of this section,

(1) The *current net asset value* of any such security shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of *directors* of the *investment company* sets, in accordance with paragraph (d) of this section, except on:

(i) Days on which changes in the *value* of the *investment company's* portfolio securities will not *materially* affect the *current net asset value* of the *investment company's* redeemable securities;

(ii) Days during which no security is tendered for redemption and no order to purchase or sell such security is received by the *investment company*; or

(iii) Customary national business holidays described or listed in the *prospectus* and local and regional business holidays listed in the *prospectus*; and

- (2) A “*qualified evaluator*” shall mean any evaluator which represents it is in a position to determine, on the basis of an informal evaluation of the *eligible trust securities* held in the Trust’s portfolio, whether—
- (i) The current bid price is higher than the offering side evaluation, computed on the last *business day* of the previous week, and
 - (ii) The offering side evaluation, computed as of the last *business day* of the previous week, is more than one-half of one percent (\$5.00 on a unit representing \$1,000 principal *amount* of *eligible trust securities*) greater than the current offering price.
- (c) Notwithstanding the provisions above, any registered *separate account* offering variable annuity contracts, any *person* designated in such account’s *prospectus* as authorized to consummate transactions in such contracts, and any *principal underwriter* of or *dealer* in such contracts shall be permitted to apply the *initial purchase payment* for any such contract at a price based on the *current net asset value* of such contract which is next computed:
- (1) Not later than two *business days* after receipt of the order to purchase by the *insurance company* sponsoring the *separate account* (“insurer”), if the contract application and other information necessary for processing the order to purchase (collectively, “application”) are complete upon receipt; or
 - (2) Not later than two *business days* after an application which is incomplete upon receipt by the insurer is made complete, Provided, that, if an incomplete application is not made complete within five *business days* after receipt,
 - (i) The *prospective purchaser* shall be informed of the reasons for the delay, and
 - (ii) The *initial purchase payment* shall be returned immediately and in full, unless the *prospective purchaser* specifically consents to the insurer retaining the purchase *payment* until the application is made complete.
- (3) As used in this section:
- (i) “*Prospective purchaser*” shall mean either an individual contract owner or an individual participant in a group contract.
 - (ii) “*Initial purchase payment*” shall refer to the first purchase *payment* submitted to the insurer by, or on behalf of, a *prospective purchaser*.
- (d) The board of *directors* shall initially set the time or times during the day that the *current net asset value* shall be computed, and shall make and approve such changes as the board deems necessary.

Rule 22c-2 Redemption fees for redeemable securities.

- (a) *Redemption fee*. It is unlawful for any *fund* issuing *redeemable securities*, its *principal underwriter*, or any *dealer* in such *securities*, to redeem a *redeemable security*

issued by the *fund* within seven calendar days after the *security* was purchased, unless it complies with the following requirements:

- (1) *Board determination.* The *fund's* board of *directors*, including a majority of *directors* who are not *interested persons* of the *fund*, must either:
 - (i) Approve a *redemption fee*, in an amount (but no more than two percent of the *value* of shares redeemed) and on shares redeemed within a time period (but no less than seven calendar days), that in its judgment is necessary or appropriate to recoup for the *fund* the costs it may incur as a result of those redemptions or to otherwise eliminate or reduce so far as practicable any dilution of the *value* of the outstanding *securities* issued by the *fund*, the proceeds of which fee will be retained by the *fund*; or
 - (ii) Determine that imposition of a *redemption fee* is either not necessary or not appropriate.
 - (2) *Shareholder information.* With respect to each *Financial intermediary* that submits orders, itself or through its agent, to purchase or redeem shares directly to the *fund*, its *principal underwriter* or transfer agent, or to a registered clearing agency, the *fund* (or on the *fund's* behalf, the *principal underwriter* or transfer agent) must either:
 - (i) Enter into a shareholder information agreement with the *Financial intermediary* (or its agent); or
 - (ii) Prohibit the *Financial intermediary* from purchasing in nominee name on behalf of other persons, securities issued by the *fund*. For purposes of this paragraph, “purchasing” does not include the automatic reinvestment of dividends.
 - (3) *Recordkeeping.* The *fund* must maintain a copy of the written agreement under paragraph (a)(2)(i) of this section that is in effect, or at any time within the past six years was in effect, in an easily accessible place.
- (b) Excepted *funds*. The requirements of paragraph (a) of this section do not apply to the following *funds*, unless they elect to impose a *redemption fee* pursuant to paragraph (a)(1) of this section:
- (1) *Money market funds*;
 - (2) Any *fund* that *issues securities* that are listed on a *national securities exchange*; and
 - (3) Any *fund* that affirmatively permits short-term trading of its *securities*, if its *prospectus* clearly and prominently discloses that the *fund* permits short-term trading of its *securities* and that such trading may result in additional costs for the *fund*.

(c) Definitions. For the purposes of this section:

(1) *Financial intermediary means:*

(i) Any *broker, dealer, bank*, or other person that holds *securities* issued by the *fund*, in nominee name;

(ii) A *unit investment trust* or *fund* that invests in the *fund* in reliance on section 12(d)(1)(E) of the [Investment Company] Act; and

(iii) In the case of a participant-directed employee benefit plan that owns the *securities issued* by the *fund*, a retirement plan's administrator under section 3(16)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(16)(A)) or any *person* that maintains the plan's participant records.

(iv) *Financial intermediary* does not include any person that the *fund* treats as an individual investor with respect to the *fund's* policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding *securities issued* by the *fund*.

(2) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the [Investment Company] Act, and includes a separate series of such an *investment company*.

(3) *Money market fund* means an open-end management investment company that is registered under the Act and is regulated as a *money market fund* under Rule 2a-7.

(4) Shareholder includes a *beneficial owner* of *securities* held in nominee name, a participant in a participant-directed employee benefit plan, and a holder of interests in a *fund* or *unit investment trust* that has invested in the *fund* in reliance on section 12(d)(1)(E) of the Act. A shareholder does not include a *fund* investing pursuant to section 12(d)(1)(G) of the Act, a trust established pursuant to section 529 of the Internal Revenue Code (26 U.S.C. 529), or a holder of an interest in such a trust.

(5) *Shareholder information agreement* means a written agreement under which a *financial intermediary* agrees to:

(i) Provide, promptly upon request by a *fund*, the Taxpayer Identification Number (or in the case of non U.S. shareholders, if the Taxpayer Identification Number is unavailable, the International Taxpayer Identification Number or other government issued identifier) of all shareholders who have purchased, redeemed, transferred, or exchanged *fund shares* held through an account with the *financial intermediary*, and the amount and dates of such shareholder purchases, redemptions, transfers, and exchanges;

(ii) Execute any instructions from the *fund* to restrict or prohibit further purchases or exchanges of *fund* shares by a shareholder who has been identified by the *fund*

as having engaged in transactions of *fund shares* (directly or indirectly through the intermediary's account) that violate policies established by the *fund* for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the *fund*; and

(iii) Use best efforts to determine, promptly upon request of the *fund*, whether any specific *person* about whom it has received the identification and transaction information set forth in paragraph (c)(5)(i) of this section, is itself a *financial intermediary* ("indirect intermediary") and, upon further request by the *fund*:

(A) Provide (or arrange to have provided) the identification and transaction information set forth in paragraph (c)(5)(i) of this section regarding shareholders who hold an account with an *indirect intermediary*; or

(B) Restrict or prohibit the *indirect intermediary* from purchasing, in nominee name on behalf of other *persons*, *securities* issued by the *fund*.

Rule 22d-1 Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.

A registered *investment company* that is the *issuer* of *redeemable securities*, a *principal underwriter* of such securities or a *dealer* therein shall be exempt from the provisions of Section 22(d) to the extent necessary to permit the sale of such securities at prices that reflect scheduled variations in, or elimination of, the *sales load*. These price schedules may offer such variations in or elimination of the *sales load* to particular classes of investors or transactions, Provided that:

(a) The company, the *principal underwriter* and *dealers* in the company's *shares* apply any scheduled variation uniformly to all offerees in the class specified;

(b) The company furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation, as prescribed in applicable registration statement form requirements;

(c) Before making any new *sales load* variation available to purchasers of the company's shares, the company revises its *prospectus* and statement of additional information to describe that new variation; and

(d) The company advises existing shareholders of any new *sales load* variation within one year of the date when that variation is first made available to purchasers of the company's shares.

Rule 22d-2 Exemption from section 22(d) for certain registered separate accounts.

A registered *separate account*, any *principal underwriter* for such account, any *dealer* in contracts or units of interest or participations in such contracts issued by such account and any *insurance company* maintaining such account shall, with respect to any variable annuity con-

tracts, units, or participations therein issued by such account, be exempted from Section 22(d) to the extent necessary to permit the sale of such contracts, units or participations by such *persons* at prices which reflect variations in the *sales load* or in any administrative charge or other deductions from the purchase *payments*; Provided, however, that (a) the *prospectus* discloses as precisely as possible the *amount* of the variations and the circumstances, if any, in which such variations shall be available or describes the basis for such variations and the manner in which entitlement shall be determined, and (b) any such variations reflect differences in costs or services and are not unfairly discriminatory against any *person*.

Rule 22e-1 Exemption from section 22(e) during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

A registered *separate account*, shall during the annuity *payment* period of variable annuity contracts participating in such account, be exempt from the provisions of Section 22(e) of the Investment Company Act of 1940 prohibiting the suspension of the right of redemption or postponement of the date of *payment* or satisfaction upon redemption of any *redeemable security*, with respect to such contracts under which *payments* are being made based upon life contingencies.

Rule 22e-2 Pricing of redemption requests in accordance with Rule 22c-1.

An *investment company* shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset *value* of the *investment company's redeemable securities* in accordance with the provisions of Rule 22c-1.

Rule 22e-3 Exemption for liquidation of money market funds.

(a) *Exemption.* A registered open-end management investment company or series thereof (“fund”) that is regulated as a money market *fund* under Rule 2a-7 is exempt from the requirements of section 22(e) of the Act if:

- (1) The *fund*, at the end of a *business day*, has invested less than ten percent of its *Total assets* in *weekly liquid assets* or, in the case of a *fund* that is a government *money market fund*, as defined in Rule 2a-7(a)(14) or a retail *money market fund*, as defined in Rule 2a-7(a)(21), the *fund's* price per share as computed for the purpose of *distribution*, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of *directors* or the *fund's* board of *directors*, including a majority of *directors* who are not *interested persons* of the *fund*, determines that such a deviation is likely to occur;
- (2) The *fund's* board of *directors*, including a majority of *directors* who are not *interested persons* of the *fund*, irrevocably has approved the liquidation of the *fund*; and
- (3) The *fund*, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions by electronic mail directed to the attention of the Director of the Division of Investment Management or the Director's designee.

(b) *Conduits*. Any registered investment company, or series thereof, that owns, pursuant to section 12(d)(1)(E) of the Act, *shares* of a money market *fund* that has suspended redemptions of *shares* pursuant to paragraph (a) of this section also is exempt from the requirements of section 22(e) of the Act. A registered investment company relying on the exemption provided in this paragraph must promptly notify the Commission that it has suspended redemptions in reliance on this section. Notification under this paragraph shall be made by electronic mail directed to the attention of the Director of the Division of Investment Management or the Director's designee.

(c) *Commission Orders*. For the protection of shareholders, the Commission may issue an order to rescind or modify the exemption provided by this section, after appropriate notice and opportunity for hearing in accordance with section 40 of the Act.

(d) *Definitions*. Each of the terms *business day*, *total assets*, and *weekly liquid assets* has the same meaning as defined in Rule 2a-7.

Rule 22e-4 *Liquidity risk management programs.*

(a) Definitions. For purposes of this section:

(1) *Acquisition* (or acquire) means any purchase or subsequent rollover.

(2) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(3) *Convertible to cash* means the ability to be sold, with the sale settled.

(4) *Exchange-traded fund* or *ETF* means an open-end management investment company (or series or class thereof), the shares of which are listed and traded on a national *securities* exchange, and that has formed and operates under an exemptive order under the Act granted by the *Commission* or in reliance on an exemptive rule adopted by the *Commission*.

(5) *Fund* means an open-end management investment company that is registered or required to register under section 8 of the Act and includes a separate series of such an investment company, but does not include a registered open-end management investment company that is regulated as a *money market fund* under Rule 2a-7 or an *In-Kind ETF*.

(6) *Highly liquid investment* means any cash held by a *fund* and any investment that the *fund* reasonably expects to be convertible into cash in current market conditions in three *business days* or less without the conversion to cash significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(7) *Highly liquid investment minimum* means the percentage of the *fund's* net assets that the *fund* invests in *highly liquid investments* that are assets pursuant to paragraph (b)(1)(iii) of this section.

(8) *Illiquid investment* means any investment that the *fund* reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(9) *In-Kind Exchange Traded Fund* or *In-Kind ETF* means an *ETF* that meets redemptions through *in-kind* transfers of *securities*, positions, and assets other than a de minimis amount of cash and that publishes its portfolio holdings daily.

(10) *Less liquid investment* means any investment that the *fund* reasonably expects to be able to sell or dispose of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section, but where the sale or disposition is reasonably expected to settle in more than seven calendar days.

(11) *Liquidity risk* means the risk that the *fund* could not meet requests to redeem shares issued by the *fund* without significant dilution of remaining investors' interests in the *fund*.

(12) *Moderately liquid investment* means any investment that the *fund* reasonably expects to be convertible into cash in current market conditions in more than three calendar days but in seven calendar days or less, without the conversion to cash significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

(13) *Person(s) designated to administer the program* means the *fund* or *In-Kind ETF*'s investment adviser, officer, or officers (which may not be solely portfolio managers of the *fund* or *In-Kind ETF*) responsible for administering the program and its policies and procedures pursuant to paragraph (b)(2)(ii) of this section.

(14) *Unit Investment Trust* or *UIT* means a *unit investment trust* as defined in section 4(2) of the Act).

(b) *Liquidity Risk Management Program*. Each *fund* and *In-Kind ETF* must adopt and implement a written *liquidity risk* management program ("program") that is reasonably designed to assess and manage its *liquidity risk*.

(1) Required program elements. The program must include policies and procedures reasonably designed to incorporate the following elements:

(i) Assessment, Management, and Periodic Review of *Liquidity Risk*. Each *fund* and *In-Kind ETF* must assess, manage, and periodically review (with such review occurring no less frequently than annually) its *liquidity risk*, which must include consideration of the following factors, as applicable:

(A) The *fund* or *In-Kind ETF*'s investment strategy and liquidity of portfolio investments during both normal and reasonably foreseeable stressed conditions,

including whether the investment strategy is appropriate for an open-end *fund*, the extent to which the strategy involves a relatively concentrated portfolio or large positions in particular issuers, and the use of borrowings for investment purposes and derivatives;

(B) Short-term and long-term cash flow projections during both normal and reasonably foreseeable stressed conditions;

(C) Holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources; and

(D) For an *ETF*:

(1) The relationship between the *ETF*'s portfolio liquidity and the way in which, and the prices and spreads at which, *ETF* shares trade, including, the efficiency of the arbitrage function and the level of active participation by market participants (including authorized participants); and

(2) The effect of the composition of baskets on the overall liquidity of the *ETF*'s portfolio.

(ii) Classification. Each *fund* must, using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations, classify each of the *fund*'s portfolio investments (including each of the *fund*'s derivatives transactions) as a *highly liquid investment*, *moderately liquid investment*, *less liquid investment*, or *illiquid investment*. A *fund* must review its portfolio investments' classifications, at least monthly in connection with reporting the liquidity classification for each portfolio investment on Form N-PORT in accordance with Rule 30b1-9, and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments' classifications.

Note to paragraph (b)(1)(ii) introductory text: If an investment could be viewed as either a *highly liquid investment* or a *moderately liquid investment*, because the period to convert the investment to cash depends on the calendar or *business day* convention used, a *fund* should classify the investment as a *highly liquid investment*. For a discussion of considerations that may be relevant in classifying the liquidity of the *fund*'s portfolio investments, see Investment Company Act Release No. IC-32315 (Oct. 13, 2016).

(A) The *fund* may generally classify and review its portfolio investments (including the *fund*'s derivatives transactions) according to their asset class, provided, however, that the *fund* must separately classify and review any investment within an asset class if the *fund* or its adviser has information about any market, trading, or investment-specific considerations that are reasonably expected to significantly affect the liquidity characteristics of that investment as compared to the *fund*'s other portfolio holdings within that asset class.

(B) In classifying and reviewing its portfolio investments or asset classes (as applicable), the *fund* must determine whether trading varying portions of a position in a particular portfolio investment or asset class, in sizes that the *fund* would reasonably anticipate trading, is reasonably expected to significantly affect its liquidity, and if so, the *fund* must take this determination into account when classifying the liquidity of that investment or asset class.

(C) For *derivatives transactions* that the *fund* has classified as moderately liquid investments, less liquid investments, and illiquid investments, identify the percentage of the *fund's highly liquid investments* that it has pledged as margin or collateral in connection with *derivatives transactions* in each of these classification categories.

Note to paragraph (b)(1)(ii)(C): For purposes of calculating these percentages, a *fund* that has pledged *highly liquid investments* and non-*highly liquid investments* as margin or collateral in connection with *derivatives transactions* classified as *moderately liquid, less liquid, or illiquid investments* first should apply pledged assets that are *highly liquid investments* in connection with these transactions, unless it has specifically identified non-*highly liquid investments* as margin or collateral in connection with such *derivatives transactions*.

(iii) *Highly Liquid Investment Minimum.*

(A) Any *fund* that does not primarily hold assets that are *highly liquid investments* must:

(1) Determine a *highly liquid investment* minimum, considering the factors specified in paragraphs (b)(1)(i)(A) through (D) of this section, as applicable (but considering those factors specified in paragraphs (b)(1)(i)(A) and (B) only as they apply during normal conditions, and during stressed conditions only to the extent they are reasonably foreseeable during the period until the next review of the *highly liquid investment minimum*). *The highly liquid investment minimum* determined pursuant to this paragraph may not be changed during any period of time that a *fund's* assets that are *highly liquid investments* are below the determined minimum without approval from the *fund's* board of directors, including a majority of directors who are not interested persons of the *fund*;

(2) Periodically review, no less frequently than annually, the *highly liquid investment* minimum; and

(3) Adopt and implement policies and procedures for responding to a shortfall of the *fund's highly liquid investments* below its *highly liquid investment minimum*, which must include requiring the *person(s) designated to administer the program* to report to the *fund's* board of directors no later than its next

regularly scheduled meeting with a brief explanation of the causes of the shortfall, the extent of the shortfall, and any actions taken in response, and if the shortfall lasts more than 7 consecutive calendar days, must include requiring the *person(s) designated to administer the program* to report to the board within one *business day* thereafter with an explanation of how the *fund* plans to restore its minimum within a reasonable period of time.

(B) For purposes of determining whether a *fund* primarily holds assets that are *highly liquid investments*, a *fund* must exclude from its calculations the percentage of the fund's assets that are *highly liquid investments* that it has pledged as margin or collateral in connection with *derivatives transactions* that the *fund* has classified as *moderately liquid investments*, *less liquid investments*, and *illiquid investments*, as determined pursuant to paragraph (b)(1)(ii)(C) of this section.

(iv) *Illiquid Investments*. No *fund* or *In-Kind ETF* may acquire any *illiquid investment* if, immediately after the *acquisition*, the *fund* or *In-Kind ETF* would have invested more than 15% of its net assets in *illiquid investments* that are assets. If a *fund* or *In-Kind ETF* holds more than 15% of its net assets in *illiquid investments* that are assets:

(A) It must cause the *person(s) designated to administer the program* to report such an occurrence to the *fund's* or *In-Kind ETF's* board of directors within one *business day* of the occurrence, with an explanation of the extent and causes of the occurrence, and how the *fund* or *In-Kind ETF* plans to bring its *illiquid investments* that are assets to or below 15% of its net assets within a reasonable period of time; and

(B) If the amount of the *fund's* or *In-Kind ETF's* *illiquid investments* that are assets is still above 15% of its net assets 30 days from the occurrence (and at each consecutive 30 day period thereafter), the *fund* or *In-Kind ETF's* board of directors, including a majority of directors who are not interested persons of the *fund* or *In-Kind ETF*, must assess whether the plan presented to it pursuant to paragraph (b)(1)(iv)(A) continues to be in the best interest of the *fund* or *In-Kind ETF*.

(v) *Redemptions in Kind*. A *fund* that engages in, or reserves the right to engage in, redemptions in kind and any *In-Kind ETF* must establish policies and procedures regarding how and when it will engage in such redemptions in kind.

(2) *Board Oversight*. A *fund* or *In-Kind ETF's* board of directors, including a majority of directors who are not interested persons of the *fund* or *In-Kind ETF*, must:

(i) Initially approve the *liquidity risk* management program;

(ii) Approve the designation of the *person(s) designated to administer the program*; and

(iii) Review, no less frequently than annually, a written report prepared by the *person(s) designated to administer the program* that addresses the operation of the program and assesses its adequacy and effectiveness of implementation, including, if applicable, the operation of the *highly liquid investment minimum*, and any material changes to the program.

(3) Recordkeeping. The *fund* or *In-Kind ETF* must maintain:

(i) A written copy of the program and any associated policies and procedures adopted pursuant to paragraphs (b)(1) through (b)(2) of this section that are in effect, or at any time within the past five years were in effect, in an easily accessible place;

(ii) Copies of any materials provided to the board of directors in connection with its approval under paragraph (b)(2)(i) of this section, and materials provided to the board of directors under paragraph (b)(2)(iii) of this section, for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place; and

(iii) If applicable, a written record of the policies and procedures related to how the *highly liquid investment minimum*, and any adjustments thereto, were determined, including assessment of the factors incorporated in paragraphs (b)(1)(iii)(A) through (B) of this section and any materials provided to the board pursuant to paragraph (b)(1)(iii)(A)(3) of this section, for a period of not less than five years (the first two years in an easily accessible place) following the determination of, and each change to, the *highly liquid investment minimum*.

(c) *UIT* Liquidity. On or before the date of initial deposit of portfolio *securities* into a registered *UIT*, the *UIT*'s principal underwriter or depositor must determine that the portion of the *illiquid investments* that the *UIT* holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the *securities* it issues, and must maintain a record of that determination for the life of the *UIT* and for five years thereafter.

Section 23. *Distribution and repurchase of securities: closed-end companies.* [15 U.S.C. 80a-23]

(a) No registered *closed-end company* shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the *issuer*), except as a dividend or *distribution* to its security holders or in connection with a *reorganization*.

(b) No registered *closed-end company* shall sell any common stock of which it is the *issuer* at a price below the *current net asset value* of such stock, exclusive of any distributing commission or discount (which net asset *value* shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders;

(3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on the date of enactment of this Act [August 22, 1940], or issued in accordance with the provisions of Section 18(d); or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

(c) No registered *closed-end company* shall purchase any securities of any class of which it is the *issuer* except—

(1) on a securities *exchange* or such other open market as the Commission may designate by rules and regulations or orders: Provided, that if such securities are stock, such registered company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of such class by letter or report addressed to stockholders of such class; or

(2) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or

(3) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

Rule 23c-1 Repurchase of securities by closed-end companies.

(a) A registered *closed-end company* may purchase for cash a security of which it is the *issuer*, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the *issuer* for the last preceding *fiscal year*, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such *fiscal year* or within 60 days after the close of such *fiscal year*.

(3) If the security to be purchased is junior to any class of outstanding security of the *issuer* representing indebtedness (except notes or other evidences of indebtedness held by a *bank* or other *person*, the issuance of which did not involve a public offering) all securities of such class shall have an *asset coverage* of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding *senior security* of the *issuer* which is a stock, all securities of such class shall have an *asset coverage* of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

- (4) The seller of the security is not to the knowledge of the *issuer* an *affiliated person* of the *issuer*.
- (5) *Payment* of the purchase price is accompanied or preceded by a written confirmation of the purchase.
- (6) The purchase is made at a price not above the market *value*, if any, or the asset *value* of such security, whichever is lower, at the time of such purchase.
- (7) The *issuer* discloses to the seller or, if the seller is acting through a *broker*, to the seller's *broker*, either prior to or at the time of purchase the approximate or estimated *asset coverage* per unit of the security to be purchased.
- (8) No *brokerage* commission is paid by the *issuer* to any *affiliated person* of the *issuer* in connection with the purchase.
- (9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.
- (10) If the security is a stock, the *issuer* has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.
- (11) The *issuer* files with the Commission, as an exhibit to Form N-CSR, a copy of any written solicitation to purchase securities under this section sent or given during the period covered by the report by or on behalf of the issuer to 10 or more persons.
- (b) Notwithstanding the conditions of paragraph (a) of this section, a *closed-end company* may purchase fractional interests in, or fractional rights to receive, any security of which it is the *issuer*.
- (c) This rule does not apply to purchase of securities made pursuant to Section 23(c)(1) or (2) of the Investment Company Act of 1940. A registered *closed-end company* may file an application with the Commission for an order under Section 23(c)(3) of the Act permitting the purchase of any security of which it is the *issuer* which does not meet the conditions of this rule and which is not to be made pursuant to Section 23(c)(1) or (2) of the Act.
- (d) This rule relates exclusively to the requirements of Section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the *issuer* were issued.

Rule 23c-2 Call and redemption of securities issued by registered closed-end companies.

- (a) Notwithstanding the provisions of Rule 23c-1, a registered closed-end *investment company* may call or redeem any securities of which it is the *issuer*, in accordance with

the terms of such securities or the *charter*, indenture or other instrument pursuant to which such securities were issued: Provided, that if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end *investment company* which proposes to call or redeem any securities of which it is the *issuer* shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; *Provided, however*, that if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date of publication. Such notice shall be filed in triplicate and shall include

- (1) the title of the class of securities to be called or redeemed,
- (2) the date on which the securities are to be called or redeemed,
- (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and,
- (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal *amount* or number of *shares* and the basis upon which the securities to be called or redeemed are to be selected.

Rule 23c-3 Repurchase offers by closed-end companies.

(a) **Definitions.** For purposes of this section:

- (1) “*Periodic interval*” shall mean an interval of three, six, or twelve months.
- (2) “*Repurchase offer*” shall mean an offer pursuant to this section by an *investment company* to repurchase common stock of which it is the *issuer*.
- (3) “*Repurchase offer amount*” shall mean the *amount* of common stock that is the subject of a *repurchase offer*, expressed as a percentage of such stock outstanding on the *repurchase request deadline*, that an *investment company* offers to repurchase in a *repurchase offer*. The *repurchase offer amount* shall not be less than five percent nor more than twenty-five percent of the common stock outstanding on a *repurchase request deadline*. Before each *repurchase offer*, the *repurchase offer amount* for that *repurchase offer* shall be determined by the *directors* of the company.
- (4) “*Repurchase payment deadline*” with respect to a tender of common stock shall mean the date by which an *investment company* must pay securities holders for any stock repurchased. A *repurchase payment deadline* shall occur seven days after the *repurchase pricing date* applicable to such tender.

(5) “*Repurchase pricing date*” with respect to a tender of common stock shall mean the date on which an *investment company* determines the net asset *value* applicable to the repurchase of the securities. A *repurchase pricing date* shall occur no later than the fourteenth day after a *repurchase request deadline*, or the next *business day* if the fourteenth day is not a *business day*. In no event shall an *investment company* determine the net asset *value* applicable to the repurchase of the stock before the close of business on the *repurchase request deadline*.

(i) For an *investment company* making a *repurchase offer* pursuant to paragraph (b) of this section, the number of days between the *repurchase request deadline* and the *repurchase pricing date* for a *repurchase offer* shall be the maximum number specified by the company pursuant to paragraph (b)(2)(i)(D) of this section.

(ii) For an *investment company* making a *repurchase offer* pursuant to paragraph (c) of this section, the *repurchase pricing date* shall be such date as the company shall disclose to security holders in the notification pursuant to paragraph (b)(4) of this section with respect to such offer.

(iii) For purposes of paragraph (b)(1) of this section, a *repurchase pricing date* may be a date earlier than the date determined pursuant to paragraph (a)(5)(i) or (ii) of this section if, on or immediately following the *repurchase request deadline*, it appears that the use of an earlier *repurchase pricing date* is not likely to result in significant dilution of the net asset *value* of either stock that is tendered for repurchase or stock that is not tendered.

(6) “*Repurchase request*” shall mean the tender of common stock in response to a *repurchase offer*.

(7) “*Repurchase request deadline*” with respect to a *repurchase offer* shall mean the date by which an *investment company* must receive *repurchase requests* submitted by security holders in response to that offer or withdrawals or modifications of previously submitted *repurchase requests*. The first *repurchase request deadline* after the effective date of the registration statement for the common stock that is the subject of a *repurchase offer*, or after a shareholder vote adopting the *fundamental* policy specifying a company’s *periodic interval*, whichever is later, shall occur no later than two *periodic intervals* thereafter.

(b) *Periodic Repurchase offers*. A registered *closed-end company* or a *business development company* may repurchase common stock of which it is the *issuer* from the holders of the stock at *periodic intervals*, pursuant to *repurchase offers* made to all holders of the stock, Provided that:

(1) The company shall repurchase the stock for cash at the net asset *value* determined on the *repurchase pricing date* and shall pay the holders of the stock by the *repurchase payment deadline* except as provided in paragraph (b)(3) of this section. The company

may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase. A company may not condition a *repurchase offer* upon the tender of any minimum *amount* of shares.

(2)(i) The company shall repurchase the security pursuant to a *fundamental* policy, changeable only by a majority vote of the outstanding *Voting securities* of the company, stating:

(A) that the company will make *repurchase offers* at *periodic intervals* pursuant to this section, as this section may be amended from time to time;

(B) the *periodic intervals* between *repurchase request deadlines*;

(C) the dates of *repurchase request deadlines* or the means of determining the *repurchase request deadlines*; and

(D) the maximum number of days between each *repurchase request deadline* and the next *repurchase pricing date*.

(ii) The company shall include a statement in its annual report to shareholders of the following:

(A) its policy under paragraph (b)(2)(i) of this section; and

(B) with respect to repurchase *offers* by the company during the period covered by the annual report, the number of repurchase *offers*, the *repurchase offer amount* and the *amount* tendered in each *repurchase offer*, and the extent to which in any *repurchase offer* the company repurchased stock pursuant to the procedures in paragraph (b)(5) of this section.

(iii) A company shall be deemed to be making *repurchase offers* pursuant to a policy within paragraph (b)(2)(i) of this section if:

(A) the company makes *repurchase offers* to its security holders at *periodic intervals* and, before May 14, 1993, has disclosed in its registration statement its intention to make or consider making such *repurchase offers*; and

(B) the company's board of *directors* adopts a policy specifying the matters required by paragraph (b)(2)(i) of this section, and the *periodic interval* specified therein conforms generally to the frequency of the company's prior *repurchase offers*.

(3)(i) The company shall not suspend or postpone a *repurchase offer* except pursuant to a vote of a majority of the *directors*, including a majority of the *directors* who are not *interested persons* of the company, and only:

(A) if the repurchase would cause the company to lose its status as a regulated *investment company* under Subchapter M of the Internal Revenue Code [26 U.S.C. §§ 851-860];

(B) if the repurchase would cause the stock that is the subject of the offer that is either listed on a *national securities exchange* or quoted in an inter-*dealer* quotation system of a national securities association to be neither listed on any *national securities exchange* nor quoted on any inter-*dealer* quotation system of a national securities association;

(C) for any period during which the New York Stock Exchange or any other market in which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading in such market is restricted;

(D) for any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the *value* of its net assets; or

(E) for such other periods as the Commission may by order permit for the protection of security holders of the company.

(ii) If a *repurchase offer* is suspended or postponed, the company shall provide notice to security holders of such suspension or postponement. If the company renews the *repurchase offer*, the company shall send a new notification to security holders satisfying the requirements of paragraph (b)(4) of this section.

(4)(i) No less than twenty-one and no more than forty-two days before each *repurchase request deadline*, the company shall send to each holder of record and to each *beneficial owner* of the stock that is the subject of the *repurchase offer* a notification providing the following information:

(A) a statement that the company is offering to repurchase its securities from security holders at net asset *value*;

(B) any fees applicable to such repurchase;

(C) the *repurchase offer amount*;

(D) the dates of the *repurchase request deadline*, *repurchase pricing date*, and *repurchase payment deadline*, the risk of fluctuation in net asset *value* between the *repurchase request deadline* and the *repurchase pricing date*, and the possibility that the company may use an earlier *repurchase pricing date* pursuant to paragraph (a)(5)(iii) of this section;

(E) the procedures for security holders to tender their *shares* and the right of the security holders to withdraw or modify their tenders until the *repurchase request deadline*;

(F) the procedures under which the company may repurchase such *shares* on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) the circumstances in which the company may suspend or postpone a *repurchase offer* pursuant to paragraph (b)(3) of this section;

(H) the net asset *value* of the common stock computed no more than seven days before the date of the notification and the means by which security holders may ascertain the net asset *value* thereafter; and

(I) the market price, if any, of the common stock on the date on which such net asset *value* was computed, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file three copies of the notification with the Commission within three *business days* after sending the notification to security holders. Those copies shall be accompanied by copies of Form N-23c-3 (“Notification of *Repurchase Offer*”). The format of the copies shall comply with the requirements for registration statements and reports under Rule 8b-12 of the Investment Company Act of 1940.

(iii) For purposes of sending a notification to a *beneficial owner* pursuant to paragraph (b)(4)(i) of this section, where the company knows that *shares* of common stock that is the subject of a *repurchase offer* are held of record by a *broker, dealer, voting trustee, bank, association or other entity* that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting *materials to beneficial owners* of securities that are set forth in Rule 14a-13 under the Securities Exchange Act of 1934.

(5) If security holders tender more than the *repurchase offer amount*, the company may repurchase an additional *amount* of stock not to exceed two percent of the common stock outstanding on the *repurchase request deadline*. If the company determines not to repurchase more than the *repurchase offer amount*, or if security holders tender stock in an *amount* exceeding the *repurchase offer amount* plus two percent of the common stock outstanding on the *repurchase request deadline*, the company shall repurchase the *shares* tendered on a pro rata basis; Provided, however, that this provision shall not prohibit the company from:

(i) Accepting all stock tendered by *persons* who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred *shares* and who tender all of their stock, before prorating stock tendered by others; or

(ii) Accepting by lot stock tendered by security holders who tender all stock held by them and who, when tendering their stock, elect to have either all or none or at least a minimum *amount* or none accepted, if the company first accepts all stock tendered by security holders who do not so elect.

(6) The company shall permit tenders of stock for repurchase to be withdrawn or modified at any time until the *repurchase request deadline* but shall not permit tenders to be withdrawn or modified thereafter.

(7)(i) The *current net asset value* of the company's common stock shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of *directors* of the company shall set.

(ii) The *current net asset value* of the company's common stock shall be computed daily on the five *business days* preceding a *repurchase request deadline* at such specific time or times during the day that the board of *directors* of the company shall set.

(iii) For purposes of Section 23(b) [of the Investment Company Act], the *current net asset value* applicable to a sale of common stock by the company shall be the net asset *value* next determined after receipt of an order to purchase such stock. During any period when the company is offering its common stock, the *current net asset value* of the common stock shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of *directors* of the company shall set, except on:

(A) days on which changes in the *value* of the company's portfolio securities will not *materially* affect the *current net asset value* of the common stock;

(B) days during which no order to purchase its common stock is received, other than days when the net asset *value* would otherwise be computed pursuant to paragraph (b)(7)(i) of this section; or

(C) customary national, local, and regional business holidays described or listed in the *prospectus*.

(8) The board of directors of the investment company satisfies the fund governance standards defined in Rule 0-1(a)(7).

(9) Any *senior security* issued by the company or other indebtedness contracted by the company either shall mature by the next *repurchase pricing date* or shall provide for the redemption or call of such security or the *repayment* of such indebtedness by the company by the next *repurchase pricing date*, either in whole or in part, without penalty or premium, as necessary to permit the company to repurchase securities in such *repurchase offer amount* as the *directors* of the company shall determine in compliance with the *asset coverage* requirements of section 18 or 61 [of the Investment Company Act], as applicable.

(10)(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the *repurchase pricing date*, a percentage of the company's assets equal to at least 100 percent of the *repurchase offer amount* shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a *repurchase request deadline* and the *repurchase payment deadline*, or of assets that mature by the next *repurchase payment deadline*.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of *directors* shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the *investment adviser*, the company's board of *directors* shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its *fundamental* policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of *directors* shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any *underwriter* for the company, shall comply, as if the company were an *open-end company*, with the provisions of Section 24(b) of the Act and rules issued thereunder with respect to any *advertisement*, pamphlet, circular, *form letter*, or other sales literature addressed to or intended for *distribution* to prospective investors.

(c) **Discretionary Repurchase offers.** A registered *closed-end company* or a *business development company* may repurchase common stock of which it is the *issuer* from the holders of the stock pursuant to a *repurchase offer* that is not made pursuant to a *fundamental* policy and that is made to all holders of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of paragraph (b) of this section.

(d) **Exemption from the Definition of Redeemable security.** A company that makes *repurchase offers* pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an *issuer* of *redeemable securities* within Section 2(a)(32) of the Act.

(e) **Registration of an indefinite amount of securities.** A company that makes *repurchase offers* pursuant to paragraph (b) of this section shall be deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Act upon the effective date of its registration statement.

Section 24. Registration of securities under Securities Act of 1933. [15 U.S.C. 80a-24]

(a) In registering under the Securities Act of 1933 any security of which it is the *issuer*, a registered *investment company*, in lieu of furnishing a registration statement containing the information and documents specified in Schedule A of said Act, may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this title, and of such reports filed by such company pursuant to Section 30 or such copies of

portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

(2) such additional information and documents (including a *prospectus*) as the Commission shall prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors.

(b) It shall be unlawful for any of the following companies, or for any *underwriter* for such a company, in connection with a public offering of any security of which such company is the *issuer*, to make use of the mails or any means or instrumentalities of *interstate commerce*, to transmit any *advertisement*, pamphlet, circular, *form letter*, or other sales literature addressed to or intended for *distribution* to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter:

(1) any registered *open-end company*;

(2) any registered *unit investment trust*; or

(3) any registered *face-amount certificate company*.

(c) In addition to the powers relative to *prospectuses* granted the Commission by Section 10 of the Securities Act of 1933, the Commission is authorized to require, by rules and regulations or order, that the information contained in any *prospectus* relating to any periodic *payment* plan certificate or *face-amount certificate* registered under the Securities Act of 1933 on or after the effective date of this title be presented in such form and order of items, and such *prospectus* contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(d) The exemption provided by paragraph (8) of Section 3(a) of the Securities Act of 1933 shall not apply to any security of which an *investment company* is the *issuer*. The exemption provided by paragraph (11) of said Section 3(a) shall not apply to any security of which a registered *investment company* is the *issuer*. The exemption provided by the third clause of Section 4(3) of the Securities Act of 1933, as amended, shall not apply to any transaction in a security issued by a *face-amount certificate company* or in a *redeemable security* issued by an open-end *management company* or *unit investment trust*, if any other security of the same class is currently being offered or sold by the *issuer* or by or through an *underwriter* in a *distribution* which is not exempted from Section 5 of said Act, except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of *persons*, securities, or transactions.

(e) For the purpose of Section 11 of the Securities Act of 1933, as amended, the effective date of the latest amendment filed shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of Section 13 of the Securities Act of 1933, as amended, no such

security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection. Except to the extent the Commission otherwise provides by rules or regulations as appropriate in the public interest or for the protection of investors, no *prospectus* relating to a security issued by a *face-amount certificate company* or a *redeemable security* issued by an open-end *management company* or *unit investment trust* which varies for the purposes of subsection (a)(3) of Section 10 of the Securities Act of 1933 from the latest *prospectus* filed as a part of the registration statement shall be deemed to meet the requirements of said Section 10 unless filed as part of an amendment to the registration statement under said Act and such amendment has become effective.

(f) **Registration of Indefinite Amount of Securities.**—

(1) *Registration of Securities.*—Upon the effective date of its registration statement, as provided by section 8 of the Securities Act of 1933, a *face-amount certificate company*, open-end *management company*, or *unit investment trust*, shall be deemed to have registered an indefinite *amount* of securities.

(2) *Payment of Registration Fees.*—Not later than 90 days after the end of the *fiscal year* of a company or trust referred to in paragraph (1), the company or trust, as applicable, shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933, based on the aggregate sales price for which its securities (including, for purposes of this paragraph, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite *amount* of securities under this subsection during the previous *fiscal year* of the company or trust, reduced by—

(A) the aggregate redemption or repurchase price of the securities of the company or trust during that year; and

(B) the aggregate redemption or repurchase price of the securities of the company or trust during any prior *fiscal year* ending not more than 1 year before the date of enactment of the Investment Company Act Amendments of 1996 [October 11, 1996], that were not used previously by the company or trust to reduce fees payable under this section.

(3) *Interest Due on Late Payment.*—A company or trust paying the fee required by this subsection or any portion thereof more than 90 days after the end of the *fiscal year* of the company or trust shall pay to the Commission interest on unpaid *amounts*, at the average investment rate for Treasury tax and loan accounts published by the Secretary of the Treasury pursuant to section 3717(a) of title 31, United States Code. The *payment* of interest pursuant to this paragraph shall not preclude the Commission from bringing an action to enforce the requirements of paragraph (2).

(4) *Rulemaking Authority.*—The Commission may adopt rules and regulations to implement this subsection.

(g) **Additional Prospectuses.**—In addition to any *prospectus* permitted or required by Section 10(a) of the Securities Act of 1933, the Commission shall permit, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, the use of a *prospectus* for purposes of section 5(b)(1) of that Act with respect to securities issued by a registered *investment company*. Such a *prospectus*, which may include information the substance of which is not included in the *prospectus* specified in section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by section 10(b) of that Act.

Rule 24b-1 Definitions.

(a) The term “*form letter*” as used in Section 24(b) of the Act includes (1) one of a series of identical sales letters, and (2) any sales letter a substantial portion of which consists of a statement which is in essence identical with similar statements in sales letters sent to 25 or more *persons* within any period of 90 consecutive days.

(b) The term “*distribution*” as used in Section 24(b) of the Act includes the *distribution* or *redistribution* to prospective investors of the content of any written sales literature, whether such *distribution* or *redistribution* is effected by means of written or oral representations or statements.

(c) The terms “*rules and regulations*” as used in Section 24(a) and (c) of the Act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto.

Rule 24b-2 Filing copies of sales literature.

Copies of *material* filed with the Commission for the sole purpose of complying with Section 24(b) of the Investment Company Act of 1940 either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the *material*.

Rule 24b-3 Sales literature deemed filed.

Any *advertisement*, pamphlet, circular, *form letter* or other sales literature addressed to or intended for *distribution* to prospective investors shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act of 1940 upon filing with a national securities association registered under Section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the *investment company* advertising practices of its members and has established and implemented procedures to review that advertising.

Rule 24b-4 Filing copies of covered investment fund research reports.

A covered investment fund research report, as defined in paragraph (c)(3) of Rule 139b under the Securities Act of 1933, of a covered investment fund registered as an *investment*

company under the Act, shall not be subject to section 24(b) of the Investment Company Act of 1940 or the rules and regulations thereunder, except that such report shall be subject to such section and the rules and regulations thereunder to the extent that it is otherwise not subject to the content standards in the rules of any self-regulatory organization related to research reports, including those contained in the rules governing communications with the public regarding *investment companies* or substantially similar standards.

Rule 24e-1 Filing of certain prospectuses as post-effective amendments to registration statements under the Securities Act of 1933.

Section 24(e) of the Investment Company Act of 1940 requires that when a *prospectus* is revised so that it may be available for use in compliance with Section 10(a)(3) of the Securities Act of 1933 for a period extending beyond the time when the previous *prospectus* would have ceased to be available for such use, such revised *prospectus*, in order to meet the requirements of Section 10 of said Act, must be filed as an amendment to the registration statement under said Act and such amendment must have become effective prior to the use of the revised *prospectus*. Except as hereinabove provided, Section 24(e) of the Act shall not be deemed to govern the times and conditions under which post-effective amendments shall be filed to registration statements under the Securities Act of 1933.

Rule 24f-2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) General. Any *face-amount certificate company*, open-end *management company*, closed-end *management company* that makes periodic repurchase offers pursuant to rule 23c-3(b), or *unit investment trust* (“*issuer*”) that is deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Act must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F-2 with the *Commission*.

Form 24F-2 must be prepared in accordance with the requirements of that Form, and must be accompanied by the *payment* of a registration fee with respect to the securities sold during the *fiscal year* in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An *issuer* that pays the registration fee more than 90 days after the end of its *fiscal year* must pay interest in the manner specified in section 24(f) of the Act and in Form 24F-2.

(b) *Issuer ceasing operations; mergers and other transactions*. For purposes of this section, if an *issuer* ceases operations, the date the *issuer* ceases operations will be deemed to be the end of its *fiscal year*. In the case of a liquidation, merger, or sale of all or substantially all of the assets (“*merger*”) of the *issuer*, the *issuer* will be deemed to have ceased operations for purposes of this section on the date the *merger* is consummated; provided, however, that in the case of a *merger* of an *issuer* or a series of an *issuer* (“*Predecessor Issuer*”) with another *issuer* or a series of an *issuer* (“*Successor Issuer*”), the *Predecessor Issuer* will not be deemed to have ceased operations and the *Successor*

Issuer will assume the obligations, fees, and redemption credits of the Predecessor *Issuer* incurred pursuant to Section 24(f) of the Act and Rule 24e-2 (as in effect prior to October 11, 1997) if the Successor *Issuer*:

- (1) Had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the *merger*;
 - (2) *Acquired* substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor *Issuer*; and
 - (3) The *merger* is not designed to result in the Predecessor *Issuer* merging with, or substantially all of its assets being *acquired* by, an *issuer* (or a series of an *issuer*) that would not meet the conditions of paragraph (b)(1) of this section.
- (c) **Counting days.** To determine the date on which Form 24F-2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90-day period is the first calendar day of the *fiscal year* following the *fiscal year* for which the Form is to be filed. If the last day of the 90-day period falls on a Saturday, Sunday or federal holiday, the period ends on the first *business day* thereafter. Note to paragraph (c): For example, a Form 24F-2 for a *fiscal year* ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday or Sunday, the Form must be filed on the following Monday.

Section 25. Plans of Reorganization. [15 U.S.C. 80a-25]

(a) Any *person* who, by use of the mails or any *means or instrumentality of interstate commerce* or otherwise, solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit, or dissent in respect of any plan of *reorganization* of any registered *investment company* shall file with, or mail to, the Commission for its information, within twenty-four hours after the commencement of any such solicitation, a copy of such plan and any deposit agreement relating thereto and of any proxy, consent, authorization, power of attorney, ratification, instrument of deposit, or instrument of dissent in respect thereto, if or to the extent that such documents shall not already have been filed with the Commission.

(b) The Commission is authorized, if so requested, prior to any solicitation of security holders with respect to any plan of *reorganization*, by any registered *investment company* which is, or any of the securities of which are, the subject of or is a participant in any such plan, or if so requested by the holders of 25 per centum of any class of its outstanding securities, to render an advisory report in respect of the fairness of any such plan and its effect upon any class or classes of security holders. In such event any registered *investment company*, in respect of which the Commission shall have rendered any such advisory report, shall mail promptly a copy of such advisory report to all its security holders affected by any such plan: Provided, that such advisory report shall have been received by it at least forty-eight hours (not including Sundays and holidays) before final action is taken in relation to such plan at any meeting of security holders called to

act in relation thereto, or any adjournment of any such meeting, or if no meeting be called, then prior to the final date of acceptance of such plan by security holders. In respect of securities not registered as to ownership, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its *principal place of business* and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such *investment company* or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) Any district court of the United States in the State of incorporation of a registered *investment company*, or any such court for the district in which such company maintains its *principal place of business*, is authorized to enjoin the consummation of any plan of *reorganization* of such registered *investment company* upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to *reorganizations* contained in Title 11 of the United States Code.

Section 26. *Unit investment trusts.* [15 U.S.C. 80a-26]

(a) No *principal underwriter* for or depositor of a registered *unit investment trust* shall sell, except by surrender to the trustee for redemption, any security of which such trust is the *issuer* (other than *short-term paper*), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or *custodians*, each of which is a *bank*, and provides that each such trustee or *custodian* shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum *amount*, which shall not be less than \$500,000 (but may also provide, if such trustee or *custodian* publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or *custodian* shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published);

(2) provides, in substance, (A) that during the life of the trust the trustee or *custodian*, if not otherwise remunerated, may charge against and collect from the income of the trust, and from the corpus thereof if no income is available, such fees

for its services and such reimbursement for its expenses as are provided for in such instrument; (B) that no such charge or collection shall be made except for services theretofore performed or expenses theretofore incurred; (C) that no *payment* to the depositor of or a *principal underwriter* for such trust, or to any *affiliated person* or agent of such depositor or *underwriter*, shall be allowed the trustee or *custodian* as an expense (except that provision may be made for the *payment* to any such *person* of a fee, not exceeding such reasonable *amount* as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or *custodian* itself); and (D) that the trustee or *custodian* shall have possession of all securities and other property in which the *funds* of the trust are invested, all *funds* held for such investment, all equalization, redemption, and other special *funds* of the trust, and all income upon, accretions to, and proceeds of such property and *funds*, and shall segregate and hold the same in trust (subject only to the charges and collections allowed under clauses (A), (B), and (C)) until *distribution* thereof to the security holders of the trust;

(3) provides, in substance, that the trustee or *custodian* shall not resign until either (A) the trust has been completely liquidated and the proceeds of the liquidation distributed to the security holders of the trust, or (B) a successor trustee or *custodian*, having the qualifications prescribed in paragraph (1) has been designated and has accepted such trusteeship or *custodianship*; and

(4) provides, in substance, (A) that a record will be kept by the depositor or an agent of the depositor of the name and address of, and the *shares* issued by the trust and held by, every holder of any security issued pursuant to such instrument, insofar as such information is known to the depositor or agent; and (B) that whenever a security is deposited with the trustee in substitution for any security in which such security holder has an undivided interest, the depositor or the agent of the depositor will, within five days after such substitution, either deliver or mail to such security holder a notice of substitution, including an identification of the securities eliminated and the securities substituted, and a specification of the *shares* of such security holder affected by the substitution.

(b) The Commission may, after consultation with and taking into consideration the views of the Federal *banking* agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a *bank*, or an *affiliated person* of a *bank*, either of which is an *affiliated person* of a *principal underwriter* for, or depositor of, a registered *unit investment trust*, may serve as trustee or *custodian* under subsection (a)(1).

(c) It shall be unlawful for any depositor or trustee of a registered *unit investment trust* holding the security of a single *issuer* to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue

an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

(d) In the event that a trust indenture, agreement of *custodianship*, or other instrument pursuant to which securities of a registered *unit investment trust* are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or *custodian* on the other part, and three copies of such contract or agreement have been filed with the Commission.

(e) Whenever the Commission has reason to believe that a *unit investment trust* is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its *principal place of business*. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other *interested persons* in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after *payment* of necessary expenses, the *distribution* of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

(f) Exemption.—

(1) *In General*.—Subsection (a) does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring *insurance company* and *principal underwriter* of such account.

(2) *Limitation on Sales*.—It shall be unlawful for any registered *separate account* funding variable insurance contracts, or for the sponsoring *insurance company* of such account, to *sell* any such contract—

(A) unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the *insurance company*, and, beginning on the earlier of August 1, 1997, or the earliest effective date of any registration statement or amendment thereto for such contract following the date of enactment of this subsection, the *insurance company* so represents in the registration statement for the contract; and

(B) unless the *insurance company*—

(i) complies with all other applicable provisions of this section, as if it were a trustee or *custodian* of the registered *separate account*;

(ii) files with the insurance regulatory authority of the State which is the domiciliary State of the *insurance company*, an annual statement of its financial condition, which most recent statement indicates that the *insurance company* has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than \$1,000,000, or such other *amount* as the Commission may from time to time prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors; and

(iii) together with its registered *separate accounts*, is supervised and examined periodically by the insurance authority of such State.

(3) *Fees and Charges*.—For purposes of paragraph (2), the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.

(4) *Regulatory Authority*.—The Commission may issue such rules and regulations to carry out paragraph (2)(A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

Rule 26a-1 Payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts.

(a) For purposes of section 26(a)(2)(C) of the Act, *payment* of a fee to the depositor of or a *principal underwriter* for a registered *unit investment trust*, or to any *affiliated person* or agent of such depositor or *underwriter* (collectively, “depositor”), for book-keeping or other administrative services provided to the trust shall be allowed the *custodian* or trustee (“trustee”) as an expense, *provided*, that such fee is an *amount* not greater than the expenses, without profit, (a) actually paid by such depositor directly attributable to the services provided and (b) increased by the services provided directly by such depositor, as determined in accordance with generally accepted accounting principles consistently applied.

Rule 26a-2 [Reserved]

Section 27. Periodic payment plans. [15 U.S.C. 80a-27]

(a) It shall be unlawful for any registered *investment company* issuing periodic *payment* plan certificates, or for any depositor of or *underwriter* for such company, to sell any such certificate, if—

(1) the *sales load* on such certificate exceeds 9 per centum of the total *payments* to be made thereon;

(2) more than one-half of any of the first twelve *monthly payments* thereon, or their equivalent, is deducted for *sales load*;

- (3) the *amount* of *sales load* deducted from any one of such first *payments* exceeds proportionately the *amount* deducted from any other such *payment*, or the *amount* deducted from any subsequent *payment* exceeds proportionately the *amount* deducted from any other subsequent *payment*;
- (4) the first *payment* on such certificate is less than \$20, or any subsequent *payment* is less than \$10;
- (5) if such registered company is a *management company*, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C), paragraph (2), of Section 26(a)) exceeding such reasonable *amount* as the Commission may prescribe, whether such fees are payable to such company or to *investment advisers* thereof; or
- (6) if such registered company is a *unit investment trust* the assets of which are securities issued by a *management company*, the depositor of or *principal underwriter* for such trust, or any *affiliated person* of such depositor or *underwriter*, is to receive from such *management company* or any *affiliated person* thereof any fee or *payment* on account of *payments* on such certificate exceeding such reasonable *amount* as the Commission may prescribe.
- (b) If it appears to the Commission, upon application or otherwise, that smaller companies are subjected to relatively higher operating costs and that in order to make due allowance therefor it is necessary or appropriate in the public interest and consistent with the protection of investors that a provision or provisions of paragraph (1), (2), or (3) of subsection (a) relative to *sales load* be relaxed in the case of certain registered *investment companies* issuing periodic *payment* plan certificates, or certain specified classes of such companies, the Commission is authorized by rules and regulations or order to grant any such company or class of companies appropriate qualified exemptions from the provisions of said paragraphs.
- (c) It shall be unlawful for any registered *investment company* issuing periodic *payment* plan certificates, or for any depositor of or *underwriter* for such company, to sell any such certificate, unless—
- (1) such certificate is a *redeemable security* ; and
 - (2) the proceeds of all *payments* on such certificate (except such *amounts* as are deducted for *sales load*) are deposited with a trustee or *custodian* having the qualifications prescribed in paragraph (1) of Section 26(a) for the trustees of *unit investment trusts*, and are held by such trustee or *custodian* under an indenture or agreement containing, in substance, the provisions required by paragraphs (2) and (3) of Section 26(a) for the trust indentures of *unit investment trusts*.
- (d) Notwithstanding subsection (a) of this section, it shall be unlawful for any registered *investment company* issuing periodic *payment* plan certificates, or for any depositor of or

underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in *payment* thereof, in cash, the sum of (1) the *value* of his account, and (2) an *amount*, from such *underwriter* or depositor, equal to that part of the excess paid for *sales loading* which is over 15 per centum of the gross *payments* made by the certificate holder. The Commission may make rules and regulations applicable to such *underwriters* and depositors specifying such reserve requirements as it deems necessary or appropriate in order for such *underwriters* and depositors to carry out the obligations to *refund* sales charges required by this subsection.

(e) With respect to any periodic *payment* plan certificate sold subject to the provisions of subsection (d) of this section, the registered *investment company* issuing such periodic *payment* plan certificate, or any depositor of or *underwriter* for such company, shall in writing (1) inform each certificate holder who has missed three *payments* or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one *payment* or more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen-month period, of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the *value* of the holder's account as of the time the written notice was given to such holder, and (B) the *amount* to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

(f) With respect to any periodic *payment* plan (other than a plan under which the *amount* of *sales load* deducted from any *payment* thereon does not exceed 9 per centum- of such *payment*), the *custodian bank* for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected *payments* on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in *payment* thereof, in cash, the sum of (1) the *value* of his account, and (2) an *amount*, from the *underwriter* or depositor, equal to the difference between the gross *payments* made and the net *amount* invested. The Commission may make rules and regulations applicable to *underwriters* and depositors of companies issuing any such certificate specifying such reserve requirements as it deems necessary or appropriate in order for such *underwriters* and depositors to carry out the obligations to *refund* sales charges required by this subsection.

(g) Notwithstanding the provisions of subsections (a) and (d), a registered *investment company* issuing periodic *payment* plan certificates may elect, by written notice to the

Commission, to be governed by the provisions of subsection (h) rather than the provisions of subsections (a) and (d) of this section.

(h) Upon making the election specified in subsection (g) of this section, it shall be unlawful for any such electing registered *investment company* issuing periodic *payment* plan certificates, or for any depositor of or *underwriter* for such company, to sell any such certificate, if—

- (1) the *sales load* on such certificate exceeds 9 per centum of the total *payments* to be made thereon;
- (2) more than 20 per centum of any *payment* thereon is deducted for *sales load*, or an average of more than 16 per centum is deducted for *sales load* from the first forty-eight *monthly payments* thereon, or their equivalent;
- (3) the *amount* of *sales load* deducted from any one of the first twelve *monthly payments*, the thirteenth through twenty-fourth *monthly payments*, the twenty-fifth through thirty-sixth *monthly payments*, or the thirty-seventh through forty-eighth *monthly payments*, or their equivalents, respectively, exceeds proportionately the *amount* deducted from any other such *payment*, or the *amount* deducted from any subsequent *payment* exceeds proportionately the *amount* deducted from any other subsequent *payment*;
- (4) the deduction for *sales load* on the excess of the *payment* or *payments* in any month over the *minimum monthly payment*, or its equivalent, to be made on the certificate exceeds the *sales load* applicable to *payments* subsequent to the first forty-eight *monthly payments* or their equivalent;
- (5) the first *payment* on such certificate is less than \$20, or any subsequent *payment* is less than \$10;
- (6) if such registered company is a *management company*, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C) of paragraph (2) of Section 26(a)) exceeding such reasonable *amount* as the Commission may prescribe, whether such fees are payable to such company or to *investment advisers* thereof; or
- (7) if such registered company is a *unit investment trust* the assets of which are securities issued by a *management company*, the depositor of or *principal underwriter* for such trust, or any *affiliated person* of such depositor or *underwriter*, is to receive from such *management company* or any *affiliated person* thereof any fee or *payment* on account of *payments* on such certificate exceeding such reasonable *amount* as the Commission may prescribe.

(i) (1) This section does not apply to any registered *separate account funding* variable insurance contracts, or to the sponsoring *insurance company* and *principal underwriter* of such account, except as provided in paragraph (2).

(2) It shall be unlawful for any registered *separate account funding* variable insurance contracts, or for the sponsoring *insurance company* of such account, to sell any such contract unless—

(A) such contract is a *redeemable security*; and

(B) the *insurance company* complies with section 26(f) and any rules or regulations issued by the Commission under section 26(f).

(j) Termination of Sales.—

(1) Termination.—Effective 30 days after the date of enactment of the Military Personnel Financial Services Protection Act [effective October 29, 2006], it shall be unlawful, subject to subsection (i)—

(A) for any registered *investment company* to issue any *periodic payment plan certificate*; or

(B) for such company, or any depositor of or *underwriter* for any such company, or any other *person*, to sell such a certificate.

(2) No Invalidation of Existing Certificates.—Paragraph (1) shall not be construed to alter, invalidate or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after such enactment [October 29, 2006].

Rule 27a-1 [Reserved]

Rule 27a-2 [Reserved]

Rule 27a-3 [Reserved]

Rule 27c-1 [Reserved]

Rule 27d-1 Reserve requirements for principal underwriters and depositors to carry out the obligations to refund charges required by section 27(d) and section 27(f) of the Act.

(a) (1) Every depositor of or *principal underwriter* for the *issuer* of a periodic *payment plan certificate* sold subject to Section 27(d) or Section 27(f) of the Investment Company Act of 1940 or both, shall deposit and maintain *funds* in a segregated trust account as a reserve and as security for the purpose of assuring the *refund* of charges required by Sections 27(d) and 27(f) of the Act.

- (2) The assets of such trust account may be held as cash or invested only in one or more of (i) government securities as defined in Section 2(a)(16) of the Act (except equity securities) or (ii) negotiable certificates of deposit issued by a *bank*, as defined in Section 2(a)(5) of the Act and having capital and surplus of at least \$10 million: Provided, that no such investment may have a maturity of more than 5 years, no more than 50 percent of the assets may be invested in obligations having a maturity of more than 1 year, and certificates of deposit of a single *issuer* may not constitute more than 10 percent of the *value* of the assets in the account.
- (3) Any income, gains, or losses from assets allocated to such account, whether or not realized, shall be credited to or charged against such account without regard to other income, gains, or losses of the depositor or *principal underwriter*.
- (4) The assets of such trust account may be withdrawn only as permitted by paragraph (f) of this section and shall in no event be chargeable with liabilities arising out of any aspect of the business of the depositor or *principal underwriter* other than assuring the ability of the depositor or *principal underwriter* to *refund* the *amounts* required by such sections.
- (b) For purposes of this section:
- (1) “*Excess sales load*” on any *payment* is that portion of the *sales load* in excess of 15 percent of that *payment*.
- (2) “*Monthly payment*” shall be the *amount* of the smallest monthly installment scheduled to be paid during the life of the plan. If *payments* are required or permitted to be made on a basis less frequently than monthly, an equivalent *monthly payment* shall be the *amount* determined by dividing the smallest minimum *payment* required or permitted in a *payment* period by the number of months included in such period.
- (3) The assets in the segregated trust account shall be valued as follows: (i) With respect to securities for which market quotations are readily available, the market *value* of such securities; and (ii) with respect to other securities, fair *value* as determined in good faith by the depositor or *principal underwriter*.
- (c) For every periodic *payment* plan certificate governed by Section 27(d), the depositor or *principal underwriter* shall deposit into the segregated trust account not less than 45 percent of the *excess sales load* on each of the first six *monthly payments* or their equivalent.
- (d) For all periodic *payment* plan certificates governed by Section 27(d) which have not been surrendered in accordance with their terms, and for which the depositor or *principal underwriter* may be liable for the *refund* of any *sales load*, the depositor or *principal underwriter* shall maintain in the segregated trust account an *amount* equal to not less than 15% of the total *refundable sales load* on the *payments* made on those certificates. The depositor or *principal underwriter* shall also maintain in the segregated trust account such additional *amounts* as the Commission by order may require for the

depositor or *principal underwriter* to carry out *refund* obligations pursuant to Sections 27(d) and 27(f) of the Act.

(e) For every periodic *payment* plan certificate governed by Section 27(f) of the Act, and for which the depositor or *principal underwriter* has no obligation to *refund* any *excess sales load* pursuant to Section 27(d) of the Act, the depositor or *principal underwriter* shall deposit and maintain during the *refund* period, at least the following *amounts* in the segregated trust account:

(1) For certificates that require *monthly payments* of \$100 or less, 20 percent of the difference between the gross *payments* made and the net *amount* invested;

(2) For certificates that require *monthly payments* in excess of \$100 and for single *payment* plan certificates, 30 percent of the difference between the gross *payments* made and the net *amount* invested;

(3) For certificates with respect to which the holder is entitled to receive the greater of the *refund* provided by Section 27(f) (of the Act) or a *refund* of total *payments* and upon which a total of at least \$1,000 has been paid, 100 percent of the difference between the gross *payments* made and net *amount* invested; and

(4) Such additional *amounts* as the Commission by order may require to carry out the obligation to *refund* charges pursuant to Section 27(f) of the Act.

(f) Assets may be withdrawn from the segregated trust account by each depositor or *principal underwriter*:

(1) To *refund excess sales load* to a certificate holder exercising the right of surrender specified in Section 27(d) of the Act; or

(2) To *refund* to a certificate holder exercising the right of withdrawal specified in Section 27(f) of the Act the difference between the *amount* of his gross *payments* and the net *amount* invested; or

(3) For any other purpose: Provided, however, that such withdrawal shall not reduce the segregated trust account to an *amount* less than the sum of (i) 130 percent of the *amount* required to be maintained by paragraph (d) of this section, if any, and (ii) 100 percent of that *amount* required to be maintained by paragraph (e) of this section, if any.

(g) The minimum *amounts* required to be maintained by paragraphs (d) and (e) of this section shall be computed at least monthly. Any additional deposits required by paragraph (d) or (e) of this section shall be made immediately after such computation, and any withdrawals permitted by paragraph (f)(3) of this section may be made only at such time.

(h) Nothing in this section shall be construed to prohibit a depositor or *principal underwriter*, acting as such for two or more registered *investment companies* issuing periodic *payment* plan certificates, from combining in a single segregated trust account the reserves for such companies required by this section.

(i) The *refunds* required to be made to certificate holders pursuant to Sections 27(d) and 27(f) (of the Act) shall be paid in cash not more than 7 days from the date the certificate is received in proper form by the *custodian bank* or such other paying agent as may be designated under the periodic *payment* plan.

(j) Each depositor or *principal underwriter* shall file with the Commission, within the appropriate period of time specified, an Accounting of Segregated Trust Account. Form N-27D-1 is hereby prescribed as such accounting form.

Rule 27d-2 [Reserved]

Rule 27e-1 [Reserved]

Rule 27f-1 [Reserved]

Rule 27g-1 [Reserved]

Rule 27h-1 [Reserved]

Rule 27i-1 Exemption from Section 27(i)(2)(A) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

A registered *separate account*, and any depositor of or *underwriter* for such account, shall, during the annuity *payment* period of variable annuity contracts participating in such account, be exempt from the requirement of paragraph (1) of section 27(i)(2)(A) of the Act that a periodic *payment* plan certificate be a *redeemable security* with respect to such contracts under which payments are being made based upon life contingencies.

Section 28. *Face-amount certificate companies.* [15 U.S.C. 80a-28]

(a) It shall be unlawful for any registered *face-amount certificate company* to issue or sell any *face-amount certificate*, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this title, unless—

(1) such company, if organized before March 15, 1940, was actively and continuously engaged in selling *face-amount certificates* on and before that date, and has outstanding capital stock worth upon a fair valuation of assets not less than \$50,000; or if organized on or after March 15, 1940, has capital stock in an *amount* not less than \$250,000 which has been bona fide subscribed and paid for in cash; and

(2) such company maintains at all times minimum certificate reserves on all its outstanding *face-amount certificates* in an aggregate *amount* calculated and adjusted as follows:

(A) the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve payments according to

the manner in which gross payments for any *certificate year* are made by the holder, which reserve payments shall be sufficient in *amount*, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face *amount* of the certificate when due. Such reserve payments may be graduated according to *certificate years* so that the reserve payment or payments for the first *certificate year* shall *amount* to at least 50 per centum of the required gross annual payment for such year and the reserve payment or payments for each of the second to fifth *certificate years* inclusive shall *amount* to at least 93 per centum of each such year's required gross annual payment and for the sixth and each subsequent *certificate year* the reserve payment or payments shall *amount* to at least 96 per centum of each such year's required gross annual payment: Provided, that such aggregate reserve payments shall *amount* to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a *certificate year*, as and when made by the certificate holder, an *amount* or *amounts* equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the *amount* of the gross payment or payments made by the certificate holder for such year less the loading so taken;

(B) if the foregoing minimum percentages of the gross annual payments required under the provisions of such certificate should produce reserve payments larger than are necessary at 3½ per centum per annum compounded annually to provide the minimum maturity or face *amount* of the certificate when due, the reserve shall be based upon reserve payments accumulated as provided under preceding subparagraph (A) of this subsection except that in lieu of the 3½ per centum rate specified therein, such rate shall be lowered to the minimum rate, expressed in multiples of one-eighth of 1 per centum, which will accumulate such reserve payments to the maturity *value* when due;

(C) if the actual annual gross payment to be made by the certificate holder on any certificate issued prior to or after the effective date of this Act is less than the *amount* of any assumed reserve payment or payments for a *certificate year*, such company shall maintain as a part of such minimum certificate reserves a deficiency reserve equal to the total present *value* of future deficiencies in the gross payments, calculated at a rate not to exceed 3½ per centum per annum compounded annually;

(D) for each certificate of the installment type the *amount* of the reserve shall at any time be at least equal to (1) the then *amount* of the reserve payments set up under Section 28(a)(2) (A) or (B); (2) the accumulations on such reserve payments as computed under subparagraphs (A) or (B) of this paragraph (2); (3) the *amount* of any deficiency reserve required under subparagraph (C) hereof; and (4) such *amount* as shall have been credited to the account of each certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity *amount* specified in such certificate, plus any accumulations on any *amount* or *amounts* so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(E) for each certificate which is fully paid, including any fully paid obligations resulting from or effected upon the maturity of the previously issued certificate, and for each paid-up certificate issued as provided in subsection (f) of this section prior to maturity, the *amount* of the reserve shall at any time be at least equal to (1) such *amount* as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, will provide the *amount* or *amounts* payable when due and (2) such *amount* as shall have been credited to the account of each such certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity *amount* specified in the certificate, plus any accumulations on any *amount* or *amounts* so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(F) for each certificate of the installment type under which gross payments have been made by or credited to the holder thereof covering a payment period or periods or any part thereof beyond the then current payment period as defined by the terms of such certificate, and for which period or periods no reserve has been set up under subparagraph (A) or (B) hereof, an advance payment reserve shall be set up and maintained in the *amount* of the present *value* of any such unapplied advance gross payments, computed at a rate not to exceed 3½ per centum per annum compounded annually;

(G) such appropriate contingency reserves for death and disability benefits and for reinstatement rights on any such certificate providing for such benefits or rights as the Commission shall prescribe by rule, regulation, or order based upon the experience of face-*amount* companies in relation to such contingencies.

At no time shall the aggregate certificate reserves herein required by subparagraphs (A) to (F), inclusive, be less than the aggregate surrender *values* and other *amounts* to which all certificate holders may be then entitled.

For the purpose of this subsection (a), no certificate of the installment type shall be deemed to be outstanding if before a surrender *value* has been attained the holder thereof has been in continuous *default* in making his *payments* thereon for a period of one year.

(b) It shall be unlawful for any registered *face-amount certificate company* to issue or sell any *face-amount certificate*, or to collect or accept any *payment* on any such certificate issued by such company on or after the effective date of this title, unless such company has, in cash or qualified investments, assets having a *value* not less than the aggregate *amount* of the capital stock requirement and certificate reserves as computed under the provisions of subsection (a) hereof. As used in this subsection, “qualified investments” means *investments* of a kind which life-insurance companies are permitted to invest in or hold under the provisions of the Code of the District of Columbia as heretofore or hereafter amended, and such other *investments* as the Commission shall by rule, regulation, or order authorize as qualified investments. Such *investments* shall be valued in accordance with the provisions of said Code where such provisions are applicable. *Investments* to which such provisions do not apply shall be valued in accordance with such rules, regulations, or orders as the Commission shall prescribe for the protection of investors.

(c) The Commission shall by rule, regulation, or order, in the public interest or for the protection of investors, require a registered *face-amount certificate company* to deposit and maintain, upon such terms and conditions as the Commission shall prescribe and as are appropriate for the protection of investors, with one or more institutions having the qualifications required by paragraph (1) of Section 26(a) for a trustee of a *unit investment trust*, all or any part of the *investments* maintained by such company as certificate reserve requirements under the provisions of subsection (b) hereof: Provided, however, that where *qualified investments* are maintained on deposit by such company in respect of its liabilities under certificates issued to or held by residents of any State as required by the statute of such State or by any order, regulation, or requirement of such State or any official or agency thereof, the *amount* so on deposit, but not to exceed the *amount* of reserves required by subsection (a) hereof for the certificates so issued or held, shall be deducted from the *amount* of *qualified investments* that may be required to be deposited hereunder.

Assets which are *qualified investments* under subsection (b) and which are deposited under or as permitted by this subsection (c), may be used and shall be considered as a part of the assets required to be maintained under the provisions of said subsection (b).

(d) It shall be unlawful for any registered *face-amount certificate company* to issue or sell any *face-amount certificate*, or to collect or accept any *payment* on any such certificate issued by such company on or after the effective date of this title, unless such certificate contains a provision or provisions to the effect—

(1) that, in respect of any certificate of the installment type, during the first *certificate year* the holder of the certificate, upon surrender thereof, shall be entitled to a *value* payable in cash not less than the reserve *payments* as specified in subparagraph (A) or (B) of paragraph (2) of subsection (a) and at the end of such *certificate year*, a *value*

payable in cash at least equal to 50 per centum of the *amount* of the gross annual *payment* required thereby for such year;

(2) that, in respect of any certificate of the installment type, at any time after the expiration of the first *certificate year* and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a *value* payable in cash not less than the then *amount* of the reserve for such certificate required by numbered items (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) hereof, less a surrender charge that shall not exceed 2 per centum of the face or maturity *amount* of the certificate, or 15 per centum of the *amount* of such reserve, whichever is the lesser, but in no event shall such *value* be less than 50 per centum of the *amount* of such reserve. The *amount* of the surrender *value* for the end of each *certificate year* shall be set out in the certificate;

(3) that, in respect of any certificate of the installment type, the holder of the certificate, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) hereof shall be entitled to a *value* payable in cash equal to the then *amount* of any advance *payment* reserve under such certificate required by subparagraph (F) of paragraph (2) of subsection (a) hereof in addition to any other *amounts* due the holder hereunder;

(4) that at any time prior to maturity, in respect of any certificate which is fully paid, the holder of the certificate, upon surrender thereof, shall be entitled to a *value* payable in cash not less than the then *amount* of the reserve for such certificate required by item (1) of subparagraph (E) of paragraph (2) of subsection (a) hereof, less a surrender charge that shall not exceed 2 per centum of the face or maturity *amount* of the certificate, or 15 per centum of the *amount* of such reserve, whichever is the lesser: Provided, however, that such surrender charge shall not apply as to any obligations of a fully paid type resulting from the maturity of a previously issued certificate. The *amount* of the surrender *value* for the end of each *certificate year* shall be set out in the certificate;

(5) that in respect of any certificate, the holder of the certificate, upon maturity, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) hereof, shall be entitled to a *value* payable in cash equal to the then *amount* of the reserve, if any, for such certificate required by item (4) of subparagraph (D) of paragraph (2) of subsection (a) hereof or item (2) of subparagraph (E) of paragraph (2) of subsection (a) hereof in addition to any other *amounts* due the holder hereunder.

The term “*certificate year*” as used in this section in respect of any certificate of the installment type means a period or periods for which one year’s *payment* or *payments* as provided by the certificate have been made thereon by the holder and the certificate maintained in force by such *payments* for the time for which the same have been made, and in respect of any certificate which is fully paid or paid-up means any year ending on the anniversary of the date of issuance of the certificate.

Any certificate may provide for loans or advances by the company to the certificate holder on the security of such certificate upon terms prescribed therein but at an interest rate not exceeding 6 per centum per annum. The *amount* of the required reserves, deposits, and the surrender *values* thereof available to the holder may be adjusted to take into account any unpaid balance on such loans or advances and interest thereon, for the purposes of this subsection and subsections (b) and (c) hereof.

Any certificate may provide that the company at its option may, prior to the maturity thereof, defer any *payment* or *payments* to the certificate holder to which he may be entitled under this subsection (d), for a period of not more than thirty days: Provided, that in the event such option is exercised by the company, interest shall accrue on any *payment* or *payments* due to the holder, for the period of such deferment at a rate equal to that used in accumulating the reserves for such certificate: and provided further, that the Commission may, by rules and regulations or orders in the public interest or for the protection of investors, make provision for any other deferment upon such terms and conditions as it shall prescribe.

(e) It shall be unlawful for any registered *face-amount certificate company* to issue or sell any *face-amount certificate*, or to collect or accept any *payment* on any such certificate issued by such company on or after the effective date of this title, which certificate makes the holder liable to any legal action or proceeding for any unpaid *amount* on such certificate.

(f) It shall be unlawful for any registered *face-amount certificate company* to issue or sell any *face-amount certificate*, or to collect or accept any *payment* on any such certificate issued by such company on or after the effective date of this title, (1) unless such *face-amount certificate* contains a provision or provisions to the effect that the holder shall have an optional right to receive a paid-up certificate in lieu of the then attained cash surrender value provided therein and in the *amount* of such *value* plus accumulations thereon at a rate to be specified in the paid-up certificate equal to that used in computing the reserve on the original certificate under subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section, such paid-up certificate to become due and payable at the end of a period equal to the balance of the term of such original certificate before maturity; and during the period prior to maturity such paid-up certificate shall have a cash value upon surrender thereof equal to the then *amount* of the reserve therefor; and (2) unless such *face-amount certificate* contains a further provision or provisions to the effect that if the holder be in continuous *default* in his *payments* on such certificate for a period of six months without having exercised his option to receive a paid-up certificate, as herein provided, the company at the expiration of such six months shall pay the surrender *value* in cash if such *value* is less than \$100 or if such *value* is \$100 or more shall issue such paid-up certificate to such holder and such *payment* or issuance, plus the *payment* of all other *amounts* to which he may be then entitled under the original certificate, shall operate to cancel his original certificate: pro-

vided, that in lieu of the issuance of a new paid-up certificate the original certificate may be converted into a paid-up certificate with the same effect; and (3) unless, where such certificate provides, in the event of *default*, for the deferment of *payments* thereon by the holder or of the due dates of such *payments* or of the maturity date of the certificate, it shall also provide in effect for the right of reinstatement by the holder of the certificate after *default* and for an option in the holder, at the time of reinstatement, to make up the *payment* or *payments* for the *default* period next preceding such reinstatement with interest thereon not exceeding 6 per centum per annum, with the same effect as if no such *default* in making such *payments* had occurred. The term “*default*” as used in this subsection (f) shall, without restricting its usual meaning, include a failure to make a *payment* or *payments* as and when provided by the certificate.

(g) The foregoing provisions of this section shall not apply to a *face-amount certificate company* which on or before the effective date of this Act has discontinued the offering of *face-amount certificates* to the public and issues *face-amount certificates* only to the holders of certificates previously issued pursuant to an obligation expressed or implied in such certificates.

(h) It shall be unlawful for any registered *face-amount certificate company* which does not maintain the minimum certificate reserve on all its outstanding *face-amount certificates* issued prior to the effective date of this Act, in an aggregate *amount* calculated and adjusted as provided in Section 28, to declare or pay any dividends on the *shares* of such company for or during any calendar year which shall exceed one-third of the net earnings for the next preceding calendar year or which shall exceed 10 per centum of the aggregate net earnings for the next preceding five calendar years, whichever is the lesser *amount*, or any dividend which shall have been forbidden by the Commission pursuant to the provision of the next sentence of this paragraph. At least thirty days before such company shall declare, pay, or distribute any dividend, it shall give the Commission written notice of its intention to declare, pay, or distribute the same; and if at any time it shall appear to the Commission that the declaration, *payment* or *distribution* of any dividend for or during any calendar year might impair the financial integrity of such company or its ability to meet its liabilities under its outstanding *face-amount certificates*, it may by order forbid the declaration, *distribution*, or *payment* of any such dividend.

(i) The foregoing provisions of this section shall apply to all *face-amount certificates* issued prior to the effective date of this subsection; to the collection or acceptance of any *payment* on such certificates; to the issuance of *face-amount certificates* to the holders of such certificates pursuant to an obligation expressed or implied in such certificates; to the provisions of such certificates; to the minimum certificate reserves and deposits maintained with respect thereto; and to the assets that the *issuer* of such certificate was and is required to have with respect to such certificates. With respect to all *face-amount*

certificates issued after the effective date of this subsection, the provisions of this section shall apply except as hereinafter provided.

(1) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a), the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve *payments* according to the manner in which gross *payments* for any *certificate year* are made by the holder, which reserve *payments* shall be sufficient in *amount*, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face *amount* of the certificate when due. Such reserve *payments* may be graduated according to *certificate years* so that the reserve *payment* or *payments* for the first three *certificate years* shall *amount* to at least 80 per centum of the required gross annual *payment* for such years; the reserve *payment* or *payments* for the fourth *certificate year* shall *amount* to at least 90 per centum of such year's required gross annual *payment*; the reserve *payment* or *payments* for the fifth *certificate year* shall *amount* to at least 93 per centum of such year's gross annual *payment*; and for the sixth and each subsequent *certificate year* the reserve *payment* or *payments* shall *amount* to at least 96 per centum of each such year's required gross annual *payment*: Provided, that such aggregate reserve *payments* shall *amount* to at least 93 per centum of the aggregate gross annual *payments* required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross *payment* or *payments* for a *certificate year*, as and when made by the certificate holder, an *amount* or *amounts* equal in the aggregate for such year to not more than the excess, if any, of the gross *payment* or *payments* required to be made by the holder for such year, over and above the percentage of the gross annual *payment* required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve *payment* or *payments* for such year and the reserve *payment* or *payments* for such year may be graduated and adjusted to correspond with the *amount* of the gross *payment* or *payments* made by the certificate holder for such year less the loading so taken.

(2) Notwithstanding paragraphs (1) and (2) of subsection (d), (A) in respect of any certificate of the installment type, during the first *certificate year*, the holder of the certificate, upon surrender thereof, shall be entitled to a *value* payable in cash not less than 80 per centum of the *amount* of the gross *payments* made on the certificate; and (B) in respect of any certificate of the installment type, at any time after the expiration of the first *certificate year* and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a *value* payable in cash not less than the then *amount* of the reserve for such certificate required by clauses (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a), less a surrender charge that shall not exceed 2 per centum of the face or maturity *amount* of the certificate, or 15 per centum of the *amount* of such reserve, whichever is the lesser, but in no event shall such *value* be less than 80 per cen-

tum of the gross *payments* made on the certificate. The *amount* of the surrender *value* for the end of each *certificate year* shall be set out in the certificate.

Rule 28b-1 Investment in loans partially or wholly guaranteed under the Servicemen's Readjustment Act of 1944, as amended.

(a) The term "qualified investments" as used in Section 28(b) of the Investment Company Act of 1940 shall include:

(1) Any loan, any portion of which is *guaranteed* under Title III of the Servicemen's Readjustment Act of 1944, as amended, and which is secured by a first lien on real estate: Provided, the *amount* of the loan not so *guaranteed* does not exceed 66 $\frac{2}{3}$ percent of the reasonable *value* of such real estate as determined by proper appraisal made by an appraiser designated by the *Administrator* of Veterans' Affairs;

(2) Any secondary loan the full *amount* of which is *guaranteed* under rule 505(a) of Title III of the above mentioned act and which is secured by a second lien on real estate:

Provided, however, that any such loan shall be deemed a *qualified investment* only so long as (i) insurance policies are required to be procured and maintained in an *amount* sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality, and (ii) the loan shall remain *guaranteed* under Title III of the Servicemen's Readjustment Act of 1944, as amended, to the extent specified in subparagraph (a)(1) or (2) of this paragraph, as the case may be.

(b) Loans made pursuant to this section shall be valued at the original principal *amount* of the loan less all payments made thereon which have been applied to the reduction of such principal *amount*.

Section 29. Bankruptcy of Face-Amount Certificate Companies. [Section 29 amended section 67 and section 44 of the Bankruptcy Act of 1898, with respect to the bankruptcy of face-amount certificate companies, as defined in section 4(1) of the Investment Company Act of 1940. The Bankruptcy Act of 1898 was repealed and section 29 is no longer effective. As a result, Section references in the Investment Company Act are off by one when compared to the U.S. Code (e.g., Section 30 of the Investment Company Act is 15 U.S.C. 80a-29 of the U.S. Code)]

(a) Section 67 of an Act entitled "An Act to establish a uniform system of *bankruptcy* throughout the United States", approved July 1, 1898, as amended, is amended by adding at the end thereof the following:

"f. (1) For the purposes of, and exclusively applicable to, this subdivision f(a) 'debtor' shall mean a *face-amount certificate company* as defined in section 4 of the Investment Company Act of 1940; (b) '*face-amount certificate*' shall mean a *face-amount certificate* as defined in section 2 of the Investment Company Act of 1940; (c) 'depository' is a *person* or State agency with whom securities or other property of a debtor is

deposited or to whom property of a debtor is transferred, in trust or otherwise, pursuant to the requirements of a State law or an agreement by the debtor providing for the *distribution* of such property or its proceeds to creditors or security holders of the debtor in the event of the insolvency of the debtor or under other specified circumstances; (d) ‘deposit creditor’ is a creditor who, under the provisions of a State law or agreement providing for a deposit with or transfer to a depository, has rights as to the securities or property so deposited or transferred which exceed the rights of a general creditor; and (e) ‘State agency’ is an official or agency of a State designated to act as depository or to distribute property, or the proceeds of property held by a depository.

“(2) Every deposit or transfer of securities or other property made by or on behalf of a debtor with or to any depository for the benefit or protection of or to secure the holder of any security sold by or on behalf of the debtor on or after January 1, 1941, shall be voidable as against the trustee of such debtor if the property of the estate is insufficient for the full *payment* and discharge of all claims on account of all *face-amount certificates* sold by or on behalf of the debtor, and such deposit or transfer and every lien created thereby shall thereupon be avoided by the trustee subject to the provisions of paragraph 3 of this subdivision f.

“(3) In the event any deposit or transfer described in paragraph 2 of this subdivision f shall be avoided the trustee shall segregate the property received by the trustee from the depository and charge the same with the costs and expenses of maintenance and liquidation and distribute the net proceeds thereof to the creditors who would have been entitled thereto under the provisions of the law or agreement providing for the deposit or transfer of the property, and each such creditor shall thereafter be entitled to dividends from the estate only after all creditors of the same rank shall have received the same percentage.

“(4) The court shall have summary jurisdiction of any proceedings to hear and determine the rights of any parties under this subdivision f and to hear and determine the sufficiency of the property of the estate for the full *payment* and discharge of all claims on account of all *face-amount certificates* sold by or on behalf of the debtor. Due notice of any hearing in such proceedings shall be given to every depository and State agency which is a party in interest.

“(5) Where the provisions of subsection (c) of section 28 are not applicable, the provisions of this section will not apply.”

(b) Section 44 of said Act of July 1, 1898, as amended, is amended by adding at the end of subdivision (a) thereof the following sentence:

“If the *bankrupt* is a *face-amount certificate company*, as defined in section 4 of the Investment Company Act of 1940, the court alone shall make the appointment; but the court shall not make such appointment without first notifying the Securities and Exchange Commission and giving it an opportunity to be heard.”

Section 30. Periodic and other reports; reports of *affiliated persons*. [15 U.S.C. 80a-29]

(a) Every registered *investment company* shall file annually with the Commission such information, documents, and reports as *investment companies* having securities registered on a *national securities exchange* are required to file annually pursuant to Section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations issued thereunder.

(b) Every registered *investment company* shall file with the Commission—

(1) such information, documents and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company filed under this title; and

(2) copies of every periodic or interim report or similar communication containing financial statements and transmitted to any class of such company's security holders, such copies to be filed not later than ten days after such transmission.

Any information or documents contained in a report or other communication to security holders filed pursuant to paragraph (2) may be incorporated by reference in any report subsequently or concurrently filed pursuant to paragraph (1).

(c)(1) The Commission shall take such action as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered *investment companies* and their *affiliated persons* in exercising its authority—

(A) under subsection (f); and

(B) under subsection (b)(1), if the Commission requires the filing of information, documents, and reports under that subsection on a basis more frequently than semiannually.

(2) Action taken by the Commission under paragraph (1) shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the reporting burdens on registered *investment companies*; and

(B) the utility of such information, documents, and reports to the Commission in relation to the costs to registered *investment companies* and their *affiliated persons* of providing such information, documents, and reports.

(d) The Commission shall issue rules and regulations permitting the filing with the Commission, and with any *national securities exchange* concerned, of copies of periodic reports, or of extracts therefrom, filed by any registered *investment company* pursuant to subsections (a) and (b), in lieu of any reports and documents required of such company under Section 13 or 15(d) of the Securities Exchange Act of 1934.

(e) Every registered *investment company* shall transmit to its stockholders, at least semi-annually, reports containing such of the following information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations for the protection of investors, which reports shall not be misleading in any *material* respect in the light of the reports required to be filed pursuant to subsections (a) and (b):

(1) a balance sheet accompanied by a statement of the aggregate *value of investments* on the date of such balance sheet;

(2) a list showing the *amounts* and *values* of securities owned on the date of such balance sheet;

(3) a statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;

(4) a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;

(5) a statement of the aggregate remuneration paid by the company during the period covered by the report (A) to all *directors* and to all members of any *advisory board* for regular compensation; (B) to each *director* and to each member of an *advisory board* for special compensation; (C) to all officers; and (D) to each *person* of whom any officer or *director* of the company is an *affiliated person*; and

(6) a statement of the aggregate dollar *amounts* of purchases and sales of *investment securities*, other than Government securities, made during the period covered by the report:

Provided, that if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of *investment company*, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of *investment company*.

(f) The Commission may, by rule, require that semiannual reports containing the information set forth in subsection (e) include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(g) Financial statements contained in annual reports required pursuant to subsections (a) and (e), if required by the rules and regulations of the Commission, shall be accompanied by a certificate of independent public accountants. The certificate of such independent public accountants shall be based upon an audit not less in scope or procedures followed than that which independent public accountants would ordinarily

make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the Commission may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinion of the accountants. Each such report shall state that such independent public accountants have verified securities owned, either by actual examination, or by receipt of a certificate from the *custodian*, as the Commission may prescribe by rules and regulations.

(h) Every *person* who is directly or indirectly the *beneficial owner* of more than 10 per centum of any class of outstanding securities (other than *short-term paper*) of which a registered *closed-end company* is the *issuer* or who is an officer, *director*, member of an *advisory board*, *investment adviser*, or *affiliated person* of an *investment adviser* of such a company shall in respect of his transactions in any securities of such company (other than *short-term paper*) be subject to the same duties and liabilities as those imposed by Section 16 of the Securities Exchange Act of 1934 upon certain *beneficial owners*, *directors*, and officers in respect of their transactions in certain equity securities.

(i) **Disclosure to Church Plan Participants.**—A *person* that maintains a church plan that is excluded from the definition of an *investment company* solely by reason of section 3(c)(14) shall provide disclosure to plan participants, in writing, and not less frequently than annually, and for new participants joining such a plan after May 31, 1996, as soon as is practicable after joining such plan, that—

(1) the plan, or any company or account maintained to manage or hold plan assets and interests in such plan, company, or account, are not subject to registration, regulation, or reporting under this title, the Securities Act of 1933, the Securities Exchange Act of 1934, or State securities laws; and

(2) plan participants and beneficiaries therefore will not be afforded the protections of those provisions.

(j) **Notice to Commission.**—The Commission may issue rules and regulations to require any *person* that maintains a church plan that is excluded from the definition of an *investment company* solely by reason of section 3(c)(14) to file a notice with the Commission containing such information and in such form as the Commission may prescribe as necessary or appropriate in the public interest or consistent with the protection of investors.

(k) **DATA STANDARDS FOR REPORTS.**—

(1) **REQUIREMENT.**—The Commission shall, by rule, adopt data standards for all reports required to be filed with the Commission under this section, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) **CONSISTENCY.**—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data

standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

Rule 30a-1 Annual report for registered investment companies.

Every management investment company must file an annual report on Form N-CEN at least every twelve months and not more than seventy-five calendar days after the close of each fiscal year. Every *unit investment trust* must file an annual report on Form N-CEN at least every twelve months and not more than seventy-five calendar days after the close of each calendar year. A registered investment company that has filed a registration statement with the *Commission* registering its *securities* for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

Rule 30a-2 Certification of Form N-CSR.

(a) Each report filed on Form N-CSR by a registered management investment company must include certifications in the form specified in Item 19(a)(3) of Form N-CSR and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N-CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that contains financial statements must be accompanied by the certifications required by Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) and such certifications must be furnished as an exhibit to such report as specified in Item 19(b) of Form N-CSR. Each principal executive and principal financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's principal executive and principal financial officers.

Rule 30a-3 Controls and procedures.

(a) Every registered management investment company, other than a small business investment company registered on Form N-5, must maintain *disclosure controls and procedures* (as defined in paragraph (c) of this section) and *internal control over financial reporting* (as defined in paragraph (d) of this section).

(b) Each such registered management investment company's management must evaluate, with the participation of the company's *principal executive and principal financial officers*, or persons performing similar functions, the effectiveness of the company's *disclosure controls and procedures*, within the 90-day period prior to the filing date of each report on Form N-CSR.

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N-CSR is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N-CSR is accumulated and communicated to the investment company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(d) The term *internal control over financial reporting* is defined as a process designed by, or under the supervision of, the registered management investment company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the investment company;
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the investment company are being made only in accordance with authorizations of management and directors of the investment company; and
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the investment company's assets that could have a material effect on the financial statements.

Rule 30a-4 Annual report for wholly-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of Rule 30a-1, a registered management investment company that is a wholly-owned subsidiary of a registered management investment company need not file an annual report on Form N-CEN if financial information with respect to that subsidiary is reported in the parent's annual report on Form N-CEN.

Rule 30b1-1 [Reserved]

Rule 30b1-2 [Reserved]

Rule 30b1-3 [Reserved]

Rule 30b1-4 Report of proxy voting record.

Every registered management *investment company*, other than a *small business investment company* registered on Form N-5, shall file an annual report on Form N-PX not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30.

Rule 30b1-5 [Reserved]

Rule 30b1-7 Monthly report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market *fund* under Rule 2a-7 must file with the Commission a monthly report of portfolio holdings on Form N-MFP, current as of the last business day or any subsequent calendar day of the preceding month, no later than the fifth business day of each month.

Rule 30b1-8 Current report for money market funds

Every registered open-end management *investment company*, or series thereof, that is regulated as a *money market fund* under Rule 2a-7, that experiences any of the events specified on Form N-CR (274.222 of this chapter), must file with the *Commission* a current report on Form N-CR within the period specified in that form.

Rule 30b1-9 Monthly report.

Each registered management investment company or *exchange-traded fund* organized as a *unit investment trust*, or series thereof, other than a registered open-end management investment company that is regulated as a *money market fund* under Rule 2a-7 or a small business investment company registered on Form N-5, must file a monthly report of portfolio holdings on Form N-PORT, current as of the last *business day*, or last calendar day, of the month. A registered investment company that has filed a registration statement with the *Commission* registering its *securities* for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. Each registered investment company that is required to file reports on Form N-PORT must maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month. Such information shall be treated as a record under section 31(a)(1) of the Investment Company Act 10 1940 and Rule 31a-1(b) subject to the requirements of Rule 31a-2(a)(2). Reports on Form N-PORT for each month in each fiscal quarter of a registered investment company must be filed with the Commission no later than 60 days after the end of such fiscal quarter.

Rule 30b1-9(T) Temporary rule regarding monthly report.

(a) Until April 1, 2019, each registered management investment company subject to Rule 30b1-9 must satisfy its reporting obligation under that section by maintaining in its records the information that is required to be included in Form N-PORT.

(b) The information maintained in the registered management investment company's records under paragraph (a) of this rule shall be treated as a record under section 31(a)(1) of the Investment Company Act of 1940 and Rule 31a-1(b) subject to the requirements of Rule 31a-2(a)(2).

(c) This rule will expire and no longer be effective on March 31, 2026.

Rule 30b1-10 Current report for open-end and closed-end management investment companies.

Every registered open-end management investment company, or series thereof, and every registered closed-end management investment company, but not a fund that is regulated as a *money market fund* under rule 2a-7, that experiences an event specified on Form N-RN, must file with the Commission a current report on Form N-RN within the period and according to the instructions specified in that form.

Rule 30b2-1 Filing of reports to stockholders.

(a) Every registered management *investment company* shall file a report on Form N-CSR not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under Rule 30e-1.

(b) A registered *investment company* shall file with the Commission a copy of every periodic or interim report or similar communication containing financial statements that is transmitted by or on behalf of such registered *investment company* to any class of such company's security holders and that is not required to be filed with the Commission under paragraph (a) of this section. The filing shall be made not later than 10 days after the transmission to security holders.

Rule 30d-1 Filing of copies of reports to shareholders.

A registered management *investment company*, other than a *small business investment company* registered on Form N-5, that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of reports on Form N-CSR. A registered *unit investment trust* or a *small business investment company* registered on Form N-5 that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall satisfy its requirement to file such reports by the filing, in accordance with the rules and procedures specified therefor, of reports on Form N-CEN.

Rule 30e-1 Reports to stockholders of management companies. [Effective January 23, 2023 Rule 30e-1 has been amended but the rule changes have a July 24, 2024 compliance date. The text below does not reflect such amendment. See page 324 for Amended rule 30e-1]

(a) Every registered *management company* shall transmit to each stockholder of record, at least semi-annually, a report containing the information required to be included in such reports by the company's registration statement form under the 1940 Act, except that the initial report of a newly registered company shall be made as of a date not later than the close of the *fiscal year* or half-year occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b) If any matter was submitted during the period covered by the shareholder report to a vote of shareholders, through the solicitation of proxies or otherwise, furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of *directors*, the name of each *director* elected at the meeting and the name of each other *director* whose term of office as a *director* continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and *broker* non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this paragraph (b).

(c) Each report shall be transmitted within 60 days after the close of the period for which such report is being made.

(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

(e) The period of time within which any report prescribed by this rule shall be transmitted may be extended by the Commission upon written request showing good cause therefor. Rule 0-5 shall not apply to such requests.

(f)(1) A company will be considered to have transmitted a report to shareholders who *share* an address if:

- (i) The company transmits a report to the shared address;
- (ii) The company addresses the report to the shareholders as a group (for example, “ABC Fund [or Corporation] Shareholders,” “Jane Doe and Household,” “The Smith Family”) or to each of the shareholders individually (for example, “John Doe and Richard Jones”); and
- (iii) The shareholders consent in writing to delivery of one report.

(2) The company need not obtain written consent from a shareholder under paragraph (f)(1)(iii) of this section if all of the following conditions are met:

- (i) The shareholder has the same last name as the other shareholders, or the company reasonably believes that the shareholders are members of the same family;
- (ii) The company has transmitted a notice to the shareholder at least 60 days before the company begins to rely on this section concerning transmission of reports to that shareholder. The notice must be a separate written statement and:
 - (A) State that only one report will be delivered to the shared address unless the company receives contrary instructions;
 - (B) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the shareholder can use to notify the company that he or she wishes to receive a separate report;
 - (C) State the duration of the consent;
 - (D) Explain how a shareholder can revoke consent;
 - (E) State that the company will begin sending individual copies to a shareholder within 30 days after the company receives revocation of the shareholder’s consent; and
 - (F) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: “Important Notice Regarding Delivery of Shareholder Documents.” This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

NOTE to Rule 30e-1(f)(2)(ii): The notice should be written in plain English. See Rule 421(d)(2) [under the Securities Act of 1933] for a discussion of plain English principles.

(iii) The company has not received the reply form or other notification indicating that the shareholder wishes to continue to receive an individual copy of the report, within 60 days after the company sent the notice; and

(iv) The company transmits the report to a post office box or to a residential street address. The company can assume a street address is a residence unless it has information that indicates it is a business.

(3) At least once a year, the company must explain to shareholders who have consented under paragraph (f)(1)(iii) or paragraph (f)(2) of this rule how they can revoke their consent. The explanation must be reasonably designed to reach these investors. If a shareholder, orally or in writing, revokes consent to delivery of one report to a shared address, the company must begin sending individual copies to that shareholder within 30 days after the company receives the revocation.

(4) For purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

Rule 30e-1 Reports to stockholders of management companies. [Reflecting amendments that have a July 24, 2024 compliance date]

(a) Every registered *management company* shall transmit to each stockholder of record, at least semi-annually, a report containing the information required to be included in such reports by the company's registration statement form under the 1940 Act, except that the initial report of a newly registered company shall be made as of a date not later than the close of the *fiscal year* or half-year occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b)(1) To satisfy its obligations under section 30(e) of the 1940 Act, an open-end management investment company registered on Form N-1A also must:

(i) Make certain materials available on a website, as described under paragraph (b)(2) of this section; and

(ii) Deliver certain materials upon request, as described under paragraph (b)(3) of this section.

(2) The following website availability requirements are applicable to an open-end management investment company registered on Form N-1A.

(i) The company must make the disclosures required by Items 7 through 11 of Form N-CSR publicly accessible, free of charge, at the website address specified at the

beginning of the report to stockholders under paragraph (a) of this section, no later than 60 days after the end of the fiscal half-year or fiscal year of the company until 60 days after the end of the next fiscal half-year or fiscal year of the company, respectively. The company may satisfy the requirement in this paragraph (b)(2)(i) by making its most recent report on Form N-CSR publicly accessible, free of charge, at the specified website address for the time period that this paragraph (b)(2)(i) specifies.

(ii) Unless the company is a money market fund under Rule 2a-7, the company must make the company's complete portfolio holdings, if any, as of the close of the company's most recent first and third fiscal quarters, after the date on which the company's registration statement became effective, presented in accordance with the schedules set forth in Rule 12-12 through 12-14 of Regulation S-X, which need not be audited. The complete portfolio holdings required by this paragraph (b)(2)(ii) must be made publicly accessible, free of charge, at the website address specified at the beginning of the report to stockholders under paragraph (a) of this section, not later than 60 days after the close of the first and third fiscal quarters until 60 days after the end of the next first and third fiscal quarters of the company, respectively.

(iii) The website address relied upon for compliance with this section may not be the address of the *Commission's* electronic filing system.

(iv) The materials that are accessible in accordance with paragraph (b)(2)(i) or (ii) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(v) Persons accessing the materials specified in paragraph (b)(2)(i) or (ii) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet the requirements of paragraph (b)(2)(iv) of this section.

(vi) The requirements set forth in paragraphs (b)(2)(i) through (v) of this section will be deemed to be met, notwithstanding the fact that the materials specified in paragraphs (b)(2)(i) and (ii) of this section are not available for a time in the manner required by paragraphs (b)(2)(i) through (v) of this section, provided that:

(A) The company has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(2)(i) through (v) of this section; and

(B) The company takes prompt action to ensure that the specified materials become available in the manner required by paragraphs (b)(2)(i) through (v) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the materials are not available in the manner required by paragraphs (b)(2)(i) through (v) of this section.

(vii) The materials specified in paragraph (b)(2)(i) or (ii) of this section may either be separately available for each series of a fund, or the materials may be grouped by the types of materials and/or by series, so long as the grouped information:

(A) Is presented in a format designed to communicate the information effectively;

(B) Clearly distinguishes the different types of materials and/or each series (as applicable); and

(C) Provides a means of easily locating the relevant information (including, for example, a table of contents that includes hyperlinks to the specific materials and series).

(3) The following requirements to deliver certain materials upon request are applicable to an open-end management investment company registered on Form N-1A.

(i) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for a paper copy.

(ii) The company (or a financial intermediary through which shares of the company may be purchased or sold) must send, at no cost to the requestor, and by email or other reasonably prompt means, an electronic copy of any of the materials specified in paragraph (b)(2)(i) or (ii) of this section, to any person requesting such a copy within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of the requested materials may be satisfied by sending a direct link to the online location of the materials; provided that a current version of the materials is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if recipients desire to retain a copy of the materials, they should access and save the materials.

(c) For registered management companies other than open-end management investment companies registered on Form N-1A, If any matter was submitted during the period covered by the shareholder report to a vote of shareholders, through the solicitation of proxies or otherwise, furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of *directors*, the name of each *director* elected at the meeting and the name of each other *director* whose term of office as a *director* continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and *broker* non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction 1 to paragraph (c). The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this paragraph (c).

(d) Each report shall be transmitted within 60 days after the close of the period for which such report is being made.

(e) The period of time within which any report prescribed by this rule shall be transmitted may be extended by the Commission upon written request showing good cause therefor. Rule 0-5 shall not apply to such requests.

(f)(1) A company will be considered to have transmitted a report to shareholders who *share* an address if:

(i) The company transmits a report to the shared address;

(ii) The company addresses the report to the shareholders as a group (for example, "ABC Fund [or Corporation] Shareholders," "Jane Doe and Household," "The Smith Family") or to each of the shareholders individually (for example, "John Doe and Richard Jones"); and

(iii) The shareholders consent in writing to delivery of one report.

(2) The company need not obtain written consent from a shareholder under paragraph (f)(1)(iii) of this section if all of the following conditions are met:

(i) The shareholder has the same last name as the other shareholders, or the company reasonably believes that the shareholders are members of the same family;

(ii) The company has transmitted a notice to the shareholder at least 60 days before the company begins to rely on this section concerning transmission of reports to that shareholder. The notice must be a separate written statement and:

(A) State that only one report will be delivered to the shared address unless the company receives contrary instructions;

(B) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the shareholder can use to notify the company that he or she wishes to receive a separate report;

(C) State the duration of the consent;

(D) Explain how a shareholder can revoke consent;

(E) State that the company will begin sending individual copies to a shareholder within 30 days after the company receives revocation of the shareholder's consent; and

(F) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: “Important Notice Regarding Delivery of Shareholder Materials.” This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

NOTE to Rule 30e-1(f)(2)(ii): The notice should be written in plain English. See Rule 421(d)(2) [under the Securities Act of 1933] for a discussion of plain English principles.

(iii) The company has not received the reply form or other notification indicating that the shareholder wishes to continue to receive an individual copy of the report, within 60 days after the company sent the notice; and

(iv) The company transmits the report to a post office box or to a residential street address. The company can assume a street address is a residence unless it has information that indicates it is a business.

(3) At least once a year, the company must explain to shareholders who have consented under paragraph (f)(1)(iii) or paragraph (f)(2) of this rule how they can revoke their consent. The explanation must be reasonably designed to reach these investors. If a shareholder, orally or in writing, revokes consent to delivery of one report to a shared address, the company must begin sending individual copies to that shareholder within 30 days after the company receives the revocation.

(4) For purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

Rule 30e-2 Reports to shareholders of unit investment trusts.

(a) At least semiannually every registered ***unit investment trust*** substantially all the assets of which consist of securities issued by a ***management company*** must transmit to each shareholder of record (including record holders of periodic ***payment*** plan certificates), a report containing all the applicable information and financial statements or their equivalent, required by Rule 30e-1 to be included in reports of the ***management company*** for the same fiscal period. Each of these reports must be transmitted within the period allowed the ***management company*** by Rule 30e-1 for transmitting reports to its shareholders.

(b) Any report required by this section will be considered transmitted to a shareholder of record if the ***unit investment trust*** satisfies the conditions set forth in Rule 30e-1(f) with respect to that shareholder.

Rule 30e-3 Internet availability of reports to shareholders.

(a) *General.* A [Company]* may satisfy its obligation to transmit a report required by Rule 30e-1 [or Rule 30e-2]* (“**Report**”) to a shareholder of record if all of the conditions set forth in paragraphs (b) through (e) of this rule are satisfied.

(b) *Availability of report to shareholders and other materials.*

(1) The following materials are publicly accessible, free of charge, at the website address specified in the Notice from the date the [Company]* transmits the **Report** as required by Rule 30e-1 [or Rule 30e-2]* until the [Company]* next transmits a report required by Rule 30e-1 [or Rule 30e-2]* with respect to the **Fund**:

(i) Current report to shareholders. The **Report**.

(ii) Prior report to shareholders. Any report with respect to the **Fund** for the prior reporting period that was transmitted to shareholders of record pursuant to Rule 30e-1 [or Rule 30e-2.]*

(iii) Complete portfolio holdings from reports containing a summary schedule of investments. If a report specified in paragraph (b)(1)(i) or (b)(1)(ii) of this rule includes a summary schedule of investments (Rule 12-12B of Regulation S-X) in lieu of Schedule I—Investments in securities of unaffiliated issuers (Rule 12-12 of Regulation S-X), the **Fund**’s complete portfolio holdings as of the close of the period covered by the report, presented in accordance with the schedules set forth in Rule 12-12 through 12-14 of Regulation S-X, which need not be audited.

(iv) Portfolio holdings for most recent first and third fiscal quarters. [For a **Fund** other than a **Fund** that is regulated as a money market fund under Rule 2a-7 or a small business investment company registered on Form N-5,]** the **Fund**’s complete portfolio holdings as of the close of the **Fund**’s most recent first and third fiscal quarters, if any, after the date on which the **Fund**’s registration statement became effective, presented in accordance with the schedules set forth in Rule 12-12 through 12-14 of Regulation S-X, which need not be audited. The complete portfolio holdings required by this paragraph (b)(1)(iv) must be made publicly available not later than 60 days after the close of the fiscal quarter.

(2) The website address relied upon for compliance with this rule may not be the address of the Commission’s electronic filing system.

* Effective January 24, 2023 with a compliance date of July 24, 2024, references to “Company” will be replaced by references to “Fund” and references to “Rule 30e-2” will be deleted.

** Effective January 24, 2023 with a compliance date of July 24, 2024, bracketed clause to be deleted.

(3) The materials that are accessible in accordance with paragraph (b)(1) of this rule must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper.

(4) Persons accessing the materials specified in paragraph (b)(1) of this rule must be able to retain, permanently free of charge, an electronic version of such materials in a format, or formats, that meet the conditions of paragraph (b)(3) of this rule.

(5) The conditions set forth in paragraphs (b)(1) through (b)(4) of this rule shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (b)(1) of this rule are not available for a time in the manner required by paragraphs (b)(1) through (b)(4) of this rule, provided that:

(i) The *[Company]** has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(1) through (b)(4) of this rule; and

(ii) The *[Company]** takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (b)(1) through (b)(4) of this rule, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (b)(1) through (b)(4) of this rule.

(c) *Notice*. A paper notice (“*Notice*”) meeting the conditions of this paragraph (c) must be sent to the shareholder within 70 days after the close of the period for which the *Report* is being made. The *Notice* may contain only the information specified by paragraphs (c)(1), (2), and (3) of this rule, and may include pictures, logos, or similar design elements so long as the design is not misleading and the information is clear.

(1) The *Notice* must be written using plain English principles pursuant to paragraph (d) of this rule and:

(i) Contain a prominent legend in bold-face type that states “[An] Important Report[s] to [Shareholders] of *[Fund]* [is/are] Now Available Online and In Print by Request.” The *Notice* may also include information identifying the *Fund*, the *Fund*’s sponsor (including any investment adviser or sub-adviser to the *Fund*), a variable annuity or variable life insurance contract or insurance company issuer thereof, or a financial intermediary through which shares of the *Fund* are held.

(ii) State that the *Report* contains important information about the *Fund*, including its portfolio holdings and financial statements. The statement may also include a brief listing of other types of information contained in the *Report*.

* Effective January 24, 2023 with a compliance date July 24, 2024, references to “Company” will be replaced by references to “Fund.”

(iii) State that the **Report** is available at the website address specified in the **Notice** or, upon request, by mail, and encourage the shareholder to access and review the **Report**.

(iv) Include a website address where the **Report** and other materials specified in paragraph (b)(1) of this rule are available. The website address must be specific enough to lead investors directly to the documents that are required to be accessible under paragraph (b)(1) of this rule, rather than to the home page or section of the website other than on which the documents are posted. The website may be a central site with prominent links to each document. In addition to the website address, the Notice may contain any other equivalent method or means to access the Report or other materials specified in paragraph (b)(1) of this rule.

(v) Provide a toll-free (or collect) telephone number to contact the [Company]* or the shareholder's financial intermediary, and:

(A) Provide instructions describing how a shareholder may request a paper or email copy of the **Report** and other materials specified in paragraph (b)(1) of this rule at no charge, and an indication that the shareholder will not otherwise receive a paper or email copy;

(B) Explain that the shareholder can at any time elect to receive print reports in the future and provide instructions describing how a shareholder may make that election (e.g., by contacting the [Company]* or by contacting the shareholder's financial intermediary); and

(C) If applicable, provide instructions describing how a shareholder can elect to receive shareholder reports or other documents and communications by electronic delivery.

(2) The **Notice** may include additional methods by which a shareholder can contact the [Company]* or the shareholder's financial intermediary (e.g., by email or through a website), which may include any information needed to identify the shareholder.

(3) A **Notice** [relating to a **Report** required by Rule 30e-1]* may include content from the Report if such content is set forth after the information required by paragraph (c)(1) of this rule.

(4) The **Notice** may not be incorporated into, or combined with, another document, except that the **Notice** may incorporate or combine one or more other **Notices**.

(5) The **Notice** must be sent separately from other types of shareholder communications and may not accompany any other document or materials; provided, however, that the **Notice** may accompany:

(i) One or more other **Notices**;

* Effective January 24, 2023 with a compliance date of July 24, 2024, bracketed clause to be deleted and references to "Company" are to be replaced by "Fund."

(ii) A current [*Summary Prospectus*,]* *Statutory Prospectus*, *Statement of Additional Information*, or Notice of Internet Availability of Proxy Materials under Rule 14a-16;

(iii) In the case of a *Fund* held in a separate account funding a variable annuity or variable life insurance contract, such contract or the *Statutory Prospectus* and *Statement of Additional Information* for such contract; or

(iv) The shareholder's account statement.

(6) A *Notice* required by this paragraph (c) will be considered transmitted to a shareholder of record if the conditions set forth in Rule 30e-1(f) [of the Investment Company Act of 1940], [Rule 30e-2(b)] [of the Investment Company Act of 1940],]* Rule 14a-3(e) [of the Securities Exchange Act of 1934], or Rule 14c-3(c) [of the Securities Exchange Act of 1934] are satisfied with respect to that shareholder.

(d) *Plain English requirements.*

(1) To enhance the readability of the *Notice*, plain English principles must be used in the organization, language, and design of the Notice.

(2) The Notice must be drafted so that, at a minimum, it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(e) *Delivery of paper copy upon request.* A paper copy of any of the materials specified in paragraph (b)(1) of this rule must be transmitted to any person requesting such a copy, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, within three business days after a request for a paper copy is received.

(f) *Investor elections to receive future reports in paper.*

(1) This rule may not be relied upon to transmit a Report to a shareholder if the shareholder has notified the [*Company*]* (or the shareholder's financial intermediary) that the shareholder wishes to receive paper copies of shareholder reports at any time after the [*Company*]* has first notified the shareholder of its intent to rely on the rule or provided a *Notice* to the shareholder.

* Effective January 24, 2023 with a compliance date of July 24, 2024, references to "Company" are to be replaced by "Fund" and bracketed references to "Summary Prospectus" and "Rule 30e-2(b) of the Investment Company Act of 1940" to be deleted.

(2) A shareholder who has notified the [*Company*]* (or the shareholder’s financial intermediary) that the shareholder wishes to receive paper copies of shareholder reports with respect to a *Fund* will be deemed to have requested paper copies of shareholder reports with respect to:

(i) Any and all current and future *Funds* held through an account or accounts with:

(A) The *Fund*’s transfer agent or principal underwriter or agent thereof for the same “group of related investment companies” as such term is defined in Rule 0-10; or

(B) A financial intermediary; and

(ii) Any and all *Funds* held currently and in the future in a separate account funding a variable annuity or variable life insurance contract.

(g) *Delivery of other documents.* This rule may not be relied upon to transmit a copy of a *Fund*’s currently effective *Statutory Prospectus* or *Statement of Additional Information*, or both, under the Securities Act of 1933 as otherwise permitted by paragraph (d) of Rule 30e-1.

(h) *Definitions.* For purposes of this rule:

[(1) *Company* means a *Fund* required to transmit a report to shareholders pursuant to Rule 30e-1 or a unit investment trust required to transmit a report to shareholders pursuant to Rule 30e-2.] [Effective January 24, 2023 with a compliance date of July 24, 2024, this paragraph to be deleted]

(2) *Fund* means a registered management company and any separate series of the management company.

Effective January 24, 2023 with a compliance date of July 24, 2024, Paragraph (2) is renumbered (1) and restated as follows:

(1) *Fund* means a management company registered on Form N-2 or Form N-3 and any separate series of the management company that is required to transmit a report to shareholders pursuant to Rule 30e-1.

(3) *Statement of Additional Information* means the statement of additional information required by Part B of the applicable registration form. [Effective January 24, 2023 with a compliance date of July 24, 2024, this paragraph to be renumbered (2).]

* Effective January 23, 2024 with a compliance date of July 24, 2024, references to “Company” are to be replaced by “Fund.”

(4) *Statutory Prospectus* means a prospectus that satisfies the requirements of section 10(a) of the Securities Act of 1933. [Effective January 24, 2023 with a compliance date of July 24, 2024, this paragraph to be renumbered (3).]

[(5) *Summary Prospectus* means the summary prospectus described in paragraph (b) of Rule 498 under the Securities Act of 1933.] [To be deleted effective July 24, 2024]

NOTE TO Rule 30e-3. For a discussion of how the conditions and requirements of this rule may apply in the context of investors holding *Fund* shares through financial intermediaries, see Investment Company Release No. 33115 (June 5, 2018).

Rule 30h-1 Applicability of Section 16 of the Exchange Act to Section 30(h).

(a) The filing of any statement prescribed under section 16(a) of the Securities Exchange Act of 1934 shall satisfy the corresponding requirements of section 30(h) of the Investment Company Act of 1940.

(b) The rules under section 16 of the Securities Exchange Act of 1934 shall apply to any duty, liability or prohibition imposed with respect to a transaction involving any security of a registered *closed-end company* under section 30(h) of the Act.

(c) No statements need be filed pursuant to section 30(h) of the Act by an *affiliated person* of an *investment adviser* in his or her capacity as such if such *person* is solely an *employee*, other than an officer, of such *investment adviser*.

Section 31. Accounts and records. [15 U.S.C. 80a-30]

(a) Maintenance of Records.—

(1) *In general.*—Each registered *investment company*, and each *underwriter, broker, dealer, or investment adviser* that is a *majority-owned subsidiary* of such a company, shall maintain and preserve such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934) for such period or periods as the *Commission*, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Each *investment adviser* that is not a *majority-owned subsidiary* of, and each depositor of any registered *investment company*, and each *principal underwriter* for any registered *investment company* other than a *closed-end company*, shall maintain and preserve for such period or periods as the *Commission* shall prescribe by rules and regulations, such records as are necessary or appropriate to record such *person's* transactions with such registered company. Each person having custody or use of the *securities, deposits, or credits* of a registered *investment company* shall maintain and preserve all records that relate to the custody or use by such *person* of the *securities, deposits, or credits* of the registered *investment company* for such period or periods as the *Commission*, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.

(2) *Minimizing compliance burden.*—In exercising its authority under this subsection, the *Commission* shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary record-keeping by, and minimize the compliance burden on, *persons* required to maintain records under this subsection (hereafter in this section referred to as ‘subject *persons*’). Such steps shall include considering, and requesting public comment on—

- (A) feasible alternatives that minimize the recordkeeping burdens on subject *persons*;
- (B) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through *Commission* examination;
- (C) the costs associated with maintaining the information that would be required to be reflected in such records; and
- (D) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

(b) *Examinations of Records.*—

(1) *In general.*—All records required to be maintained and preserved in accordance with subsection (a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the *Commission*, or any member or representative thereof, as the *Commission* may prescribe.

(2) *Availability.*—For purposes of examinations referred to in paragraph (1), any subject *person* shall make available to the *Commission* or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the *Commission* or its representatives may reasonably request.

(3) *Commission Action.*—The *Commission* shall exercise its authority under this subsection with due regard for the benefits of internal compliance policies and procedures and the effective implementation and operation thereof.

(4) *Records of Persons with Custody or Use.*—

(A) *In General.*—Records of *persons* having custody or use of the *securities*, deposits, or credits of a registered *investment company* that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the *Commission*, as the *Commission* deems necessary or appropriate in the public interest or for the protection of investors.

(B) *Certain Persons Subject to Other Regulation.*—Any *person* that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under

subparagraph (A), by providing to the *Commission* a detailed listing, in writing, of the *securities*, deposits, or credits of the registered *investment company* within the custody or use of such *person*.

(c) **Regulatory Authority.**—The *Commission* may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the accounting policies and principles to be followed by registered *investment companies* in maintaining their accounting records and in preparing financial statements required pursuant to this title.

(d) **Exemption Authority.**—The *Commission*, upon application made by any registered *investment company*, may by order exempt a specific transaction or transactions from the provisions of any rule or regulation made pursuant to subsection (c), if the *Commission* finds that such rule or regulation should not reasonably be applied to such transaction.

Rule 31a-1 *Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.*

(a) Every registered *investment company*, and every *underwriter, broker, dealer, or investment adviser* which is a *majority-owned subsidiary* of such a company, shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for financial statements required to be filed pursuant to Section 30 of the Investment Company Act of 1940 and of the auditor's certificates relating thereto.

(b) Every registered *investment company* shall maintain and keep current the following books, accounts, and other documents:

(1) Journals (or *other records* of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemptions of its own securities), all receipts and deliveries of securities (including certificate numbers if such detail is not recorded by *custodian* or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the *person* through or from whom purchased or received or to whom sold or delivered. In the case of a money market *fund*, also identify the provider of any *Demand feature* or *Guarantee* (as defined in Rule 2a-7(a)(9) or Rule 2a-7(a)(16) respectively) and give a brief description of the nature of the *Demand feature* or *Guarantee* (e.g., *Unconditional demand feature, conditional demand feature*, letter of credit, or bond insurance) and, in a *subsidiary portfolio investment record*, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, *value*, and account for each investment.

(2) General and auxiliary ledgers (or *other records*) reflecting all assets, liability, reserve, capital, income and expense accounts, including:

(i) Separate ledger accounts (or *other records*) reflecting the following: (a) Securities in transfer; (b) Securities in physical possession; (c) Securities borrowed and securities loaned; (d) Monies borrowed and monies loaned (together with a record of the collateral therefor and substitutions in such collateral); (e) Dividends and interest received; (f) Dividends receivable and interest accrued.

Instruction: (a) and (b) of this subdivision shall be stated in terms of securities quantities only; (c) and (d) of this subdivision shall be stated in dollar *amounts* and securities quantities as appropriate; (e) and (f) of this subdivision shall be stated in dollar *amounts* only.

(ii) Separate ledger accounts (or *other records*) for each portfolio security, showing (as of trade dates) (a) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and (b) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or *other records*) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the *amount* and declaration ex-dividend, and *payment* dates of each dividend declared thereon.

(iii) Separate ledger accounts (or *other records*) for each *broker-dealer, bank* or other *person* with or through which transactions in portfolio securities are effected, showing each purchase or sale of securities with or through such *persons*, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the *commissions* or other compensation paid to such *persons*. Purchases or sales effected during the same day at the same price may be aggregated.

(iv) Separate ledger accounts (or *other records*), which may be maintained by a transfer agent or registrar, showing for each shareholder of record of the *investment company* the number of *shares* of capital stock of the company held. In respect of *share* accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued *shares* by the owner thereof, etc.), details shall be available as to the dates and number of *shares* of each accumulation, and except with respect to already issued *shares* deposited by the owner thereof, prices of each such accumulation.

(3) A securities record or ledger reflecting separately for each portfolio security as of trade date all “long” and “short” positions carried by the *investment company* for its own account and showing the location of all securities long and the off-setting position to all securities short. The record called for by this paragraph shall not be required in circumstances under which all portfolio securities are maintained by a *bank* or *banks* or

a member or members of a *national securities exchange* as *custodian* under a custody agreement or as agent for such *custodian*.

(4) Corporate *charters*, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and *directors'* or trustees' meetings; and minute books of *directors'* or trustees' committee and *advisory board* or advisory committee meetings.

(5) A record of each *brokerage* order given by or in behalf of the *investment company* for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the *broker*, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the *person* who placed the order in behalf of the *investment company*.

(6) A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph (b)(5) of this section.

(7) A record of all puts, calls, spreads, straddles, and other options in which the *investment company* has any direct or indirect interest or which the *investment company* has granted or *guaranteed*; and a record of any contractual commitments to purchase, sell, receive or deliver securities or other property (but not including open orders placed with broker-dealers for the purchase or sale of securities, which may be cancelled by the company on notices without penalty or cost of any kind); containing, at least, an identification of the security, the number of units involved, the option price, the date of maturity, the date of issuance, and the person to whom issued.

(8) A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(9) A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named *brokers* or *dealers* and the division of *brokerage commissions* or other compensation on such purchase and sale orders among named *persons* were made during such quarter. The record shall indicate the consideration given to (i) sales of *shares* of the *investment company* by *brokers* or *dealers*, (ii) the supplying of services or benefits by *brokers* or *dealers* to the *investment company*, its *investment adviser* or *principal underwriter* or any *persons* affiliated therewith, and (iii) any other considerations other than the technical qualifications of the *brokers* and *dealers* as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of *brokerage commissions* or other compensation. The

record shall also include the identities of the *persons* responsible for the determination of such allocation and such division of *brokerage commissions* or other compensation.

(10) A record in the form of an appropriate memorandum identifying the *person* or *persons*, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of this section.

(11) Files of all advisory *material* received from the *investment adviser*, any *advisory board* or advisory committee, or any other *persons* from whom the *investment company* accepts investment advice, other than *material* which is furnished solely through uniform publications distributed generally.

(12) The term “*other records*” as used in the expressions “journals (or *other records* of original entry)” and “ledger accounts (or *other records*)” shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

(c) Every *underwriter*, *broker*, or *dealer* which is a *majority-owned subsidiary* of a registered *investment company* shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by *brokers* and *dealers* by rule adopted under Section 17 of the Securities Exchange Act of 1934.

(d) Every depositor of any registered *investment company*, and every *principal underwriter* for any registered *investment company* other than a closed-end *investment company* shall maintain such accounts, books and other documents as are required to be maintained by *brokers* and *dealers* by rule adopted under Section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such *person’s* transactions with such registered *investment company*.

(e) Every *investment adviser* which is a *majority-owned subsidiary* of a registered *investment company* shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by registered *investment advisers* by rule adopted under Section 204 of the Investment Advisers Act of 1940.

(f) Every *investment adviser* not a *majority-owned subsidiary* of a registered *investment company* shall maintain such accounts, books and other documents as are required to be maintained by registered *investment advisers* by rule adopted under Section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such *person’s* transactions with such registered *investment company*.

Rule 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) Every registered *investment company* shall:

(1) Preserve permanently, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (1) through (4) of Rule 31a-1(b);

(2) Preserve for a period not less than six years from the end of the *fiscal year* in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to Rule 31a-1(b)(5) through (12) and all vouchers, memoranda, correspondence, checkbooks, *bank* statements, cancelled checks, cash reconciliations, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, including schedules evidencing and supporting each computation of an adjustment to net asset *value* of the *investment company* shares based on swing pricing policies and procedures established and implemented pursuant to Rule 22c-1(a)(3) all schedules evidencing and supporting each computation of a liquidity fee by a money market fund pursuant to Rule 2a-7(c)(2), and other documents required to be maintained by Rule 31a-1(a) and not enumerated in Rule 31a-1(b).

(3) Preserve for a period not less than 6 years from the end of the *fiscal year* last used, the first 2 years in an easily accessible place, any *advertisement*, pamphlet, circular, *form letter* or other sales literature addressed to or intended for *distribution* to prospective investors;

(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;

(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*;

(6) Preserve for a period not less than six years, the first two years in an easily accessible place, any documents or other written information considered by the directors of the investment company pursuant to section 15(c) of the Investment Company Act of 1940 in approving the terms or renewal of a contract or agreement between the company and an investment adviser; and

(7) Preserve for a period not less than six years, the first two years in an easily accessible place, any shareholder report required by Rule 30e-1 (including any version posted on a website or otherwise provided electronically) that is not filed with the *Commission* in the exact form in which it was used.

(b) Every *underwriter, broker, or dealer* which is a *majority-owned subsidiary* of a registered *investment company* shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by *brokers* and *dealers* by rule adopted under Section 17 of the Securities Exchange Act of 1934.

(c) Every depositor of any registered *investment company*, and every *principal underwriter* for any registered *investment company* other than a *closed-end company*, shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by *brokers* and *dealers* by rule adopted under Section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such *person's* transactions with such registered *investment company*.

(d) Every *investment adviser* which is a *majority-owned subsidiary* of a registered *investment company* shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by *investment advisers* by rule adopted under Section 204 of the Investment Advisers Act of 1940.

(e) Every *investment adviser* not a *majority-owned subsidiary* of a registered *investment company* shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by registered *investment advisers* by rule adopted under Section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such *person's* transactions with such registered *investment company*.

(f) *Micrographic and electronic storage permitted—*

(1) *General.* The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an *investment company* on:

- (i) Micrographic media, including microfilm, microfiche, or any similar medium; or
- (ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The *investment company*, or *person* that maintains and preserves records on its behalf, must:

- (i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
- (ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) or the *directors* of the company may request:
 - (A) A legible, true, and complete copy of the record in the medium and format in which it is stored;
 - (B) A legible, true, and complete printout of the record; and

- (C) Means to access, view, and print the records; and
- (iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.
- (3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the *investment company*, or *person* that maintains and preserves records on its behalf, must establish and maintain procedures:
- (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
- (ii) To limit access to the records to properly authorized *personnel*, the *directors* of the *investment company*, and the Commission (including its examiners and other representatives); and
- (iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.
- (4) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any record, book or other document may be destroyed in accordance with a plan previously submitted to and approved by the Commission. A plan shall be deemed to have been approved by the Commission if notice to the contrary has not been received within 90 days after submission of the plan to the Commission.

Rule 31a-3 Records prepared or maintained by other than person required to maintain and preserve them.

- (a) If the records required to be maintained and preserved pursuant to the provisions of Rule 31a-1 and Rule 31a-2 are prepared or maintained by others on behalf of the *person* required to maintain and preserve such records, the *person* required to maintain and preserve such records shall obtain from such other *person* an agreement in writing to the effect that such records are the property of the *person* required to maintain and preserve such records and will be surrendered promptly on request.
- (b) In cases where a *bank* or member of a *national securities exchange* acts as *custodian*, transfer agent, or dividend disbursing agent, compliance with this section shall be considered to have been met if such *bank* or *exchange* member agrees in writing to make any records relating to such service available upon request and to preserve for the periods prescribed in Rule 31a-2 any such records as are required to be maintained by Rule 31a-1.

Rule 31a-4 Records to be maintained and preserved by registered investment companies relating to fair value determinations.

- (a) *Appropriate documentation.* Every registered investment company shall maintain appropriate documentation to support fair value determinations made pursuant to Rule 2a-5 [under the Investment Company Act of 1940] for at least six years from the time that the determination was made, the first two years in an easily accessible place.

(b) *Records when designating.* If the board of a registered investment company has designated performance of fair value determinations to a valuation designee under rule 2a-5(b), in addition to the records required in paragraph (a) of this section, the registered investment company must maintain copies of:

- (1) The reports and other information provided to the board as required under rule 2a-5(b)(1) for at least six years after the end of the fiscal year in which the documents were provided to the board, the first two years in an easily accessible place; and
- (2) A specified list of the investments or investment types whose fair value determination has been designated to the valuation designee to perform pursuant to rule 2a-5(b) for a period beginning with the designation and ending at least six years after the end of the fiscal year in which the designation was terminated, in an easily accessible place until two years after such termination.

(c) *Party to maintain.* If the board of a registered investment company has designated performance of fair value determinations to its investment adviser under rule 2a-5(b), such investment adviser shall maintain the records required by this section. If the investment adviser is not so designated, the fund shall maintain such records.

Section 32. Accountants and auditors. [15 U.S.C. 80a-31]

(a) It shall be unlawful for any registered *management company* or registered *face-amount certificate company* to file with the Commission any financial statement signed or *certified* by an independent public accountant, unless—

- (1) such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the *fiscal year* or before the annual meeting of stockholders in that year by the vote, cast in *person*, of a majority of those members of the board of *directors* who are not *interested persons* of such registered company;
- (2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of those members of the board of *directors* who are not *interested persons* of such registered company, cast in *person* at a meeting called for the purpose of voting on such action;
- (3) the employment of such accountant shall have been conditioned upon the right of the company by vote of a *majority of the outstanding voting securities* at any meeting called for the purpose to terminate such employment forthwith without any penalty; and
- (4) such certificate or report of such accountant shall be addressed both to the board of *directors* of such registered company and to the security holders thereof.

If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a

majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in Section 16(c) [of the Investment Company Act of 1940], no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding *shares* of beneficial interest in such trust in the same manner as is provided in Section 16(c) [of the Investment Company Act of 1940] in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the *shares* of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the *custodian*, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of Section 2(a) [of the Investment Company Act of 1940] as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection.

(b) No registered *management company* or registered *face-amount certificate company* shall file with the Commission any financial statement in the preparation of which the *controller* or other principal accounting officer or *employee* of such company participated, unless such *controller*, officer or *employee* was selected, either by vote of the holders of such company's *Voting securities* at the last annual meeting of such security holders, or by the board of *directors* of such company.

(c) The Commission is authorized, by rules and regulations or order in the public interest or for the protection of investors, to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered *investment companies* for such period or periods as the Commission may prescribe, and to make the same available for inspection by the Commission or any member or representative thereof.

Rule 32a-1 Exemption of certain companies from affiliation provisions of section 32(a).

A registered *investment company* shall be exempt from the provisions of paragraph (1) of Section 32(a) of the Investment Company Act of 1940, insofar as said paragraph requires that independent public accountants for such company be selected by a majority of certain members of the board of *directors*, if:

- (a) Such company meets the conditions of paragraphs (1) to (8), inclusive, of Section 10(d) of the Investment Company Act of 1940; and
- (b) Such accountants are selected by a majority of all the members of the board of *directors*.

Rule 32a-2 Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts.

(a) A registered *separate account* shall be exempt from the requirement under paragraph (2) of Section 32(a) of the Investment Company Act of 1940 that selection of an independent public accountant shall have been submitted for ratification or rejection at the next succeeding annual meeting of security owners, subject to the following conditions:

(1) Such registered *separate account* qualifies for exemption from Section 14(a) of the Investment Company Act of 1940 pursuant to Rule 14a-2, or is exempt therefrom by order of the Commission upon application; and

(2) The selection of such accountant shall be submitted for ratification or rejection to variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts participating in such account, provided that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

Rule 32a-3 Exemption from provision of section 32(a)(1) regarding the time period during which a registered management investment company must select an independent public accountant.

(a) A registered management *investment company* (“company”) organized in a jurisdiction that does not require it to hold regular annual meetings of its stockholders, and which does not hold a regular annual stockholders’ meeting in a given *fiscal year*, shall be exempt in that *fiscal year* from the requirement of Section 32(a)(1) of the Investment Company Act of 1940 that the independent public accountant (“accountant”) be selected at a board of *directors* meeting held within 30 days before or after the beginning of the *fiscal year* or before the annual meeting of stockholders in that year, provided, that such company is either:

(1) In a *set of investment companies* as defined in paragraph (b) of this rule, if not all the members of such set have an identical *fiscal year* end and if such company selects an accountant at a board of *directors* meeting held within 90 days before or after the beginning of that *fiscal year*; or

(2) Not in a *set of investment companies*, or is in a set, each of whose members has the same *fiscal year* end, and if such company selects an accountant at a board of *directors* meeting held within 30 days before or 90 days after the beginning of that *fiscal year*.

(b) For purposes of this rule, “*set of investment companies*” means any two or more registered management *investment companies* that hold themselves out to investors as related companies for purposes of investment and investor services, and (1) that have a common *investment adviser* or *principal underwriter*, or (2) if the *investment adviser* or *principal underwriter* of one of the companies is an *affiliated person* as defined in Section 2(a)(3)(C) of the Investment Company Act of 1940 of the *investment adviser* or *principal underwriter* of each of the other companies.

Rule 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 Investment Company Act of 1940 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*.

Section 33. Filing of documents with Commission in civil actions. [15 U.S.C. 80a-32]

Every registered *investment company* which is a party and every *affiliated person* of such company who is a party defendant to any action or claim by a registered *investment company* or a security holder thereof in a derivative or representative capacity against an officer, *director*, *investment adviser*, trustee, or depositor of such company, shall file with the Commission, unless already so filed, (1) a copy of all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim, (2) a copy of any proposed settlement, compromise, or discontinuance of such action, and (3) a copy of such motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any document referred to in clause (1) or (2)—

- (A) is delivered to such company or party defendant, such document shall be filed with the Commission not later than ten days after the receipt thereof; or
- (B) is filed in such court or delivered by such company or party defendant, such document shall be filed with the Commission not later than five days after such filing or delivery.

Section 34. Destruction and falsification of reports and records. [15 U.S.C. 80a-33]

- (a) It shall be unlawful for any *person*, except as permitted by rule, regulation, or order of the Commission, willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to Section 31(a) or 32(c) [of the Investment Company Act of 1940].
- (b) It shall be unlawful for any *person* to make any untrue statement of a *material* fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this title or the keeping of which is required pursuant to section 31(a)

of the Act. It shall be unlawful for any *person* so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being *materially* misleading. For the purposes of this subsection, any part of any such document which is signed or *certified* by an accountant or auditor in his capacity as such shall be deemed to be made, filed, transmitted, or kept by such accountant or auditor, as well as by the *person* filing, transmitting, or keeping the complete document.

Rule 34b-1 Sales literature deemed to be misleading.

Any *advertisement*, pamphlet, circular, *form letter*, or other sales literature addressed to or intended for *distribution* to prospective investors that is required to be filed with the Commission by Section 24(b) of the Investment Company Act of 1940 (for purposes of paragraph (a) and (b) of this section “sales literature”) will have omitted to state a fact necessary in order to make the statements made therein not *materially* misleading unless the sales literature includes the information specified in paragraphs (a) and (b) of this section. [Any registered investment company or business development company advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors in connection with a public offering (for purposes of paragraph (c) of this section, “sales literature”) will have omitted to state a fact necessary in order to make the statements therein not materially misleading unless the sales literature includes the information specified in paragraph (c) of this section.] [Compliance date for bracketed text in this paragraph is July 24, 2024]

Note to Rule 34b-1 introductory text: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the *investment company*, *underwriter*, or *dealer* of any obligations with respect to the sales literature under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in *investment company* sales literature are misleading, see Rule 156 under the Securities Act of 1933.

(a) Sales literature for a money market *fund* shall contain the information required by paragraph (b)(4) of Rule 482 under the Securities Act of 1933 [reproduced as Appendix B], presented in the manner required by paragraph (b)(5) of Rule 482 under the Securities Act of 1933.

(b)(1) Except as provided in paragraph (b)(3) of this section:

(i) In any sales literature that contains performance data for an *investment company*, include the disclosure required by paragraph (b)(3) of Rule 482 under the Securities Act of 1933, presented in the manner required by paragraph (b)(5) of Rule 482 under the Securities Act of 1933.

- (ii) In any sales literature for a money market *fund*:
- (A) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or *distributions* made by the money market *fund* with a quotation of current yield specified by paragraph (e)(1)(i) of Rule 482 under the Securities Act of 1933;
 - (B) Accompany any quotation of the money market fund's tax equivalent yield or tax equivalent effective yield with a quotation of current yield as specified in paragraph (e)(1)(iii) of Rule 482 under the Securities Act of 1933; and
 - (C) Accompany any quotation of the money market *fund's* total return with a quotation of the money market *fund's* current yield specified in paragraph (e)(1)(i) of Rule 482 under the Securities Act of 1933. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a *material* difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market *fund* than the total return quotation.
- (iii) In any sales literature for an *investment company* other than a money market *fund* that contains performance data:
- (A) Include the total return information required by paragraph (d)(3) of Rule 482 under the Securities Act of 1933;
 - (B) Accompany any quotation of performance adjusted to reflect the effect of taxes (not including a quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or *distributions* made by the company) with the quotations of total return specified by paragraph (d)(4) of Rule 482 under the Securities Act of 1933;
 - (C) If the sales literature (other than sales literature for a company that is permitted under Rule 35d-1(a)(4) to use a name suggesting that the company's *distributions* are exempt from federal income tax or from both federal and state income tax) represents or implies that the company is managed to limit or control the effect of taxes on company performance, include the quotations of total return specified by paragraph (d)(4) of Rule 482 under the Securities Act of 1933;
 - (D) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or *distributions* made by the company with a quotation of current yield specified by paragraph (d)(1) of Rule 482 under the Securities Act of 1933; and
 - (E) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or *distributions* made by the company with a quotation of tax equivalent yield specified in paragraph (d)(2) and current yield specified by paragraph (d)(1) of Rule 482 under the Securities Act of 1933.

(2) Any performance data included in sales literature under paragraphs (b)(1)(ii) or (iii) of this section must meet the currentness requirements of paragraph (g) of Rule 482 under the Securities Act of 1933.

(3) The requirements specified in paragraph (b)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Investment Company Act of 1940 containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor do the requirements of paragraphs (d)(3)(ii), (d)(4)(ii), and (g) of Rule 482 under the Securities Act of 1933 apply to any such periodic report containing any other performance data.

[(c)(1) Except as provided in paragraph (c)(2) of this section:

(i) In any sales literature that contains fee and expense figures for a registered investment company or business development company, include the disclosure required by paragraph (i) of Rule 482 under the Securities Act of 1933;

(ii) Any fee and expense information included in sales literature must meet the timeliness requirements of paragraph (j) of Rule 482 under the Securities Act of 1933.

(2) The requirements specified in paragraph (c)(1) of this section do not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act or to other reports pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 containing fee and expense information; nor do the requirements of paragraphs (i) and (j) of Rule 482 under the Securities Act of 1933 or paragraph (c)(3) of Rule 433 under the Securities Act of 1933 apply to any such report containing fee and expense information.]*

*[Compliance date for bracketed text in this paragraph (c) is July 24, 2024]

NOTE: Sales literature (except that of a money market fund) containing a quotation of yield or tax equivalent yield must also contain the total return information. In the case of sales literature, the currentness provisions apply from the date of distribution and not the date of submission for publication.

Section 35. Unlawful representations and names. [15 U.S.C. 80a-34]

(a) Misrepresentation of *Guarantees*.

(1) *In General*. It shall be unlawful for any *person*, issuing or selling any security of which a registered *investment company* is the *issuer*, to represent or imply in any manner whatsoever that such security or company—

(A) has been *guaranteed*, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

(B) has been insured by the Federal Deposit Insurance Corporation; or

(C) is *guaranteed* by or is otherwise an obligation of any *bank* or insured depository institution.

(2) *Disclosures.* Any *person* issuing or selling the securities of a registered *investment company* that is advised by, or sold through, a *bank* shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

(3) *Definitions.* The terms ‘insured depository institution’ and ‘appropriate Federal *banking* agency’ have the same meanings given in section 3 of the Federal Deposit Insurance Act.

(b) It shall be unlawful for any *person* registered under any section of this title to represent or imply in any manner whatsoever that such *person* has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or officer thereof.

(c) No provision of subsection (a) or (b) shall be construed to prohibit a statement that a *person* or security is registered under the Investment Company Act of 1940, the Securities Act of 1933, or the Securities Exchange Act of 1934, if such statement is true in fact and if the effect of such registration is not misrepresented.

(d) *Deceptive or Misleading Names.* It shall be unlawful for any registered *investment company* to adopt as a part of the name or title of such company, or of any securities of which it is the *issuer*, any word or words that the Commission finds are *materially* deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are *materially* deceptive or misleading.

Rule 35d-1 Investment company names.

[Names Rule Compliance Date: December 11, 2025 for Fund groups with net assets of US \$1 billion or more and June 11, 2026 for fund groups with net assets of less than US \$1 billion .]

(a) *Materially deceptive and misleading fund names.* For purposes of section 35(d) of the [Investment Company] Act (15 U.S.C. 80a-34(d)), a materially deceptive and misleading name of a *fund* includes:

(1) *Names suggesting guarantee or approval by the United States Government.* A name suggesting that the *fund* or the securities issued by it are guaranteed, sponsored, recommended, or approved by the United States Government or any United States Government agency or instrumentality, including any name that uses the words “guaranteed” or “insured” or similar terms in conjunction with the words “United States” or “U.S. Government.”

(2) *Names suggesting an investment focus.* A name that includes terms suggesting that the *fund* focuses its investments in: a particular type of investment or investments; a

particular industry or group of industries; particular countries or geographic regions; or investments that have, or whose issuers have, particular characteristics (e.g., a name with terms such as “growth” or “value,” or terms indicating that the *fund’s* investment decisions incorporate one or more environmental, social, or governance factors), unless:

(i) The *fund* has adopted a policy to invest, under normal circumstances, at least 80% of the value of its *assets* in investments in accordance with the investment focus that the *fund’s* name suggests. For a name suggesting that the *fund* focuses its investments in a particular country or geographic region, investments that are in accordance with the investment focus that the *fund’s* name suggests are investments that are tied economically to the particular country or geographic region suggested by its name;

(ii) The policy described in paragraph (a)(2)(i) of this section is a *fundamental policy*, or the *fund* has adopted a policy to provide the *fund’s* shareholders with at least 60 days’ prior notice of any change in the policy described in paragraph (a)(2)(i) of this section, and any change in the *fund’s* name that accompanies the change, that meets the provisions of paragraph (e) of this section; and

(iii) Any terms used in the *fund’s* name that suggest that the *fund* focuses its investments as described in paragraph (a)(2)(i) of this section are consistent with those terms’ plain English meaning or established industry use.

(3) *Tax-exempt funds.* A name suggesting that the *fund’s* distributions are exempt from Federal income tax or from both Federal and State income tax, unless:

(i) The *fund* has adopted a *fundamental policy*:

(A) To invest, under normal circumstances, at least 80% of the value of its *assets* in investments the income from which is exempt, as applicable, from Federal income tax or from both Federal and State income tax; or

(B) To invest, under normal circumstances, its *assets* so that at least 80% of the income that it distributes will be exempt, as applicable, from Federal income tax or from both Federal and State income tax; and

(ii) Any terms used in the *fund’s* name that suggest that the *fund* invests its *assets* as described in paragraph (a)(3)(i) of this section are consistent with those terms’ plain English meaning or established industry use.

(b) *Operation of policies and related recordkeeping.*

(1) The requirements of paragraph (a)(2)(i) and (a)(3)(i) of this section apply at the time a *fund* invests its *assets*, provided that:

(i) The *fund* must review its portfolio investments’ inclusion in the *fund’s* 80% *basket*, as defined in paragraph (g) of this section, at least quarterly. If, subsequent to an investment, the *fund* identifies that the requirements of paragraph (a)(2)(i) or

- (a)(3)(i) of this section, as applicable, are no longer met, the *fund* must make future investments in a manner that will bring the *fund* into compliance with those paragraphs as soon as reasonably practicable, and in all circumstances within 90 consecutive days of the *fund's* identification that those requirements are no longer met;
- (ii) If the *fund* departs from the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, in other-than-normal circumstances, the *fund* must come back into compliance with the requirements of those paragraphs within 90 consecutive days, measured from the time of the initial departure; and
- (iii) A *fund* may temporarily invest less than 80% of the value of its *assets* in accordance with the *fund's* investment focus as otherwise required by paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, to reposition or liquidate the *fund's assets* in connection with a reorganization, to *launch* the *fund*, or when notice of a change in a *fund's* policy as described in paragraph (a)(2)(ii) of this section has been provided to *fund* shareholders.
- (2) For the purpose of determining the *fund's* compliance with an investment policy adopted under paragraph (a)(2)(i) or (a)(3)(i)(A) of this section, in addition to any *derivatives instrument* that the *fund* includes in its *80% basket* because the *derivatives instrument* provides investment exposure to investments suggested by the *fund's* name, a *fund* may include in its *80% basket* a *derivatives instrument* that provides investment exposure to one or more of the market risk factors associated with the investment focus that the *fund's* name suggests.
- (3) A *fund* must maintain written records documenting its compliance under paragraphs (a) and (b) of this section, as applicable. A *fund* must maintain written records, at the time a *fund* invests its *assets*, documenting: whether the investment the *fund* makes is included in the *fund's 80% basket* and, if so, the basis for including such investment in the *fund's 80% basket*; and the value of the *fund's 80% basket*, as a percentage of the value of the *fund's assets*. A *fund* must maintain written records documenting its review of its portfolio investments' inclusion in the *fund's 80% basket*, as described in paragraph (b)(1)(i), including whether each investment is included in the *fund's 80% basket* and the basis for including such investment in the *80% basket*. If during the review of portfolio investments' inclusion in the *fund's 80% basket* or otherwise, the *fund* identifies that the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, are no longer met, the *fund* must maintain written records documenting: the date this was identified; and the reason for any departure from the policies described in paragraphs (a)(2)(i) and (a)(3)(i) of this section. If the *fund* departs from the requirements of paragraph (a)(2)(i) or (a)(3)(i) of this section, as applicable, in other-than-normal circumstances as described in paragraph (b)(1)(ii), or as described in paragraph (b)(1)(iii), the *fund* must keep records documenting: the date of any departure from the policies described in paragraphs (a)(2)(i) and (a)(3)(i) of this section; and the reason for any such departure (including why the *fund* determined that circumstances are

other-than-normal). A *fund* must maintain records of any notice sent to the *fund's* shareholders pursuant to paragraph (d) of this section. Written records documenting the *fund's* compliance under paragraphs (a) and (b) of this section must be maintained for a period of not less than six years following the creation of each required record (or, in the case of notices, following the date the notice was sent), the first two years in an easily accessible place.

(c) *Effect of compliance with policy adopted under paragraph (a)(2)(i) or (a)(3)(i)*. A *fund* name may be materially deceptive or misleading under section 35(d) of the Act even if the *fund* adopts and implements a policy under paragraph (a)(2)(i) or (a)(3)(i) of this section and otherwise complies with the requirements of paragraph (a)(2) or (a)(3) of this section, as applicable.

(d) *Notice*. A policy to provide a *fund's* shareholders with notice of a change in a *fund's* policy as described in paragraph (a)(2)(ii) of this section must provide that:

(1) The notice will be provided in plain English separately from any other documents (provided, however, that if the notice is delivered in paper form, it may be provided in the same envelope as other written documents);

(2) The notice will contain the following prominent statement, or similar clear and understandable statement, in bold-face type: "Important Notice Regarding Change in Investment Policy [and Name]", provided that

(i) If the notice is provided in paper form, the statement also will appear on the envelope in which the notice is delivered; and

(ii) If the notice is provided electronically, the statement also will appear on the subject line of the email communication that includes the notice or an equivalent indication of the subject of the communication in other forms of electronic media; and

(3) The notice must describe, as applicable, the *fund's* policy adopted under paragraph (a)(2)(i) of this section, the nature of the change to the policy, the *fund's* old and new names, and the effective date of any policy and/or name changes.

(e) *Unit investment trusts*. The requirements of paragraphs (a)(2)(i), (a)(3)(i), and (b)(3) of this section shall apply to any unit investment trust (as defined in section 4(2) of the Act (15 U.S.C. 80a-4(2)) only at the time of initial deposit of portfolio securities.

(f) *Unlisted registered closed-end funds and business development companies*. Notwithstanding the requirements of paragraph (a)(2)(ii) of this section, if the *fund* is a closed-end company or business development company, and the *fund* does not have shares that are listed on a national securities exchange, any policy adopted pursuant to paragraph (a)(2) of this section can be changed only if authorized by the vote of the majority of the outstanding voting securities of such *fund* unless:

(1) The *fund* conducts a tender or repurchase offer to allow shareholders to redeem shares, in accordance with all applicable Commission rules, in advance of any change in such policy;

(2) The *fund* provides the *fund's* shareholders with at least 60 days' prior notice of any change in such policy in advance of the tender or repurchase offer described in paragraph (f)(1) of this section;

(3) The tender or repurchase offer described in paragraph (f)(1) of this section is not *oversubscribed*; and

(4) In the event of a tender offer, the *fund* purchases shares at their net asset value.

(g) *Definitions.* For purposes of this section:

Assets means net *assets*, plus the amount of any borrowings for investment purposes. In determining the value of a *fund's assets* for purposes of this section, a *fund* must value each *derivatives instrument* using the instrument's notional amount (which must be converted to 10-year bond equivalents for interest rate derivatives and delta adjusted for options contracts) and must value each physical short position using the value of the asset sold short. The *fund* may reduce the value of its *assets* by excluding any cash and cash equivalents, and U.S. Treasury securities with remaining maturities of one year or less, up to the notional amount of the *derivatives instrument(s)* and the value of asset(s) sold short, and also exclude any closed-out derivatives positions if those positions result in no credit or market exposure to the *fund*. A *fund* must exclude from this calculation *derivatives instruments* used to hedge currency risks associated with one or more specific foreign-currency-denominated equity or fixed-income investments held by the *fund*, provided that such currency derivatives are entered into and maintained by the *fund* for hedging purposes and that the notional amounts of such derivatives do not exceed the value of the hedged investments (or the par value thereof, in the case of fixed-income investments) by more than 10 percent.

Derivatives instrument means any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument.

Eighty percent (80%) basket means investments that are invested in accordance with the investment focus that the *fund's* name suggests (or as described in paragraph (a)(3)(i) of this section).

Fund means a registered investment company or a business development company, including any separate series thereof.

Fundamental policy means a policy that a *fund* adopts under section 8(b)(3) of the [Investment Company] Act (15 U.S.C. 80a-8(b)(3)) or, in the case of a business development company, a policy that is changeable only if authorized by the vote of a majority of the outstanding voting securities of the *fund*.

Launch means a period, not to exceed 180 consecutive days, starting from the date the *fund* commences operations.

Oversubscribed means shareholders have tendered or requested repurchase of a greater number of shares than the *fund* has offered to purchase in accordance with applicable Commission rules.

Section 36. Breach of fiduciary duty. [15 U.S.C. 80a-35]

(a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a *person* who is, or at the time of the alleged misconduct was, serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving *personal* misconduct in respect of any registered *investment company* for which such *person* so serves or acts, or at the time of the alleged misconduct, so served or acted—

- (1) as officer, *director*, member of any *advisory board*, *investment adviser*, or depositor; or
- (2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

If such allegations are established, the court may enjoin such *persons* from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such *person* as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in Section 1(b) of [the Investment Company Act of 1940].

(b) For the purposes of this subsection, the *investment adviser* of a registered *investment company* shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of *payments* of a *material* nature, paid by such registered *investment company*, or by the security holders thereof, to such *investment adviser* or any *affiliated person* of such *investment adviser*. An action may be brought under this subsection by the Commission, or by a security holder of such registered *investment company* on behalf of such company, against such *investment adviser*, or any *affiliated person* of such *investment adviser*, or any other *person* enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or *payments*, for breach of fiduciary duty in respect of such compensation or *payments* paid by such registered *investment company* or by the security holders thereof to such *investment adviser* or *person*. With respect to any such action the following provisions shall apply:

- (1) It shall not be necessary to allege or prove that any defendant engaged in *personal* misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty.
- (2) In any such action approval by the board of *directors* of such *investment company* of such compensation or *payments*, or of contracts or other arrangements providing for

such compensation or *payments*, and ratification or approval of such compensation or *payments*, or of contracts or other arrangements providing for such compensation or *payments*, by the shareholders of such *investment company*, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

(3) No such action shall be brought or maintained against any *person* other than the recipient of such compensation or *payments*, and no damages or other relief shall be granted against any *person* other than the recipient of such compensation or *payments*. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the *amount* of compensation or *payment* received from such *investment company*, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or *payments* made in connection with transactions subject to Section 17 of this Act, or rules, regulations, or orders thereunder, or to *sales loads* for the *acquisition* of any security issued by a registered *investment company*.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this title for the purposes of Sections 9 and 49 of [the Investment Company Act of 1940], Section 15 of the Securities Exchange Act of 1934, or Section 203 of [the Investment Advisers Act of 1940] or (B) for an injunction to prohibit any *person* from serving in any of the capacities enumerated in subsection (a) of this section.

(c) For the purposes of subsections (a) and (b) of this section, the term “*investment adviser*” includes a corporate or other trustee performing the functions of an *investment adviser*.

Section 37. Larceny and embezzlement. [15 U.S.C. 80a-36]

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered *investment company* shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in Section 49. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

Section 38. Rules, regulations, and orders; general powers of the Commission. [15 U.S.C. 80a-37]

(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the

powers conferred upon the Commission elsewhere in this title, including rules and regulations defining accounting, technical, and trade terms used in this title, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify *persons*, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of *persons*, securities, or matters.

(b) The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under [the Investment Company Act of 1940], [the Investment Advisers Act of 1940], the Securities Act of 1933, the Securities Exchange Act of 1934, or the Trust Indenture Act of 1939, by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this title or any of such Acts.

(c) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Rule 38a-1 *Compliance procedures and practices of certain investment companies.*

(a) Each registered *investment company* and *business development company* (“*fund*”) must:

(1) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation of the Federal Securities Laws by the *fund*, including policies and procedures that provide for the oversight of compliance by each *investment adviser*, *principal underwriter*, *administrator*, and transfer agent of the *fund*;

(2) *Board approval.* Obtain the approval of the *fund’s* board of *directors*, including a majority of *directors* who are not *interested persons* of the *fund*, of the *fund’s* policies and procedures and those of each *investment adviser*, *principal underwriter*, *administrator*, and transfer agent of the *fund*, which approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the *Federal Securities Laws* by the *fund*, and by each *investment adviser*, *principal underwriter*, *administrator*, and transfer agent of the *fund*;

(3) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures of the *fund* and of each *investment adviser*, *principal underwriter*, *administrator*, and transfer agent and the effectiveness of their implementation;

(4) *Chief compliance officer.* Designate one individual responsible for administering the *fund’s* policies and procedures adopted under paragraph (a)(1) of this section:

(i) Whose designation and compensation must be approved by the *fund’s* board of *directors*, including a majority of the *directors* who are not *interested persons* of the *fund*;

- (ii) Who may be removed from his or her responsibilities by action of (and only with the approval of) the *fund's* board of *directors*, including a majority of the *directors* who are not *interested persons* of the *fund*;
 - (iii) Who must, no less frequently than annually, provide a written report to the board that, at a minimum, addresses:
 - (A) The operation of the policies and procedures of the *fund* and each *investment adviser, principal underwriter, administrator*, and transfer agent of the *fund*, any *material* changes made to those policies and procedures since the date of the last report, and any *material* changes to the policies and procedures recommended as a result of the annual review conducted pursuant to paragraph (a)(3) of this section; and
 - (B) Each *Material Compliance Matter* that occurred since the date of the last report; and
 - (iv) Who must, no less frequently than annually, meet separately with the *fund's* independent *directors*.
- (b) *Unit investment trusts.* If the *fund* is a *unit investment trust*, the *fund's principal underwriter* or depositor must approve the *fund's* policies and procedures and chief compliance officer, must receive all annual reports, and must approve the removal of the chief compliance officer from his or her responsibilities.
- (c) *Undue influence prohibited.* No officer, *director*, or *employee* of the *fund*, its *investment adviser*, or *principal underwriter*, or any *person* acting under such *person's* direction may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the *fund's* chief compliance officer in the performance of his or her duties under this section.
- (d) *Recordkeeping.* The *fund* must maintain:
- (1) A copy of the policies and procedures adopted by the *fund* under paragraph (a)(1) that are in effect, or at any time within the past five years were in effect, in an easily accessible place; and
 - (2) Copies of materials provided to the board of *directors* in connection with their approval under paragraph (a)(2) of this section, and written reports provided to the board of *directors* pursuant to paragraph (a)(4)(iii) of this section (or, if the *fund* is a *unit investment trust*, to the *fund's principal underwriter* or depositor, pursuant to paragraph (b) of this section) for at least five years after the end of the *fiscal year* in which the documents were provided, the first two years in an easily accessible place; and
 - (3) Any records documenting the *fund's* annual review pursuant to paragraph (a)(3) of this section for at least five years after the end of the *fiscal year* in which the annual review was conducted, the first two years in an easily accessible place.

(e) *Definitions.* For purposes of this section:

(1) *Federal Securities Laws* means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), the Investment Company Act of 1940, the Investment Advisers Act of 1940, Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)), any rules adopted by the *Commission* under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311-5314; 5316-5332) as it applies to *funds*, and any rules adopted thereunder by the *Commission* or the Department of the Treasury.

(2) A *Material Compliance Matter* means any compliance matter about which the *fund's* board of *directors* would reasonably need to know to oversee *fund* compliance, and that involves, without limitation:

(i) A violation of the *Federal Securities Laws* by the *fund*, its *investment adviser*, *principal underwriter*, *administrator* or transfer agent (or officers, *directors*, *employees* or agents thereof),

(ii) A violation of the policies and procedures of the *fund*, its *investment adviser*, *principal underwriter*, *administrator* or transfer agent, or

(iii) A weakness in the design or implementation of the policies and procedures of the *fund*, its *investment adviser*, *principal underwriter*, *administrator* or transfer agent.

Section 39. Rules and regulations; procedure for issuance. [15 U.S.C. 80a-38]

Subject to the provisions of the Federal Register Act and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this title, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

Section 40. Orders; procedure for issuance. [15 U.S.C. 80a-39]

(a) Orders of the Commission under this title shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by *personal* service upon each party or by registered mail or by *certified* mail or confirmed telegraphic notice to the party's last known business address. Notice to *interested persons*, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(b) The Commission may provide, by appropriate rules or regulations, that an application verified under oath may be admissible in evidence in a proceeding before the Commission and that the record in such a proceeding may consist, in whole or in part, of such application.

(c) In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State or State

agency, and may admit as a party any representative of interested security holders, or any other *person* whose participation in the proceeding may be in the public interest or for the protection of investors.

Section 41. Hearings by Commission. [15 U.S.C. 80a-40]

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

Section 42. Enforcement of title. [15 U.S.C. 80a-41]

(a) The Commission may make such investigations as it deems necessary to determine whether any *person* has violated or is about to violate any provision of this title or of any rule, regulation, or order hereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under this title against a particular *person* or *persons*, or with respect to a particular transaction or transactions. The Commission shall permit any *person* to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or any other proceeding under this title, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or *other records* which are relevant or *material* to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any *person*, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such *person* resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and *other records*. And such court may issue an order requiring such *person* to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such *person* is an inhabitant or wherever he may be found. Any *person* who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or *other records*, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Whenever it shall appear to the Commission that any *person* has engaged or is about to engage in any act or practice constituting a violation of any provision of this title, or of any rule, regulation, or order hereunder, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order hereunder. Upon a showing that such *person* has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. In any proceeding under this subsection to enforce compliance with Section 7, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the *investment company* or companies involved and the books, records, and assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this title, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

(e) Money Penalties in Civil Actions.

(1) *Authority of Commission.* Whenever it shall appear to the Commission that any *person* has violated any provision of this title, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to Section 9(f) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the *person* who committed such violation.

(2) *Amount of Penalty.*

(A) *First Tier.* The *amount* of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the *amount* of the penalty shall not exceed the greater of (i) \$5,000 for a natural *person* or \$50,000 for any other *person*, or (ii) the gross *amount* of pecuniary gain to such defendant as a result of the violation.

(B) *Second Tier.* Notwithstanding subparagraph (A), the *amount* of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural *person* or \$250,000 for any other *person*, or (ii) the gross *amount* of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) *Third Tier.* Notwithstanding subparagraphs (A) and (B), the *amount* of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural

person or \$500,000 for any other *person*, or (ii) the gross *amount* of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other *persons*.

(3) *Procedures for Collection.*

(A) *Payment of Penalty to Treasury.* A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 and section 21F of the Securities Exchange Act of 1934.

(B) *Collection of Penalties.* If a *person* upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) *Remedy Not Exclusive.* The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) *Jurisdiction and Venue.* For purposes of Section 44 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title.

(4) *Special Provisions Relating to a Violation of a Cease-and-Desist Order.* In an action to enforce a cease-and-desist order entered by the Commission pursuant to Section 9(f), each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

Section 43. Court review of orders. [15 U.S.C. 80a-42]

(a) Any *person* or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the United States court of appeals within any circuit wherein such *person* resides or has his *principal place of business*, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in Section 2112 of Title 28 of the United States Code. Upon the filing of such petition

such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is *material* and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of Title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) to review an order of the Commission issued under Section 8(e) shall operate as a stay of the Commission's order unless the court otherwise orders. The commencement of proceedings under subsection (a) to review an order of the Commission issued under any provision of this title other than Section 8(e) shall not operate as a stay of the Commission's order unless the court specifically so orders.

Section 44. Jurisdiction of offenses and suits. [15 U.S.C. 80a-43]

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of Section 34 of this title, or upon a failure to file a report or other document required to be filed under this title, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or *place of business*. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial

may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in Sections 1254, 1291, 1292, and 1294 of Title 28 of the United States Code. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, Section 36(b) of this title at any stage of such action or suit prior to final judgment therein.

Section 45. Disclosure of Information filed with Commission; Copies [15 U.S.C. 80a-44]

(a) The information contained in any registration statement, application, report, or other document filed with the Commission pursuant to any provision of this title or of any rule or regulation thereunder (as distinguished from any information or document transmitted to the Commission) shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Except as provided in Section 24(c) of the Securities Exchange Act of 1934, it shall be unlawful for any member, officer, or *employee* of the Commission to use for *personal* benefit, or to disclose to any *person* other than an official or *employee* of the United States or of a State, for official use, or for any such official or *employee* to use for *personal* benefit, any information contained in any document so filed or transmitted, if such information is not available to the public.

(b) Photostatic or other copies of information contained in documents filed with the Commission under this title and made available to the public shall be furnished any *person* at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

Rule 45a-1 Confidential treatment of names and addresses of dealers of registered investment company securities.

(a) Exhibits calling for the names and addresses of *dealers* to or through whom *principal underwriters* of registered *investment companies* are currently offering securities and which are required to be furnished with registration statements filed pursuant to Section 8(b) of the Investment Company Act of 1940 or periodic reports filed pursuant to Section 30(a) or Section 30(b)(1) of the Investment Company Act of 1940, shall be the subject of confidential treatment and shall not be made available to the public, except that the Commission may by order make such exhibits available to the public if, after appropriate notice and opportunity for hearing, it finds that public disclosure of such *material* is necessary or appropriate in the public interest or for the protection of investors.

(b) The exhibits referred to in paragraph (a) of this section shall be filed in quadruplicate with the Commission at the time the registration statement or periodic report is filed. Such

exhibits shall be enclosed in a separate envelope marked “Confidential Treatment” and addressed to the Chairman, Securities and Executive Commission, Washington, D.C. Confidential treatment requests shall be submitted in paper only, whether or not the registrant is required to file in electronic format.

Section 46. Reports by Commission; hiring and leasing authority. [15 U.S.C. 80a-45]

(a) The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this title as it may find advisable. [Report requirement terminated by 104 Public Law 66 (1995), effective May 15, 2000.]

(b) The provisions of Section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such *employees* as may be necessary for carrying out its functions under this title, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.

Section 47. Validity of contracts. [15 U.S.C. 80a-46]

(a) Any condition, stipulation, or provision binding any *person* to waive compliance with any provision of this title or with any rule, regulation, or order thereunder shall be void.

(b)(1) A contract that is made, or whose performance involves, a violation of this title, or of any rule, regulation, or order thereunder, is unenforceable by either party (or by a non-party to the contract who *acquired* a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this title or of any rule, regulation, or order thereunder) unless a court finds that under the circumstances enforcement would produce a more equitable result than non-enforcement and would not be inconsistent with the purposes of this title.

(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this title.

(3) This subsection shall not apply (A) to the lawful portion of a contract to the extent that it may be severed from the unlawful portion of the contract, or (B) to preclude recovery against any *person* for unjust enrichment.

Section 48. Liability of *controlling persons*; preventing compliance with title. [15 U.S.C. 80a-47]

(a) It shall be unlawful for any *person*, directly or indirectly, to cause to be done any act or thing through or by means of any other *person* which it would be unlawful for such *person* to do under the provisions of this title or any rule, regulation, or order thereunder.

(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any *person* that knowingly or recklessly provides substantial assistance to another *person* in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the *person* to whom such assistance is provided.

(c) It shall be unlawful for any *person* without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this title or any rule, regulation, or order thereunder.

Section 49. Penalties. [15 U.S.C. 80a-48]

Any *person* who willfully violates any provision of this title or of any rule, regulation, or order hereunder, or any *person* who willfully in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this title or the keeping of which is required pursuant to Section 31(a) makes any untrue statement of a *material* fact or omits to state any *material* fact necessary in order to prevent the statements made therein from being *materially* misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than \$10,000 or imprisoned not more than five years, or both; but no *person* shall be *convicted* under this section for the violation of any rule, regulation, or order if he proves that he had no actual knowledge of such rule, regulation, or order.

Section 50. Construction with other laws. [15 U.S.C. 80a-49]

Except where specific provision is made to the contrary, nothing in this title shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, or [the Investment Advisers Act of 1940] over any *person*, security, or transaction, or (2) the rights, obligations, duties, or liabilities of any *person* under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any *person*, security, or transaction, insofar as such jurisdiction does not conflict with any provision of this title or of any rule, regulation, or order hereunder.

Section 51. Separability of provisions. [15 U.S.C. 80a-50]

If any provision of this title or any provision incorporated in this title by reference, or the application of any such provision to any *person* or circumstances, shall be held invalid, the remainder of this title and the application of any such provision to *person* or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 52. Short title. [15 U.S.C. 80a-51]

This title may be cited as the “Investment Company Act of 1940”.

Section 53. Effective date. [15 U.S.C. 80a-52]

The effective date of the provisions of this title, so far as the same relate to *face-amount certificates* or to *face-amount certificate companies*, is January 1, 1941. The effective date of provisions hereof, insofar as the same do not apply to *face-amount certificates* or *face-amount certificate companies* is November 1, 1940. Except as herein otherwise provided, every provision of this subchapter shall take effect on November 1, 1940.

Section 54. Election to be regulated as a *business development company*. [15 U.S.C. 80a-53]

(a) Any company defined in Section 2(a)(48)(A) and (B) may elect to be subject to the provisions of Sections 55 through 65 by filing with the Commission a notification of election, if such company—

(1) has a class of its equity securities registered under Section 12 of the Securities Exchange Act of 1934; or

(2) has filed a registration statement pursuant to Section 12 of the Securities Exchange Act of 1934 for a class of its equity securities.

(b) The Commission may, by rule, prescribe the form and manner in which notification of election under this section shall be given. A *business development company* shall be deemed to be subject to Sections 55 through 65 upon receipt by the Commission of such notification of election.

(c) Whenever the Commission finds, on its own motion or upon application, that a *business development company* which has filed a notification of election pursuant to subsection (a) of this section has ceased to engage in business, the Commission shall so declare by order revoking such company's election. Any *business development company* may voluntarily withdraw its election under subsection (a) by filing a notice of withdrawal of election with the Commission, in a form and manner which the Commission may, by rule, prescribe. Such withdrawal shall be effective immediately upon receipt by the Commission.

Section 55. Functions and activities of *business development companies*. [15 U.S.C. 80a-54]

(a) It shall be unlawful for a *business development company* to *acquire* any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the *acquisition* is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the *value* of its *Total assets* (other than assets described in paragraph (7) below):

(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this title and of the Securities Act of 1933 with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small *amount*, or the limited nature of the public offering, involved in such transactions—

- (A) from the *issuer* of such securities, which *issuer* is an *Eligible Portfolio Company*, from any *person* who is, or who within the preceding thirteen months has been, an *affiliated person* of such *Eligible Portfolio Company*, or from any other *person*, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; or
- (B) from the *issuer* of such securities, which *issuer* is described in Section 2(a)(46)(A) and (B) but is not an *Eligible Portfolio Company* because it has issued a class of securities with respect to which a member of a *national securities exchange, broker, or dealer* may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under Section 7 of the Securities Exchange Act of 1934, or from any *person* who is an officer or *employee* of such *issuer*, if—
- (i) at the time of the purchase, the *business development company* owns at least 50 per centum of—
 - (I) the greatest number of equity securities of such *issuer* and securities convertible into or *exchangeable* for such securities; and
 - (II) the greatest *amount* of debt securities of such *issuer*, held by such *business development company* at any point in time during the period when such *issuer* was an *Eligible Portfolio Company*, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such *issuer*, shall not be considered to have been held by such *business development company* for purposes of this requirement; and
 - (ii) the *business development company* is one of the 20 largest holders of record of such *issuer's* outstanding *Voting securities*;
- (2) securities of any *Eligible Portfolio Company* with respect to which the *business development company* satisfies the requirements of Section 2(a)(46)(C)(ii);
- (3) securities purchased in transactions not involving any public offering from an *issuer* described in Sections 2(a)(46)(A) and (B) or from a *person* who is, or who within the preceding thirteen months has been an *affiliated person* of such *issuer*, or from any *person* in transactions incident thereto, if such securities were—
- (A) issued by an *issuer* that is, or was immediately prior to the purchase of its securities by the *business development company*, in *bankruptcy* proceedings, subject to *reorganization* under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such *bankruptcy* proceedings or *reorganization*;
 - (B) issued by an *issuer* pursuant to or in consummation of such a plan or arrangement; or

(C) issued by an *issuer* that, immediately prior to the purchase of such *issuer's* securities by the *business development company*, was not in *bankruptcy* proceedings but was unable to meet its obligations as they came due without *material* assistance other than conventional lending or financing arrangements;

(4) securities of *Eligible Portfolio Companies* purchased from any *person* in transactions not involving any public offering, if there is no ready market for such securities and if immediately prior to such purchase the *business development company* owns at least 60 per centum of the outstanding equity securities of such *issuer* (giving effect to all securities presently convertible into or *exchangeable* for equity securities of such *issuer* as if such securities were so converted or *exchanged*);

(5) securities received in *exchange* for or distributed on or with respect to securities described in paragraphs (1) through (4) of this subsection, or pursuant to the exercise of options, warrants, or rights relating to securities described in such paragraphs;

(6) cash, cash items, Government securities, or high quality debt securities maturing in one year or less from the time of investment in such high quality debt securities; and

(7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the *business development company*, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a *business development company*, including notes of indebtedness of *directors*, officers, *employees*, and general partners held by a *business development company* as *payment* for securities of such company issued in connection with an executive compensation plan described in Section 57(j).

(b) For purposes of this section, the *value* of a *business development company's* assets shall be determined as of the date of the most recent financial statements filed by such company with the Commission pursuant to Section 13 of the Securities Exchange Act of 1934, and shall be determined no less frequently than annually.

Rule 55a-1 Investment activities of business development companies.

Notwithstanding section 55(a) of the Act, a *business development company* may acquire *securities* purchased in transactions not involving any *public offering* from an *issuer*, or from any *person* who is an officer or employee of the *issuer*, if the *issuer* meets the requirements of sections 2(a)(46)(A) and (B) of the Act, but the *issuer* is not an *eligible portfolio company* because it does not meet the requirements of rule 2a-46, and the *business development company* meets the requirements of paragraphs (i) and (ii) of section 55(a)(1)(B) of the Act.

Section 56. Qualifications of directors. [15 U.S.C. 80a-55]

(a) A majority of a business development *company's directors* or general partners shall be *persons* who are not *interested persons* of such company.

(b) If, by reason of the death, disqualification, or bona fide resignation of any *director* or general partner, a *business development company* does not meet the requirements of subsection (a) of this section, or the requirements of Section 15(f)(1) of this title with respect to *directors*, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the Commission may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.

Section 57. Transactions with certain affiliates. [15 U.S.C. 80a-56]

(a) It shall be unlawful for any *person* who is related to a *business development company* in a manner described in subsection (b) of this section, acting as principal—

(1) knowingly to sell any security or other property to such *business development company* or to any company *controlled* by such *business development company*, unless such sale involves solely (A) securities of which the buyer is the *issuer*, or (B) securities of which the seller is the *issuer* and which are part of a general offering to the holders of a class of its securities;

(2) knowingly to purchase from such *business development company* or from any company *controlled* by such *business development company*, any security or other property (except securities of which the seller is the *issuer*);

(3) knowingly to borrow money or other property from such *business development company* or from any company *controlled* by such *business development company* (unless the borrower is *controlled* by the lender), except as permitted in Section 21(b) or Section 62; or

(4) knowingly to effect any transaction in which such *business development company* or a company *controlled* by such *business development company* is a joint or a joint and several participant with such *person* in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such *business development company* or *controlled* company on a basis less advantageous than that of such *person*, except that nothing contained in this paragraph shall be deemed to preclude any *person* from acting as manager of any underwriting syndicate or other group in which such *business development company* or *controlled* company is a participant and receiving compensation therefor.

(b) The provisions of subsection (a) of this section shall apply to the following *persons*:

(1) Any *director*, officer, *employee*, or member of an *advisory board* of a *business development company* or any *person* (other than the *business development company* itself) who is, within the meaning of Section 2(a)(3)(C), an *affiliated person* of any such *person* specified in this paragraph.

(2) Any *investment adviser* or *promoter* of, general partner in, *principal underwriter* for, or *person* directly or indirectly either *controlling*, *controlled* by, or under common

control with, a *business development company* (except the *business development company* itself and any *person* who, if it were not directly or indirectly *controlled* by the *business development company*, would not be directly or indirectly under the *control* of a *person* who *controls* the *business development company*), or any *person* who is, within the meaning of Section 2(a)(3)(C) or (D), an *affiliated person* of any such *person* specified in this paragraph.

(c) Notwithstanding paragraphs (1), (2), and (3) of subsection (a), any *person* may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of such paragraphs. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the *business development company* or its shareholders or partners on the part of any *person* concerned;

(2) the proposed transaction is consistent with the policy of the *business development company* as recited in the filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and

(3) the proposed transaction is consistent with the general purposes of this title.

(d) It shall be unlawful for any *person* who is related to a *business development company* in the manner described in subsection (e) of this section and who is not subject to the prohibitions of subsection (a) of this section, acting as principal—

(1) knowingly to sell any security or other property to such *business development company* or to any company *controlled* by such *business development company*, unless such sale involves solely (A) securities of which the buyer is the *issuer*, or (B) securities of which the seller is the *issuer* and which are part of a general offering to the holders of a class of its *securities*;

(2) knowingly to purchase from such *business development company* or from any company *controlled* by such *business development company*, any security or other property (except securities of which the seller is the *issuer*);

(3) knowingly to borrow money or other property from such *business development company* or from any company *controlled* by such *business development company* (unless the borrower is *controlled* by the lender), except as permitted in Section 21(b); or

(4) knowingly to effect any transaction in which such *business development company* or a company *controlled* by such *business development company* is a joint or a joint and several participant with such *affiliated person* in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing

participation by such *business development company* or *controlled* company on a basis less advantageous than that of such *affiliated person*, except that nothing contained in this paragraph shall be deemed to preclude any *person* from acting as manager of any underwriting syndicate or other group in which such *business development company* or *controlled* company is a participant and receiving compensation therefor.

(e) The provisions of subsection (d) of this section shall apply to the following *persons*:

(1) Any *person* (A) who is, within the meaning of Section 2(a)(3)(A), an *affiliated person* of a *business development company*, (B) who is an *executive officer* or a *director* of, or general partner in, any such *affiliated person*, or (C) who directly or indirectly either *controls*, is *controlled* by, or is under common *control* with, such *affiliated person*.

(2) Any *person* who is an *affiliated person* of a *director*, officer, *employee*, *investment adviser*, member of an *advisory board* or *promoter* of, *principal underwriter* for, general partner in, or an *affiliated person* of any *person* directly or indirectly either *controlling* or under common *control* with a *business development company* (except the *business development company* itself and any *person* who, if it were not directly or indirectly *controlled* by the *business development company*, would not be directly or indirectly under the *control* of a *person* who *controls* the *business development company*).

For purposes of this subsection, the term “*executive officer*” means the president, secretary, treasurer, any vice president in charge of a principal business function, and any other *person* who performs similar policymaking functions.

(f) Notwithstanding subsection (d) of this section, a *person* described in subsection (e) of this section may engage in a proposed transaction described in subsection (d) if such proposed transaction is approved by the *required majority* (as defined in subsection (o)) of the *directors* of or general partners in the *business development company* on the basis that—

(1) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the shareholders or partners of the *business development company* and do not involve overreaching of such company or its shareholders or partners on the part of any *person* concerned;

(2) the proposed transaction is consistent with the interests of the shareholders or partners of the *business development company* and is consistent with the policy of such company as recited in filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and

(3) the *directors* or general partners record in their minutes and preserve in their records, for such periods as if such records were required to be maintained pursuant to Section 31(a), a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefor.

(g) Notwithstanding subsection (a) or (d), a *person* may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any *person* and furnish the services incident thereto.

(h) The *directors* of or general partners in any *business development company* shall adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction in which such *business development company* or a company *controlled* by such *business development company* proposes to participate, with respect to the possible involvement in the transaction of *persons* described in subsections (b) and (e) of this section.

(i) Until the adoption by the Commission of rules or regulations under subsections (a) and (d) of this section, the rules and regulations of the Commission under subsections (a) and (d) of Section 17 applicable to registered closed-end *investment companies* shall be deemed to apply to transactions subject to subsections (a) and (d) of this section. Any rules or regulations adopted by the Commission to implement this section shall be no more restrictive than the rules or regulations adopted by the Commission under subsections (a) and (d) of Section 17 of this title that are applicable to all registered closed-end *investment companies*.

(j) Notwithstanding subsections (a) and (d) of this section, any *director*, officer, or *employee* of, or general partner in, a *business development company* may—

(1) *acquire* warrants, options, and rights to purchase *voting securities* of such *business development company*, and securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan offered by such company which meets the requirements of Section 61(a)(4)(B); and

(2) borrow money from such *business development company* for the purpose of purchasing securities issued by such company pursuant to an executive compensation plan, if each such loan—

(A) has a term of not more than ten years;

(B) becomes due within a reasonable time, not to exceed sixty days, after the termination of such *person's* employment or service;

(C) bears interest at no less than the prevailing rate applicable to 90-day United States Treasury bills at the time the loan is made;

(D) at all times is fully collateralized (such collateral may include any securities issued by such *business development company*); and

(E)(i) in the case of a loan to any officer or *employee* of such *business development company* (including any officer or *employee* who is also a *director* of such company), is approved by the *required majority* (as defined in subsection (o)) of the *directors* of

or general partners in such company on the basis that the loan is in the best interests of such company and its shareholders or partners; or

(ii) in the case of a loan to any *director* of such *business development company* who is not also an officer or *employee* of such company, or to any general partner in such company, is approved by order of the Commission, upon application, on the basis that the terms of the loan are fair and reasonable and do not involve overreaching of such company or its shareholders or partners.

(k) It shall be unlawful for any *person* described in subsection (l)—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from the *business development company*) for the purchase or sale of any property to or for such *business development company* or any *controlled* company thereof, except in the course of such *person's* business as an *underwriter* or *broker*; or

(2) acting as *broker*, in connection with the sale of securities to or by the *business development company* or any *controlled* company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds—

(A) the usual and customary *broker's* commission if the sale is effected on a securities *exchange*;

(B) 2 per centum of the sales price if the sale is effected in connection with a secondary *distribution* of such securities; or

(C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected,

unless the Commission, by rules and regulations or order in the public interest and consistent with the protection of investors, permits a larger commission.

(l) The provisions of subsection (k) of this section shall apply to the following *persons*:

(1) Any *affiliated person* of a *business development company*.

(2)(A) Any *person* who is, within the meaning of Section 2(a)(3)(B), (C), or (D), an *affiliated person* of any *director*, officer, *employee*, or member of an *advisory board* of the *business development company*.

(B) Any *person* who is, within the meaning of Section 2(a)(3)(A), (B), (C), or (D), an *affiliated person* of any *investment adviser* of, general partner in, or *person* directly or indirectly either *controlling*, *controlled* by, or, under common *control* with, the *business development company*.

(C) Any *person* who is, within the meaning of Section 2(a)(3)(C), an *affiliated person* of any *person* who is an *affiliated person* of the *business development company* within the meaning of Section 2(a)(3)(A).

(m) For purposes of subsections (a) and (d), a *person* who is a *director*, officer, or *employee* of a party to a transaction and who receives his usual and ordinary fee or salary for usual and customary services as a *director*, officer, or *employee* from such party shall not be deemed to have a *financial interest* or to participate in the transaction solely by reason of his receipt of such fee or salary.

(n)(1) Notwithstanding subsection (a)(4) of this section, a *business development company* may establish and maintain a profit-sharing plan for its *directors*, officers, *employees*, and general partners and such *directors*, officers, *employees*, and general partners may participate in such profit-sharing plan, if—

(A)(i) in the case of a profit-sharing plan for officers and *employees* of the *business development company* (including any officer or *employee* who is also a *director* of such company), such profit-sharing plan is approved by the *required majority* (as defined in subsection (o)) of the *directors* or general partners in such company on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any *person* concerned, and is consistent with the interests of the shareholders or partners of such company; or

(ii) in the case of a profit-sharing plan which includes one or more *directors* of the *business development company* who are not also officers or *employees* of such company, or one or more general partners in such company, such profit-sharing plan is approved by order of the Commission, upon application, on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any *person* concerned, and is consistent with the interests of the shareholders or partners of such company; and

(B) the aggregate *amount* of benefits which would be paid or accrued under such plan shall not exceed 20 per centum of the *business development company's* net income after taxes in any *fiscal year*.

(2) This subsection may not be used where the *business development company* has outstanding any stock option, warrant, or right issued as part of an executive compensation plan, including a plan pursuant to section 61(a)(4)(B), or has an *investment adviser* registered or required to be registered under the Investment Advisers Act of 1940.

(o) The term “*required majority*”, when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a *business development company's directors* or general partners who have no *financial interest* in such transaction, plan, or arrangement and a majority of such *directors* or general partners who are not *interested persons* of such company.

Rule 57b-1 Exemption for downstream affiliates of business development companies.

Notwithstanding subsection (b)(2) of Section 57 of the Investment Company Act of 1940, the provisions of subsection (a) of that section shall not apply to any *person* (a) solely because that *person* is directly or indirectly *controlled* by a *business development company* or (b) solely because that *person* is, within the meaning of Section 2(a)(3)(C) or (D) of the Investment Company Act of 1940, an *affiliated person* of a *person* described in (a) of this rule.

Section 58. Changes in investment policy. [15 U.S.C. 80a-57]

No *business development company* shall, unless authorized by the vote of a majority of its outstanding *Voting securities* or partnership interests, change the nature of its business so as to cease to be, or to withdraw its election as, a *business development company*.

Section 59. Incorporation of provisions. [15 U.S.C. 80a-58]

Notwithstanding the exemption set forth in Section 6(f) of this title, Sections 1, 2, 3, 4, 5, 6, 9, 10(f), 15(a), (c), and (f), 16(b), 17(f) through (j), 19(a), 20(b), 32(a) and (c), 33 through 47, and 49 through 53 of this title shall apply to a *business development company* to the same extent as if it were a registered closed-end *investment company*.

Section 60. Functions and activities of business development companies. [15 U.S.C. 80a-59]

Notwithstanding the exemption set forth in Section 6(f) of this title, Section 12 shall apply to a *business development company* to the same extent as if it were a registered closed-end *investment company*, except that the Commission shall not prescribe any rule, regulation, or order pursuant to Section 12(a)(1) governing the circumstances in which a *business development company* may borrow from a *bank* in order to purchase any security.

Rule 60a-1 Exemption for certain business development companies.

Section 12(d)(1)(A) and (C) of the Investment Company Act of 1940 shall not apply to the *acquisition* by a *business development company* of the securities of a *small business investment company* licensed to do business under the *Small Business Investment Act* of 1958 which is operated as a *Wholly-owned subsidiary* of the *business development company*.

Section 61. Capital structure. [15 U.S.C. 80a-60]

(a) Notwithstanding the exemption set forth in section 6(f), section 18 shall apply to a *business development company* to the same extent as if it were a registered closed-end investment company, except as follows:

(1) Except as provided in paragraph (2), the *asset coverage* requirements of subparagraphs (A) and (B) of section 18(a)(1) (and any related rule promulgated under this subchapter) applicable to *business development companies* shall be 200 percent.

(2) The *asset coverage* requirements of subparagraphs (A) and (B) of section 18(a)(1) and of subparagraphs (A) and (B) of section 18(a)(2) (and any related rule promulgated under this subchapter) applicable to a *business development company* shall be 150 percent if—

(A) not later than 5 business days after the date on which those *asset coverage* requirements are approved under subparagraph (D) of this paragraph, the *business development company* discloses that the requirements were approved, and the effective date of the approval, in—

(i) any filing submitted to the Commission under section 13(a) or section 15 of the Securities Exchange Act of 1934, as amended; and

(ii) a notice on the website of the *business development company*;

(B) the *business development company* discloses, in each periodic filing required under section 13(a) of the Securities Exchange Act of 1934, as amended,—

(i) the aggregate outstanding principal amount or liquidation preference, as applicable, of the senior securities issued by the *business development company* and the *asset coverage* percentage as of the date of the *business development company's* most recent financial statements included in that filing;

(ii) that the *business development company*, under subparagraph (D), has approved the *asset coverage* requirements under this paragraph; and

(iii) the effective date of the approval described in clause (ii);

(C) with respect to a *business development company* that is an issuer of common equity securities, each periodic filing of the company required under section 13(a) of the Securities Exchange Act of 1934, as amended, includes disclosures that are reasonably designed to ensure that shareholders are informed of—

(i) the amount of senior securities (and the associated *asset coverage* ratios) of the company, determined as of the date of the most recent financial statements of the company included in that filing; and

(ii) the principal risk factors associated with the senior securities described in clause (i), to the extent that risk is incurred by the company; and

(D) the company—

(i)(I) through a vote of the required majority (as defined in section 57(o)), approves the application of this paragraph to the company, to become effective on the date that is 1 year after the date of the approval; or

(II) obtains, at a special or annual meeting of shareholders or partners at which a quorum is present, the approval of more than 50 percent of the votes cast for

the application of this paragraph to the company, to become effective on the first day after the date of the approval; and

(ii) if the company is not an issuer of common equity securities that are listed on a national securities exchange, extends, to each person that is a shareholder as of the date of an approval described in subclause (I) or (II) of clause (i), as applicable, the opportunity (which may include a tender offer) to sell the securities held by that shareholder as of that applicable approval date, with 25 percent of those securities to be repurchased in each of the 4 calendar quarters following the calendar quarter in which that applicable approval date takes place.

(3) Notwithstanding Section 18(c), a *business development company* may issue more than one class of *senior security* representing indebtedness.

(4) Notwithstanding Section 18(d)—

(A) a *business development company* may issue warrants, options, or rights to subscribe or convert to *Voting securities* of such company, accompanied by securities, if—

(i) such warrants, options, or rights expire by their terms within ten years;

(ii) such warrants, options, or rights are not separately transferable unless no class of such warrants, options, or rights and the securities accompanying them has been publicly distributed;

(iii) the exercise or conversion price is not less than the current market value at the date of issuance, or if no such market *value* exists, the *current net asset value* of such *Voting securities*; and

(iv) the proposal to issue such securities is authorized by the shareholders or partners of such *business development company*, and such issuance is approved by the *required majority* (as defined in Section 57(o)) of the *directors* of or general partners in such company on the basis that such issuance is in the best interests of such company and its shareholders or partners;

(B) a *business development company* may issue, to its *directors*, officers, *employees*, and general partners, warrants, options, and rights to purchase *voting securities* of such company pursuant to an executive compensation plan, if—

(i) (I) in the case of warrants, options, or rights issued to any officer or *employee* of such *business development company* (including any officer or *employee* who is also a *director* of such company), such securities satisfy the conditions in clauses (i), (iii), and (iv) of subparagraph (A); or (II) in the case of warrants, options, or rights issued to any *director* of such *business development company* who is not also an officer or *employee* of such company, or to any general partner in such company, the proposal to issue such securities satisfies the conditions in clauses (i)

and (iii) of subparagraph (A), is authorized by the shareholders or partners of such company, and is approved by order of the Commission, upon application, on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its shareholders or partners;

(ii) such securities are not transferable except for disposition by gift, will, or intestacy;

(iii) no *investment adviser* of such *business development company* receives any compensation described in Section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by section (1) or (2) of 205(b); and

(iv) such *business development company* does not have a profit-sharing plan described in Section 57(n); and

(C) a *business development company* may issue warrants, options, or rights to subscribe to, convert to, or purchase *Voting securities* not accompanied by securities, if—

(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

(ii) the proposal to issue such warrants, options, or rights is authorized by the shareholders or partners of such *business development company*, and such issuance is approved by the *required majority* (as defined in section 57(o)) of the *directors* of or general partners in such company on the basis that such issuance is in the best interests of the company and its shareholders or partners.

Notwithstanding this paragraph, the *amount* of *voting securities* that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25 per centum of the outstanding *voting securities* of the *business development company*, except that if the *amount* of *voting securities* that would result from the exercise of all outstanding warrants, options, and rights issued to such company's *directors*, officers, *employees*, and general partners pursuant to any executive compensation plan meeting the requirements of subparagraph (B) of this paragraph would exceed 15 per centum of the outstanding *voting securities* of such company, then the total *amount* of *voting securities* that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20 per centum of the outstanding *Voting securities* of such company.

(5) For purposes of measuring the *asset coverage* requirements of Section 18(a), a *senior security* created by the *guarantee* by a *business development company* of indebtedness issued by another company shall be the *amount* of the maximum potential liability less the fair market *value* of the net unencumbered assets (plus the indebtedness which has been *guaranteed*) available in the borrowing company whose debts have been *guaranteed*, except that a *guarantee* issued by a *business development company* of indebtedness issued by a company which is a *wholly-owned subsidiary* of the *business development company*

and is licensed as a *small business investment company* under the *Small Business Investment Act* of 1958 shall not be deemed to be a *senior security* of such *business development company* for purposes of Section 18(a) if the *amount* of the indebtedness at the time of its issuance by the borrowing company is itself taken fully into account as a liability by such *business development company*, as if it were issued by such *business development company*, in determining whether such *business development company*, at that time, satisfies the *asset coverage* requirements of Section 18(a).

(b) A *business development company* shall comply with the provisions of this section at the time it becomes subject to Sections 55 through 65, as if it were issuing a security of each class which it has outstanding at such time.

Section 62. Loans. [15 U.S.C. 80a-61]

Notwithstanding the exemption set forth in Section 6(f) of this title, Section 21 shall apply to a *business development company* to the same extent as if it were a registered closed-end *investment company*, except that nothing in that section shall be deemed to prohibit—

(1) any loan to a *director*, officer, or *employee* of, or general partner in, a *business development company* for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of Section 57(j); or

(2) any loan to a company *controlled* by a *business development company*, which companies could be deemed to be under common *control* solely because a third *person controls* such *business development company*.

Section 63. *Distribution* and repurchase of securities. [15 U.S.C. 80a-62]

Notwithstanding the exemption set forth in Section 6(f), Section 23 shall apply to a *business development company* to the same extent as if it were a registered closed-end *investment company*, except as follows:

(1) The prohibitions of Section 23(a)(2) shall not apply to any company which (A) is a *wholly-owned subsidiary* of, or directly or indirectly *controlled* by, a *business development company*, and (B) immediately after the issuance of any of its securities for property other than cash or securities, will not be an *investment company* within the meaning of Section 3(a).

(2) Notwithstanding the provisions of Section 23(b), a *business development company* may sell any common stock of which it is the *issuer* at a price below the *current net asset value* of such stock, and may sell warrants, options, or rights to *acquire* any such common stock at a price below the *current net asset value* of such stock, if—

(A) the holders of a majority of such *business development company's* outstanding *Voting securities*, and the holders of a majority of such company's outstanding

Voting securities that are not *affiliated persons* of such company, approved such company's policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the *initial public offering* by a *business development company* of its securities;

(B) a *required majority* (as defined in Section 57(o)) of the *directors* of or general partners in such *business development company* have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

(C) a *required majority* (as defined in Section 57(o)) of the *directors* of or general partners in such *business development company*, in consultation with the *underwriter* or *underwriters* of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market *value* of those securities, less any distributing commission or discount.

(3) A *business development company* may sell any common stock of which it is the *issuer* at a price below the *current net asset value* of such stock upon the exercise of any warrant, option, or right issued in accordance with section 61(a)(4).

Section 64. Accounts and records. [15 U.S.C. 80a-63]

(a) Notwithstanding the exemption set forth in Section 6(f), Section 31 shall apply to a *business development company* to the same extent as if it were a registered closed-end *investment company*, except that the reference to the financial statements required to be filed pursuant to Section 30 shall be construed to refer to the financial statements required to be filed by such *business development company* pursuant to Section 13 of the Securities Exchange Act of 1934.

(b)(1) In addition to the requirements of subsection (a), a *business development company* shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule prescribe, describing the risk factors involved in an investment in the securities of a *business development company* due to the nature of such company's investment portfolio and capital structure, and shall supply copies of such statement to any registered *broker* or *dealer* upon request.

(2) If the Commission finds it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title, the Commission may also require, by rule, any *person* who, acting as principal or agent, sells a security of a *business development company* to

inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such *business development company* pursuant to this subsection, and make such risk statement available on request. The Commission in making such rules and regulations shall consider among other matters whether any such rule or regulation would impose any unreasonable burdens on such *brokers* or *dealers* or unreasonably impair the maintenance of fair and orderly markets.

Section 65. Liability of *controlling persons*; preventing compliance with title. [15 U.S.C. 80a-64]

Notwithstanding the exemption set forth in Section 6(f), Section 48 shall apply to a *business development company* to the same extent as if it were a registered closed-end *investment company*, except that the provisions of Section 48(a) shall not be construed to require any company which is not an *investment company* within the meaning of Section 3(a) to comply with the provisions of this title which are applicable to a *business development company* solely because such company is a *wholly-owned subsidiary* of, or directly or indirectly *controlled* by, a *business development company*.

Rule 0-1 Definition of terms used in this part.

(a) As used in the Rules and Regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless the context otherwise requires:

- (1) The term “Commission” means the Securities and Exchange Commission.
- (2) The term “Act” means the Investment Company Act of 1940.
- (3) The term “Section” refers to a section of the Act.
- (4) The terms “Rule” and “Regulations” refer to the rules and regulations adopted by the Commission pursuant to the Act, including the forms for registration and reports and the accompanying instructions thereto.
- (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 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.

(7) Fund governance standards. The board of directors of an investment company (“fund”) satisfies the fund governance standards if:

(i) At least seventy-five percent of the directors of the fund are not interested persons of the fund (“disinterested directors”) or, if the fund has three directors, all but one are disinterested directors;

(ii) The disinterested directors of the fund select and nominate any other disinterested director of the fund;

(iii) Any person who acts as legal counsel for the disinterested directors of the fund is an independent legal counsel as defined in paragraph (a)(6) of this section;

(iv) A disinterested director serves as chairman of the board of directors of the fund, presides over meetings of the board of directors and has substantially the same responsibilities as would a chairman of a board of directors;

(v) The board of directors evaluates at least once annually the performance of the board of directors and the committees of the board of directors, which evaluation must include a consideration of the effectiveness of the committee structure of the fund board and the number of funds on whose boards each director serves;

(vi) The disinterested directors meet at least once quarterly in a session at which no directors who are interested persons of the fund are present; and

(vii) The disinterested directors have been authorized to hire employees and to retain advisers and experts necessary to carry out their duties.

(b) Unless otherwise specifically provided, the terms used in the Rules and Regulations in this part shall have the meaning defined in the Act. The terms “EDGAR,” “EDGAR Filer Manual,” “electronic filer,” “electronic filing,” “electronic format,” “electronic submission,” “paper format,” and “signature” shall have the meanings assigned to such terms in Regulation S-T—General Rules for Electronic Filings.

(c) A rule or regulation which defines a term without express reference to the Act or to the Rules and Regulations, or to a portion thereof, defines such terms for all purposes as used both in the Act and in the Rules and Regulations in this part, unless the context otherwise requires.

(d) Unless otherwise specified or the context otherwise requires, the term “*prospectus*” means a *prospectus* meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

(e) Definition of *separate account* and conditions for availability of exemption under Rules 6c-6, 6c-7, 6c-8, 11a-2, 14a-2, 15a-3, 16a-1, 22c-1, 22d-2, 22e-1, 26a-1, 27i-1, and 32a-2.

(1) As used in the Rules and Regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless otherwise specified or the context otherwise requires, the term “*separate account*” shall mean an account established and maintained by an *insurance company* pursuant to the laws of any state or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the *insurance company* and the term “variable annuity contract” shall mean any accumulation or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the *value* of the contract, either prior or subsequent to annuitization, or both, varies according to the investment experience of the *separate account* in which the contract participates.

(2) As conditions to the availability of exemptive Rules 6c-6, 6c-7, 6c-8, 11a-2, 14a-2, 15a-3, 16a-1, 22c-1, 22d-2, 22e-1, 26a-1, 27i-1, and 32a-2, the *separate account* shall be legally segregated, the assets of the *separate account* shall, at the time during the year that adjustments in the reserves are made, have a *value* at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a *value* approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a *value* equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the *insurance company* may conduct.

[Editor's Note: As of the date of publication, subsections (a)(7)(i) and (iv) of this Rule have not gone into effect pending further study as a result of the decision of the U.S. Court of Appeals for the D.C. circuit in *U.S. Chamber of Commerce v. SEC.*]

Rule 0-2 General requirements of papers and applications.

(a) *Filing of papers.* All papers required to be filed with the Commission pursuant to the Act or the Rules and Regulations thereunder shall, unless otherwise provided by the rules and regulations in this part, be delivered through the mails or otherwise to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Except as otherwise provided by the Rules and Regulations, the date on which papers are actually received by the Commission shall be the date of filing thereof. If the last day for the timely filing of such papers falls on a Saturday, Sunday, or holiday, such papers may be filed on the first *business day* following.

(b) *Formal specifications respecting applications.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed, and every amendment to such application shall be filed in quintuplicate. One copy shall be signed by the applicant but the other four copies may have facsimile or typed signatures. Such applications should be on paper no larger than 8½ × 11 inches in size. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size. The left margin should be at least 1½ inches wide and, if the application is bound, it should be bound on the left side. All type-written or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying.

(c) *Authorizations respecting applications.*

(1) Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the Commission, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the *person* signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the *person* signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, *directors*, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the application.

(2) If an amendment to any such application shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall state that the authorization described in the original application is applicable to the individual who signs such amendment and that such authorization still remains in effect.

(3) When any such application or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the Commission.

(d) *Verification of applications and statements of fact.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

The undersigned states that he or she has duly executed the attached _____ dated _____, 20__ for and on behalf of _____ (*name of company*) _____; that he or she is _____ (*title of officer*) _____ of such company; and that all action by stockholders, directors, and other bodies necessary to authorize the undersigned to execute and file such instrument has been taken. The undersigned further states that he or she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his or her knowledge, information and belief.

(Signature)

(e) *Statement of grounds for application.* Each application should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the act and of the rules and regulations under which application is made.

(f) *Name and address.* Every application shall contain the name and address of each applicant and the name and address of any *person* to whom any applicant wishes any question regarding the application to be directed.

(g) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Investment Company Act of 1940, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

Rule 0-3 Amendments to registration statements and reports.

Registration statements filed with the Commission pursuant to Section 8 and reports filed with the Commission pursuant to Section 30 may be amended in the following manner:

(a) Each amendment shall conform to the requirements for the registration statement or report it amends with regard to filing, number of copies filed, size, paper, ink, margins, binding, and similar formal matters.

(b) Each amendment to a particular statement or report shall have a facing sheet as follows:

Securities and Exchange Commission

Washington, D.C. 20549

Amendment No. _____

to

Form _____

File No. _____

(Describe the nature of the statement or report)

Dated, _____ 19 _____,

Pursuant to Section _____ of the Investment Company Act of 1940

Name of Registrant

Address of Principal Office of Registrant

The facing sheet shall contain in addition any other information required on the facing sheet of the form for the statement or report which is being amended. Amendments to a particular statement or report shall be numbered consecutively in the order in which filed with the Commission.

(c) Each amendment shall contain in the manner required in the original statement or report the text of every item to which it relates and shall set out a complete amended answer to each such item. However, amendments to financial statements may contain only the particular statements or schedules in fact amended.

(d) Each amendment shall have a signature sheet containing the form of signature required in the statement or report it amends.

Rule 0-4 Incorporation by reference.

(a) *Registration statements and reports.* Except as provided by this section or in the appropriate form, information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report. Where an item requires a summary or outline of the provisions of any document, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Financial information.* Except as provided in the *Commission's* rules, financial information required to be given in comparative form for two or more fiscal years or periods

must not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given. In the financial statements, incorporating by reference, or cross-referencing to, information outside of the financial statements is not permitted unless otherwise specifically permitted or required by the *Commission's* rules or by U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards as issued by the International Accounting Standards Board, whichever is applicable.

(c) *Exhibits*. Any document or part thereof, including any financial statement or part thereof, filed with the *Commission* pursuant to any Act administered by the *Commission* may be incorporated by reference as an exhibit to any registration statement, application, or report filed with the *Commission* by the same or any other person. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of any such modification and the date thereof.

(d) *Hyperlinks*. Include an active hyperlink to information incorporated into a registration statement, application, or report by reference if such information is publicly available on the *Commission's* Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”) at the time the registration statement, application, or report is filed. For hyperlinking to exhibits, please refer to the appropriate form.

(e) *General*. Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

Rule 0-5 Procedure with respect to applications and other matters.

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any Rule or Regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the Federal Register and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as a matter of course, following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion.

(d)(1) An applicant may request expedited review of an application if such application is substantially identical to two other applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing.

(2) For purposes of this section, "substantially identical" applications are applications requesting relief from the same sections of the Act and 17 CFR part 270, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.

(e) An application submitted for expedited review must include:

(1) A notation on the cover page of the application that states prominently, "EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0-5(d)";

(2) Exhibits with marked copies of the application showing changes from the final versions of the two applications identified as substantially identical under paragraph (e)(3) of this section; and

(3) An accompanying cover letter, signed, on behalf of the applicant, by the person executing the application;

(i) Identifying two substantially identical applications and explaining why the applicant chose those particular applications, and if more recent applications of the same type have been approved, why the applications chosen, rather than the more recent applications, are appropriate; and

(ii) Certifying that the applicant believes the application meets the requirements of paragraph (d) of this section and that the marked copies required by paragraph (e)(2) of this section are complete and accurate.

(f)(1) No later than 45 days from the date of filing of an application for which expedited review is requested:

(i) Notice of an application will be issued in accordance with paragraph (a) of this section; or

(ii) The applicant will be notified that the application is not eligible for expedited review because it does not meet the criteria set forth in paragraphs (d) or (e) of this section or because additional time is necessary for appropriate consideration of the application;

(2) For purposes of paragraph (f)(1) of this section:

(i) The 45-day period will stop running upon:

(A) Any request for modification of an application and will resume running on the 14th day after the applicant has filed an amended application responsive to such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate;

(B) Any unsolicited amendment of the application and will resume running on the 30th day after such an amendment, provided that the amendment includes a marked copy showing changes made and a certification signed by the person executing the application that such marked copy is complete and accurate; and

(C) Any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in Federal appropriations, national emergency, inclement weather, or ad hoc Federal holiday, and will resume upon the reopening of the Commission's Washington, DC office to the public for normal business.

(ii) If the applicant does not file an amendment responsive to any request for modification within 30 days of receiving such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate, the application will be deemed withdrawn.

(g) If an applicant has not responded in writing to any request for clarification or modification of an application filed under this section, other than an application that is under expedited review under paragraphs (d) and (e) of this section, within 120 days after the request, the application will be deemed withdrawn.

Rule 0-8 Payment of filing fees.

All *payment* of filing fees shall be made by wire transfer, debit card, credit card or via the Automated Clearing House Network. *Payment* of filing fees required by this section shall be made in accordance with the directions set forth in Rule 3a [of part 202—Informal and other Procedures].

Rule 0-10 Small entities under the Investment Company Act for purposes of the Regulatory Flexibility Act.

(a) *General.* For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.) and unless otherwise defined for purposes of a particular rulemaking, the term *small business* or *small organization* for purposes of the Investment Company Act of 1940 shall mean an *investment company* that, together with other *investment companies* in the same group of

related *investment companies*, has net assets of \$50 million or less as of the end of its most recent *fiscal year*. For purposes of this section:

(1) In the case of a *management company*, the term group of related *investment companies* shall mean two or more *management companies* (including series thereof) that:

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

(ii) Either:

(A) Have a common *investment adviser* or have *investment advisers* that are *affiliated persons* of each other; or

(B) Have a common *administrator*; and

(2) In the case of a *unit investment trust*, the term group of related *investment companies* shall mean two or more *unit investment trusts* (including series thereof) that have a common sponsor.

(b) *Special rule for insurance company separate accounts.* In determining whether an *insurance company separate account* is a *small business* or small entity pursuant to paragraph (a) of this section, the assets of the *separate account* shall be cumulated with the assets of the general account and all other *separate accounts* of the *insurance company*.

(c) *Determination of net assets.* The Commission may calculate its determination of the net assets of a group of related *investment companies* based on the net assets of each *investment company* in the group as of the end of such company's *fiscal year*.

Rule 0-11 Customer identification programs.

Each registered open-end company is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation at 31 CFR 103.131, which requires a customer identification program to be implemented as part of the anti-money laundering program required under subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. Where 31 CFR 103.131 and this chapter use different definitions for the same term, the definition in 31 CFR 103.131 shall be used for the purpose of compliance with 31 CFR 103.131. Where 31 CFR 103.131 and this chapter require the same records to be preserved for different periods of time, such records shall be preserved for the longer period of time.

INVESTMENT COMPANY ACT OF 1940

INDEX OF TERMS

<u>TERM</u>	<u>CITE</u>
<i>Absolute VaR test</i>	Rule 18f-4(a)
<i>Advisory board</i>	Section 2(a)(1)
<i>Access person</i>	Rule 17j-1(a)(1)
<i>Acquired fund</i>	Rule 12d1-4(a)(1)
<i>Acquiring fund</i>	Rule 12d1-4(a)(1)
<i>Acquired security</i>	Rule 11a-3(a)(1)
<i>Acquisition (or Acquire)</i>	Rule 2a-7(a)(1); Rule 22e-4(a)(1)
<i>Adjustable Rate Government Securities</i>	Rule 2a-7(i)(1)
<i>Administrative fee</i>	Rule 11a-3(a)(2)
<i>Administrator</i>	Rule 0-1(a)(5)
<i>Advisory group</i>	Rule 12d1-4(d)
<i>Advisory person</i>	Rule 17j-1(a)(2)
<i>Affiliated company</i>	Section 2(a)(2)
<i>Affiliated management person</i>	Rule 3c-5(a)(1)
<i>Affiliated Person</i>	Section 2(a)(3)
<i>Amortized cost method</i>	Rule 2a-7(a)(2)
<i>Amount</i>	Rule 8b-2(a)
<i>Assets</i>	Rule 35d-1(g)
<i>Asset backed security</i>	Rule 2a-7(a)(3)
<i>Asset coverage</i>	Section 18(h)
<i>Assignment</i>	Section 2(a)(4)
<i>Authentication document</i>	Rule 8b-11(e)
<i>Authorized participant</i>	Rule 6c-11(a)(1)
<i>Automatic Investment Plan</i>	Rule 17j-1(a)(11)
<i>Bank</i>	Section 2(a)(5)
<i>Basket</i>	Rule 6c-11; Rule 12d1-4(d)
<i>Beneficial owner</i>	Rule 2a51-2
<i>Beneficial ownership</i>	Rule 17j-1(d)(5)
<i>Beneficial ownership in small business investment companies</i> ..	Rule 3c-2
<i>Board</i>	Rule 2a-5(e)(3)
<i>Broker</i>	Section 2(a)(6)
<i>Business day</i>	Rule 2a-7(a)(4); Rule 6c-11(a)(1); Rule 22e-4(a)(2)
<i>Business development company</i>	Section 2(a)(48)
<i>Canadian law</i>	Rule 7d-2(a)(1)
<i>Canadian Retirement Account</i>	Rule 7d-2(a)(2)
<i>Capital preservation investment</i>	Rule 3a-8(a)(1)
<i>Cash balancing amount</i>	Rule 6c-11(a)(1)
<i>Cash surrender value</i>	Rule 6e-3(c)(4)

<u>TERM</u>	<u>CITE</u>
<i>Cash value</i>	Rule 6e-3(c)(3)
<i>Certificate year</i>	Section 28(d)
<i>Certified</i>	Rule 8b-2(b)
<i>Charitable gift annuity</i>	Section 3(c)(10)(D)(vi)
<i>Charitable lead trust</i>	Section 3(c)(10)(D)(iv)
<i>Charitable organization</i>	Section 3(c)(10)(D)(iii)
<i>Charitable remainder trust</i>	Section 3(c)(10)(D)(v)
<i>Charter</i>	Rule 8b-2(c)
<i>Clearing corporation</i>	Rule 17f-4(c)(1)
<i>Clearing Organization</i>	Rule 17f-6(b)(1)
<i>Closed-end company</i>	Section 5(a)(2)
<i>Collateralized fully</i>	Rule 2a-7(a)(5); Rule 5b-3(c)(1)
<i>Commission</i>	Section 2(a)(7); Rule 0-1(a)(1)
<i>Commodity interests</i>	Rule 2a51-1(a)(1)
<i>Commodity pool</i>	Section 2(a)(54)
<i>Commodity pool operator</i>	Section 2(a)(54)
<i>Commodity trading advisor</i>	Section 2(a)(54)
<i>Common trust fund</i>	Rule 3c-4
<i>Company</i>	Section 2(a)(8); Rule 6c-10(b)(1); Rule 30e-3(h)(1)
<i>Company controlled by the parent company</i>	Rule 3a-5(b)(3)
<i>Conditional demand feature</i>	Rule 2a-7(a)(6)
<i>Conduit security</i>	Rule 2a-7(a)(7)
<i>Contract period</i>	Rule 6e-3(c)(2)
<i>Contract processing day</i>	Rule 6e-3(c)(5)
<i>Control</i>	Section 2(a)(9); Rule 17j-1(a)(3)
<i>Control person</i>	Rule 0-1(a)(6)(iv)(B)
<i>Controlled primarily</i>	Rule 3a-8(b)(5)
<i>Convertible to cash</i>	Rule 22e-4(a)(3)
<i>Convicted</i>	Section 2(a)(10)
<i>Covered company</i>	Rule 3c-1(a)(1); Rule 3c-5(a)(2)
<i>Covered security</i>	Rule 17j-1(a)(4)
<i>Creation unit</i>	Rule 6c-11(a)(1)
<i>Credit rating agency</i>	Section 2(a)(53)
<i>Current market price</i>	Rule 17a-7(b)
<i>Current net asset value</i>	Rule 2a-4
<i>Custodian</i>	Rule 17f-4(c)(2)
<i>Custom basket</i>	Rule 6c-11(a)(1)
<i>Daily dividend fund</i>	Rule 18f-3(c)(2)(i)
<i>Daily liquid assets</i>	Rule 2a-7(a)(8)
<i>Derivatives Instrument</i>	Rule 35d-1(g)
<i>Disclosure controls & procedures</i>	Rule 30a-3(c)

<u>TERM</u>	<u>CITE</u>
<i>Dealer</i>	Section 3(a)(11)
<i>Default</i>	Section 28(f)
<i>Deferred sales load</i>	Rule 6c-8(a); Rule 6c-10(b)(3); Rule 11a- 2(a)(1); Rule 11a-3(a)(3)
<i>Demand feature</i>	Rule 2a-7(a)(9)
<i>Demand feature issued by a Non-Controlled person</i>	Rule 2a-7(a)(10)
<i>Derivatives exposure</i>	Rule 18f-4(a)
<i>Derivatives instrument</i>	Rule 18f-4(a)
<i>Derivatives risk manager</i>	Rule 18f-4(a)
<i>Derivatives risks</i>	Rule 18f-4(a)
<i>Derivatives transaction</i>	Rule 18f-4(a)
<i>Designated index</i>	Rule 18f-4(a)
<i>Designated reference portfolio</i>	Rule 18f-4(a)
<i>Director</i>	Section 2(a)(12)
<i>Disclosure controls and procedures</i>	Rule 30a-3(c)
<i>Distribution</i>	Rule 24b-1(b)
<i>Diversified company</i>	Section 5(b)(1)
<i>Domestic issuer</i>	Rule 10f-3(a)(1)
<i>Donee</i>	Rule 3c-6(a)(1)
<i>Eighty percent basket</i>	Rule 35d-1(g)
<i>Eligible Assets</i>	Rule 3a-7(b)(1)
<i>Eligible Foreign Custodian</i>	Rule 17f-5(a)(1)
<i>Eligible Foreign Offering</i>	Rule 10f-3(a)(2)
<i>Eligible Municipal Securities</i>	Rule 10f-3(a)(3)
<i>Eligible Portfolio Company</i>	Section 2(a)(46); Rule 2a-46
<i>Eligible Rule 144A offering</i>	Rule 10f-3(a)(4)
<i>Eligible securities depository</i>	Rule 17f-7(b)(1)
<i>Eligible security</i>	Rule 2a-7(a)(11); Rule 7d-2(a)(3)
<i>Eligible trust securities</i>	Rule 14a-3(b)
<i>Eligible unregistered fund</i>	Rule 17a-8(b)(2)
<i>Employee</i>	Rule 8b-2(d)
<i>Employees' securities company</i>	Section 2(a)(13)
<i>Engaged substantially in commercial banking activity</i>	Rule 3a-6(b)(2)
<i>Event of insolvency</i>	Rule 2a-7(a)(12); Rule 5b-3(c)(2)
<i>Exchange traded fund</i>	Rule 6c-11(a)(1)
<i>Exchange traded fund share</i>	Rule 6c-11(a)(1)
<i>Excess sales load</i>	Rule 27d-1(b)(1)
<i>Exchange</i>	Section 2(a)(14); Rule 11a-1
<i>Exchange offer</i>	Rule 11a-3(a)(6)
<i>Exchanged security</i>	Rule 11a-2(a)(2); Rule 11a-3(a)(4)

<u>TERM</u>	<u>CITE</u>
<i>Exchange traded fund or ETF</i>	Rule 12d1-4(d); Rule 22e-4(a)(4)
<i>Exchange-traded futures contracts and commodity options</i>	Rule 17f-6(b)(2)
<i>Executive officer</i>	Rule 3c-5(a)(3); Section 57(e)(2)
<i>Exempted person</i>	Rule 6c-10(b)(2)
<i>Existing portfolio company</i>	Rule 6c-6(a)(3)
<i>Existing separate account</i>	Rule 6c-6(a)(2)
<i>Face-amount certificate</i>	Section 2(a)(15)
<i>Face-amount certificate company</i>	Section 4(1)
<i>Fair Value</i>	Rule 2a-5(e)(2)
<i>Family company</i>	Rule 2a51-1(a)(2)
<i>Federal Securities Laws</i>	Rule 38a-1(e)(1)
<i>Federal Tax Status Contribution</i>	Rule 2a19-2(b)(1)
<i>Feeder Fund</i>	Rule 22c-1(a)(3)(iv)
<i>Finance subsidiary</i>	Rule 3a-5(b)(1)
<i>Financial asset</i>	Rule 17f-4(c)(1)
<i>Financial contract</i>	Section 3(c)(2)(B)(ii)
<i>Financial interest</i>	Rule 17a-6(b)(1)
<i>Financial intermediary</i>	Rule 22c-2(c)(1)
<i>Fiscal year</i>	Rule 8b-2(e)
<i>Fixed income securities</i>	Rule 3a-7(b)(2)
<i>Flexible contract</i>	Rule 6e-3(a)(2)
<i>Flexible premium variable life insurance contract</i>	Rule 6e-3(c)(1)
<i>Floating rate security</i>	Rule 2a-7(a)(13)
<i>Foreign Assets</i>	Rule 17f-5(a)(2); Rule 17f-7(b)
<i>Foreign bank</i>	Rule 3a-6(b)(1); Rule 17f-6(b)(5)
<i>Foreign Custody Manager</i>	Rule 17f-5(a)(3)
<i>Foreign financial regulatory authority</i>	Section 2(a)(50)
<i>Foreign Government</i>	Rule 7d-2(a)(4)
<i>Foreign insurance company</i>	Rule 3a-6(b)(3)
<i>Foreign investment</i>	Rule 6c-11(a)(1)
<i>Foreign Issuer</i>	Rule 7d-2(a)(5)
<i>Foreign private issuer</i>	Rule 3a-5(b)(4)
<i>Foreign securities authority</i>	Section 2(a)(49)
<i>Form letter</i>	Rule 24b-1(a)
<i>Front-end sales load</i>	Rule 11a-2(a)(3)
<i>Fully-owned subsidiary</i>	Rule 17a-3(b)

	<u>TERM</u>	<u>CITE</u>
<i>Fund</i>		Rule 2a-5(e)(1); Rule 17a-6(b)(2); Rule 17a-10(b)(1); Rule 17f-4(c)(3); Rule 17f-5(a)(4); Rule 17f-6(b)(3); Rule 17f-7(b); Rule 17j-1(a)(5); Rule 18f-4(a); Rule 22c-1(a)(3); Rule 22c-2(c)(2); Rule 22e-4(a)(5); Rule 30e-3(h)(2)
<i>Fundamental policy</i>		Rule 35d-1(g)
<i>Fundwide Expenses</i>		Rule 18f-3(c)(2)(ii)
<i>Futures Commission Merchant</i>		Rule 17f-6(b)(4)
<i>Government Money Market Fund</i>		Rule 2a-7(a)(14)
<i>Government security</i>		Section 2(a)(16); Rule 2a-7(a)(15); Rule 5b-3(c)(3)
<i>Group of investment companies</i>		Rule 11a-3(a)(5); Section 12(d)(1)(G)(ii); Rule 12d1-4(d)
<i>Guarantee</i>		Rule 2a-7(a)(16)
<i>Guarantee Issued By A Non-Controlled Person</i>		Rule 2a-7(a)(17)
<i>Highly liquid investment</i>		Rule 22e-4(a)(6)
<i>Highly liquid investment minimum</i>		Rule 22e-4(a)(7)
<i>Illiquid investment</i>		Rule 22e-4(a)(8)
<i>Illiquid security</i>		Rule 2a-7(a)(18)
<i>Independent Evaluator</i>		Rule 17a-8(b)(3)
<i>Independent Legal Counsel</i>		Rule 0-1(a)(6)(i)
<i>Indirect intermediary</i>		Rule 22c-2(c)(5)(iii)
<i>Initial Public Offering</i>		Rule 17j-1(a)(6)
<i>Initial Purchase Payment</i>		Rule 22c-1(c)(3)(ii)
<i>In-kind Exchange Traded Fund</i>		Rule 22e-4(a)(9)
<i>Insurance company</i>		Section 2(a)(17)
<i>Interested person</i>		Section 2(a)(19)
<i>Interim contract</i>		Rule 15a-4(a)(2)
<i>Intermediary custodian</i>		Rule 17f-4(c)(4)
<i>Internal control over financial reporting</i>		Rule 30a-3(d)
<i>Inverse multiple</i>		Rule 18f-4(a)
<i>Interstate commerce</i>		Section 2(a)(18)
<i>Investment adviser</i>		Section 2(a)(20)
<i>Investment banker</i>		Section 2(a)(21)
<i>Investment company</i>		Section 3(a)(1); Rule 12d1-1(d)(1)

	<u>TERM</u>	<u>CITE</u>
<i>Investment income</i>		Rule 8b-2(f)
<i>Investment made pursuant to a collaborative research and development arrangement</i>		Rule 3a-8(b)(6)
<i>Investment Personnel</i>		Rule 17j-1(a)(7)
<i>Investment securities</i>		Section 3(a)(2)
<i>Investment Vehicle</i>		Rule 2a51-1(a)(3)
<i>Investments</i>		Rule 2a51-1(b)
<i>Investments in securities</i>		Rule 3a-8(b)(7)
<i>Investor flow</i>		Rule 22c-1(a)(3)(i)
<i>Issuer</i>		Section 2(a)(22)
<i>Joint enterprise or other joint arrangement or profit-sharing plan</i>		Rule 17d-1(c)
<i>Joint insured bond</i>		Rule 17g-1(b)(1)
<i>Knowledgeable Employee</i>		Rule 3c-5(a)(4)
<i>Launch</i>		Rule 35d-1(g)
<i>Lend</i>		Section 2(a)(23)
<i>Less liquid Investment</i>		Rule 22e-4(a)(10)
<i>Leveraged/inverse fund</i>		Rule 18f-4(a)
<i>Leverage multiple</i>		Rule 18f-4(a)
<i>Life insurer</i>		Rule 6e-3(a)(1)
<i>Limited Offering</i>		Rule 17j-1(a)(8)
<i>Limited Partnership Investment Company</i>		Rule 2a19-2(b)(2)
<i>Liquidity risk</i>		Rule 22e-4(a)(11)
<i>Long-Term Floating rate securities</i>		Rule 2a-7(i)(5)
<i>Long-Term Variable rate securities</i>		Rule 2a-7(i)(3)
<i>Majority of the Outstanding Voting securities</i>		Rule 18f-2(h)
<i>Majority owned subsidiary</i>		Section 2(a)(24)
<i>Major swap participant</i>		Section 2(a)(54)
<i>Making available significant managerial assistance</i>		Section 2(a)(47)
<i>Managed Portion</i>		Rule 10f-3(a)(5)
<i>Management company</i>		Section 4(3)
<i>Market intermediary</i>		Section 3c(2)(B)(i)
<i>Market price</i>		Rule 6c-11(a)(1)
<i>Master Fund</i>		Rule 22c-1(a)(3)(iv)
<i>Material</i>		Rule 8b-2(g)
<i>Material compliance matter</i>		Rule 38a-1(e)(2)
<i>Material Matter</i>		Rule 2a-5(b)(1)(ii)
<i>Means or instrumentality of interstate commerce</i>		Section 2(a)(25)
<i>Merger</i>		Rule 17a-8(b)(1)
<i>Moderately liquid investment</i>		Rule 22e-4(a)(12)
<i>Money market fund</i>		Rule 22c-2(c)(3); Rule 12d1-1(d)(2)
<i>Money Market fund Securities</i>		Rule 2a-7(i)(8)
<i>Monthly payment</i>		Rule 27d-1(b)(2)

<u>TERM</u>	<u>CITE</u>
<i>Municipal Issuer</i>	Rule 2a-7(a)(7)
<i>Narrow-based security index</i>	Section 2(a)(52)
<i>National securities exchange</i>	Section 2(a)(26); Rule 6c-11(a)(1)
<i>Negative interest rate event</i>	Rule 2a-7(c)(3)(ii)
<i>New portfolio company</i>	Rule 6c-6(a)(4)
<i>New separate account</i>	Rule 6c-6(a)(5)
<i>Nominal fee</i>	Rule 11a-3(a)(8)
<i>Non-diversified company</i>	Section 5(b)(2)
<i>Notice</i>	Rule 30e-3(c)
<i>Offering company</i>	Rule 11a-3(a)(6)
<i>Officer's instruction</i>	Rule 17f-4(c)(5)
<i>Open-end company</i>	Section 5(a)(1)
<i>Other investment</i>	Rule 3a-8(b)(8)
<i>Other records</i>	Rule 31a-1(b)(12)
<i>Oversubscribed</i>	Rule 35d-1(g)
<i>Parent</i>	Rule 8b-2(h)
<i>Parent Company</i>	Rule 2a51-1(g)(3); Rule 3a-5(b)(2)
<i>Participant</i>	Rule 7d-2(a)(6)
<i>Partnership Agreement</i>	Rule 2a19-2(b)(3)
<i>Penny-rounding method</i>	Rule 2a-7(a)(19)
<i>Periodic interval</i>	Rule 23c-3(a)(1)
<i>Periodic payment plan certificate</i>	Section 2(a)(27)
<i>Person</i>	Section 2(a)(28); Rule 0-1(a)(6)(iv)(A)
<i>Person(s) designated to administer the program</i>	Rule 22e-4(a)(13)
<i>Person(s) responsible for administering swing pricing</i>	Rule 22c-1(a)(3)(ii)(C)
<i>Physical commodity</i>	Rule 2a51-1(a)(5)
<i>Pooled income fund</i>	Section 3(c)(10)(D)(ii)
<i>Portfolio affiliate</i>	Rule 17a-6(b)(3)
<i>Portfolio holdings</i>	Rule 6c-11(a)(1)
<i>Portfolio lending agreements</i>	Rule 2a-7(i)(7)
<i>Premium or discount</i>	Rule 6c-11(a)(1)
<i>Previous contract</i>	Rule 15a-4(a)(3)
<i>Previously filed</i>	Rule 8b-2(i)
<i>Previously reported</i>	Rule 8b-2(i)
<i>Primary ABS</i>	Rule 2a-7(d)(3)(ii)(D)(1)
<i>Primary custodian</i>	Rule 17f-7(b)(2)
<i>Principal underwriter</i>	Section 2(a)(29)
<i>Private fund program</i>	Rule 12d1-4(d); Rule 18f-4(a)
<i>Promoter</i>	Section 2(a)(30)

<u>TERM</u>	<u>CITE</u>
<i>Prospective purchaser</i>	Rule 22c-1(c)(3)(i)
<i>Prospective qualified purchaser</i>	Rule 2a51-1(a)(6)
<i>Prospectus</i>	Section 2(a)(31)
<i>Public company</i>	Rule 2a51-1(a)(7)
<i>Public offering</i>	Rule 3c-3; Rule 7d-2(b)
<i>Purchase or sale of a Covered Security</i>	Rule 17j-1(a)(9)
<i>Purchase payments made for the acquired security</i>	Rule 11a-2(a)(4)
<i>Qualified company</i>	Rule 7d-2(a)(7)
<i>Qualified evaluator</i>	Rule 22c-1(b)(2)
<i>Qualified Foreign Bank</i>	Rule17f-5(a)(5); Rule17f-7(b)
<i>Qualified investments</i>	Rule 28b-1(a)
<i>Qualified purchaser</i>	Section 2(a)(51)(A); Rule 2a51-1(h)
<i>Qualified purchaser transferee</i>	Rule 3c-6(b)
<i>Qualified purchaser transferor</i>	Rule 3c-6(b)
<i>Qualifying venture capital fund</i>	Section 3(c)(1)(C)(i)
<i>Qualifying assets</i>	Rule 2a-7(a)(3)
<i>Redeemable security</i>	Section 2(a)(32)
<i>Redemption fee</i>	Rule 11a-3(a)(7)
<i>Refunded security</i>	Rule 2a-7(a)(20); Rule 5b-3(c)(5)
<i>Registered Canadian Fund</i>	Rule 17f-5(a)(6); Rule 17f-7(b)
<i>Regular broker or dealer</i>	Rule 10b-1
<i>Related person</i>	Rule 2a51-1(a)(8)
<i>Relative VaR test</i>	Rule 18f-4(a)
<i>Relying person</i>	Rule 2a51-1(a)(9)
<i>Reorganization</i>	Section 2(a)(33)
<i>Report</i>	Rule 30e-3(a)
<i>Repurchase offer</i>	Rule 23c-3(a)(2)
<i>Repurchase offer amount</i>	Rule 23c-3(a)(3)
<i>Repurchase payment deadline</i>	Rule 23c-3(a)(4)
<i>Repurchase pricing date</i>	Rule 23c-3(a)(5)
<i>Repurchase request</i>	Rule 23c-3(a)(6)
<i>Repurchase request deadline</i>	Rule 23c-3(a)(7)
<i>Required majority</i>	Section 57(o)
<i>Resale price</i>	Rule 5b-3(c)(6)
<i>Research and development expenses</i>	Rule 3a-8(b)(9)
<i>Restricted special purpose entity</i>	Rule 2a-7(d)(3)(ii)(D)(2)
<i>Retail Money Market Fund</i>	Rule 2a-7(a)(21)
<i>Revenue ruling</i>	Rule 6c-6(a)(1)
<i>Sale, sell, offer to sell, offer for sale</i>	Section 2(a)(34)
<i>Sales load</i>	Section 2(a)(35);

<u>TERM</u>	<u>CITE</u>
<i>Savings and loan association</i>	Section 2(a)(45)
<i>Secondary ABS</i>	Rule 2a-7(d)(3)(ii)(D)(1)(ii)
<i>Second tier fund</i>	Rule 12d1-4(b)(3)
<i>Section 3(c)(1) Company</i>	Rule 3c-5(a)(5); Rule 3c-1(a)(2); Rule 3c-6(a)(2)
<i>Section 3(c)(7) Company</i>	Rule 3c-1(a)(3); Rule 3c-5(a)(6); Rule 3c-6(a)(3); Rule 2a51-1(a)(10)
<i>Securities Depository</i>	Rule 17f-4(c)(6)
<i>Securities intermediary</i>	Rule 17f-4(c)(1)
<i>Securities portfolio</i>	Rule 18f-4(a)
<i>Securities related activities</i>	Rule 12d3-1(d)(1)
<i>Security</i>	Section 2(a)(36)
<i>Security entitlement</i>	Rule 17f-4(c)(1)
<i>Security future</i>	Section 2(a)(52)
<i>Security held or to be acquired</i>	Rule 17j-1(a)(10)
<i>Senior security</i>	Section 18(f)(2); Section 18(g)
<i>Separate account</i>	Section 2(a)(37); Rule 0-1(e)(1)
<i>Series of a series company</i>	Rule 10f-3(a)(6)
<i>Set of investment companies</i>	Rule 32a-3(b)
<i>Settled shares method</i>	Rule 18f-3(c)(2)(iii)
<i>Share</i>	Rule 8b-2(j)
<i>Short-Term Floating rate securities</i>	Rule 2a-7(i)(4)
<i>Short-term paper</i>	Section 2(a)(38)
<i>Short-term variable rate securities</i>	Rule 2a-7(i)(2)
<i>Significant subsidiary</i>	Rule 8b-2(k)
<i>Simultaneous Equations Method</i>	Rule 18f-3(c)(2)(iv)
<i>Single insured bond</i>	Rule 17g-1(b)(2)
<i>Single state fund</i>	Rule 2a-7(a)(22)
<i>Special purpose entity</i>	Rule 2a-7(a)(3)
<i>Standby commitment</i>	Rule 2a41-1
<i>State</i>	Section 2(a)(39)
<i>Statement of Additional Information</i>	Rule 30e-3(h)(3)
<i>Statutory Prospectus</i>	Rule 30e-3(h)(4)
<i>Subadviser</i>	Rule 10f-3(a)(7); Rule 12d3-1(d)(9); Rule 17a-10(b)(2)
<i>Subsidiary</i>	Rule 8b-2(l)
<i>Summary Prospectus</i>	Rule 30e-3(h)(5)
<i>Surviving company</i>	Rule 17a-8(b)(4)
<i>Swap</i>	Section 2(a)(54)

<u>TERM</u>	<u>CITE</u>
<i>Swap dealer</i>	Section 2(a)(54)
<i>Swap execution facility</i>	Section 2(a)(54)
<i>Tax Exempt Fund</i>	Rule 2a-7(a)(23)
<i>Ten Percent Obligor</i>	Rule 2a-7(d)(3)(ii)(D)(1)(i)
<i>Total assets</i>	Rule 2a-7(a)(24); Rule 5b-1
<i>Totally-held subsidiary</i>	Rule 8b-2(m)
<i>Trust account</i>	Rule 14a-2(b)
<i>UIT</i>	Rule 12d1-4(b)(2)(ii)
<i>U.S. Bank</i>	Rule17f-5(a)(7); Rule17f-7(b)
<i>Unconditional demand feature</i>	Rule 2a-7(a)(25)
<i>Underlying security</i>	Rule 2a-7(d)(2)(iii)
<i>Underwriter</i>	Section 2(a)(40)
<i>Unfunded commitment agreement</i>	Rule 18f-4(a)
<i>Unit investment trust</i>	Section 4(2); Rule 22e-4(a)(14)
<i>United States Dollar-Denominated</i>	Rule 2a-7(a)(26)
<i>Value</i>	Section 2(a)(41)
<i>Value-at-risk or VaR</i>	Rule 18f-4(a)
<i>Valuation designee</i>	Rule 2a-5(e)(4)
<i>Valuation risks</i>	Rule 2a-5(a)(1)
<i>Variable life insurance contract</i>	Rule 6e-2(c)(1)
<i>Variable rate security</i>	Rule 2a-7(a)(27)
<i>Venture capital fund</i>	Section 3(c)(1)(C)(ii)
<i>Voting security</i>	Section 2(a)(42)
<i>Weekly liquid assets</i>	Rule 2a-7(a)(28)
<i>Wholly-owned subsidiary</i>	Section 2(a)(43)

INVESTMENT ADVISERS ACT OF 1940 AND RULES THEREUNDER

INVESTMENT ADVISERS ACT OF 1940 AND RULES THEREUNDER

Section 201. Findings [15 U.S.C. 80b-1]

Upon the basis of facts disclosed by the record and report of the Securities and Exchange *Commission* made pursuant to section 30 of the Public Utility Holding Company Act of 1935, and facts otherwise disclosed and ascertained, it is hereby found that *investment advisers* are of national concern, in that, among other things—

- (1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with *clients* are negotiated and performed, by the use of the mails and means and instrumentalities of interstate commerce;
- (2) their advice, counsel, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on *national securities exchanges* and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national *banks* and member *banks* of the Federal Reserve System; and
- (3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, *national securities exchanges*, and other securities markets, the national *banking* system and the national economy.

Section 202. Definitions [15 U.S.C. 80b-2]

(a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

- (1) “*Assignment*” includes any direct or indirect transfer or hypothecation of an *investment advisory contract* by the assignor or of a *controlling* block of the assignor’s outstanding voting securities by a security holder of the assignor, but if the *investment adviser* is a partnership, no *assignment* of an *investment advisory contract* shall be deemed to result from the death or withdrawal of a minority of the members of the *investment adviser* having only a minority interest in the business of the *investment adviser*, or from the admission to the *investment adviser* of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.
- (2) “*Bank*” means (A) a *banking* institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners’ Loan Act, (B) a member *bank* of the Federal Reserve System, (C) any other *banking* institution, savings association as defined in section 2(4) of the Home Owners’ Loan Act, or trust company, whether incorporated or not, doing business under the laws of any *State* or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national *banks* under the authority of the Comptroller of the Currency, and which is supervised

and examined by *State* or Federal authority having supervision over *banks* or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term “*broker*” has the same meaning as given in section 3 of the Securities Exchange Act of 1934.

(4) “*Commission*” means the Securities and Exchange *Commission*.

(5) “*Company*” means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of *persons*, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code [i.e., bankruptcy,] or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) “*Convicted*” includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term “*dealer*” has the same meaning as given in section 3 of the Securities Exchange Act of 1934, but does not include an *insurance company* or *investment company*.

(8) “*Director*” means any *director* of a corporation or any *person* performing similar functions with respect to any organization, whether incorporated or unincorporated.

(9) “*Exchange*” means any organization, association, or group of *persons*, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock *exchange* as that term is generally understood, and includes the market place and the market facilities maintained by such *exchange*.

(10) “*Interstate commerce*” means trade, commerce, transportation, or communication among the several *States*, or between any foreign country and any *State*, or between any *State* and any place or ship outside thereof.

(11) “*Investment adviser*” means any *person* who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a *bank*, or any *bank* holding company as defined in the Bank Holding Company Act of 1956, which is not an *investment company*, except that the term “*investment adviser*” includes any *bank* or *bank* holding company to the extent that such *bank* or *bank* holding company serves or acts as an *investment adviser* to a registered *investment company*, but if, in the case of a *bank*, such services or actions are performed through a *separately identifiable*

department or division, the department or division, and not the *bank* itself, shall be deemed to be the *investment adviser*; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any *broker* or *dealer* whose performance of such services is solely incidental to the conduct of his business as a *broker* or *dealer* and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any *person* whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; (F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H) such other *persons* not within the intent of this paragraph, as the *Commission* may designate by *rules and regulations* or order.

(12) “*Investment company*,” “*affiliated person*,” and “*insurance company*” have the same meanings as in the Investment Company Act of 1940. “*Control*” means the power to exercise a *controlling* influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) “*Investment supervisory services*” means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each *client*.

(14) “*Means or instrumentality of interstate commerce*” includes any facility of a *national securities exchange*.

(15) “*National securities exchange*” means an *exchange* registered under section 6 of the Securities Exchange Act of 1934.

(16) “*Person*” means a natural *person* or a company.

(17) The term “*person associated with an investment adviser*” means any partner, officer, or *director* of such *investment adviser* (or any *person* performing similar functions), or any *person* directly or indirectly *controlling* or *controlled* by such *investment adviser*, including any employee of such *investment adviser*, except that for the purposes of section 203 of this title (other than subsection (f) thereof), *persons* associated with an *investment adviser* whose functions are clerical or ministerial shall not be included in the meaning of such term. The *Commission* may by *rules and regulations* classify, for the purposes of any portion or portions of this title, *persons*, including employees *controlled* by an *investment adviser*.

(18) “**Security**” means any note, stock, treasury stock, *security future*, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a *national securities exchange* relating to foreign currency, or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

(19) “**State**” means any *State* of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(20) “**Underwriter**” means any *person* who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a *person* whose interest is limited to a commission from an *underwriter* or *dealer* not in excess of the usual and customary distributor’s or seller’s commission. As used in this paragraph the term issuer shall include in addition to an issuer, any *person* directly or indirectly *controlling* or *controlled* by the issuer, or any *person* under direct or indirect common *control* with the issuer.

(21) “Securities Act of 1933,” “Securities Exchange Act of 1934,” and “Trust Indenture Act of 1939,” mean those Acts, respectively, as heretofore or hereafter amended.

(22) “**Business development company**” means any company which is a *business development company* as defined in section 2(a)(48) of the Investment Company Act of 1940 and which complies with section 55 of the Investment Company Act of 1940, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 2(a)(48) and 55 of the Investment Company Act of 1940 shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 55 through 65 of the Investment Company Act of 1940; and

(C) the securities which may be purchased pursuant to section 55(a) of the Investment Company Act of 1940 may be purchased from any *person*.

For purposes of this paragraph, all terms in sections 2(a)(48) and 55 the Investment Company Act of 1940 shall have the same meaning set forth in such Act as if such company were a registered closed-end *investment company*, except that the value of the assets of a *business development company* which is not subject to the provisions of sections 55 through 65 of the Investment Company Act of 1940 shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

(23) “*Foreign securities authority*” means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(24) “*Foreign financial regulatory authority*” means any (A) *foreign securities authority*, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(25) “*Supervised person*” means any partner, officer, *director* (or other *person* occupying a similar status or performing similar functions), or employee of an *investment adviser*, or other *person* who provides investment advice on behalf of the *investment adviser* and is subject to the supervision and *control* of the *investment adviser*.

(26) The term “*separately identifiable department or division*” of a *bank* means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of *directors* of the *bank* as responsible for the day-to-day conduct of the *bank’s investment adviser* activities for one or more *investment companies*, including the supervision of all *bank* employees engaged in the performance of such activities; and

(B) for which all of the records relating to its *investment adviser* activities are separately maintained in or extractable from such unit’s own facilities or the facilities of the *bank*, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the *Commission* of this Act or the Investment Company Act of 1940 and *rules and regulations* promulgated under this Act or the Investment Company Act of 1940.

(27) The terms “*security future*” and “*narrow-based security index*” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(28) The term “*credit rating agency*” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended Section 202(a) of the Investment Advisers Act of 1940 by adding two new subsections (29).

(29) The term “*private fund*” means an issuer that would be an *investment company*, as defined in section 3 of the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act.

(29) The terms “*commodity pool*”, “*commodity pool operator*”, “*commodity trading advisor*”, “*major swap participant*”, “*swap*”, “*swap dealer*”, and “*swap execution facility*” have the same meanings as in section 1a of the Commodity Exchange Act.

(30) The term “*foreign private adviser*” means any *investment adviser* who—

(A) has no *place of business* in the United States;

(B) has, in total, fewer than 15 *clients* and investors in the United States in *private funds* advised by the *investment adviser*;

(C) has aggregate *assets under management* attributable to *clients* in the United States and investors in the United States in *private funds* advised by the *investment adviser* of less than \$25,000,000, or such higher amount as the *Commission* may, by rule, deem appropriate in accordance with the purposes of this title; and

(D) neither—

(i) holds itself out generally to the public in the United States as an *investment adviser*; nor

(ii) acts as—

(I) an *investment adviser* to any *investment company* registered under the Investment Company Act of 1940; or

(II) a *company* that has elected to be a *business development company* pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn its election.

(b) Governments Excepted. No provision in this title shall apply to, or be deemed to include, the United States, a *State*, or any political subdivision of a *State*, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of Promotion of Efficiency, Competition, and Capital Formation. Whenever pursuant to this title the *Commission* is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public inter-

est, the *Commission* shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

Rule 202(a)(1)-1 *Certain transactions not deemed assignments*

A transaction which does not result in a change of actual *control* or management of an *investment adviser* is not an *assignment* for purposes of Section 205(a)(2) of this Act.

Rule 202(a)(11)-1 [Reserved]

Rule 202(a)(11)(G)-1 *Family offices.*

(a) *Exclusion.* A *family office*, as defined in this section, shall not be considered to be an *investment adviser* for purpose of the Advisers Act.

(b) *Family office.* A *family office* is a *company* (including its *directors*, partners, members, managers, trustees, and employees acting within the scope of their position or employment) that:

(1) Has no clients other than *family clients*; provided that if a *person* that is not a *family client* becomes a client of the *family office* as a result of the death of a *family member* or *key employee* or other involuntary transfer from a *family member* or *key employee*, that *person* shall be deemed to be a *family client* for purposes of this section 202(a)(11)(G)-1 for one year following the completion of the transfer of legal title to the assets resulting from the involuntary event;

(2) Is wholly owned by *family clients* and is exclusively *controlled* (directly or indirectly) by one or more *family members* and/or *family entities*; and

(3) Does not hold itself out to the public as an *investment adviser*.

(c) *Grandfathering.* A *family office* as defined in paragraph (a) above shall not exclude any *person*, who was not registered or required to be registered under the Advisers Act on January 1, 2010, solely because such *person* provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to:

(1) Natural *persons* who, at the time of their applicable investment, are officers, *directors*, or employees of the *family office* who have invested with the *family office* before January 1, 2010 and are accredited investors, as defined in Regulation D under the Securities Act of 1933;

(2) Any *company* owned exclusively and *controlled* by one or more *family members*; or

(3) Any *investment adviser* registered under the Advisers Act that provides investment advice to the *family office* and who identifies investment opportunities to the *family office*, and invests in such transactions on substantially the same terms as the *family office* invests, but does not invest in other funds advised by the *family office*, and whose assets as to which the *family office* directly or indirectly provides investment advice represents, in the aggregate, not more than 5 percent of the value of the total assets as to which the *family office* provides investment advice; provided that a *family office* that

would not be a *family office* but for this subsection (c) shall be deemed to be an *investment adviser* for purposes of paragraphs (1), (2) and (4) of section 206 of the Advisers Act.

(d) *Definitions*. For purposes of this section:

(1) *Affiliated family office* means a *family office* wholly owned by *family clients* of another *family office* and that is *controlled* (directly or indirectly) by one or more *family members* of such other *family office* and/or *family entities* affiliated with such other *family office* and has no clients other than *family clients* of such other *family office*.

(2) *Control* means the power to exercise a controlling influence over the management or policies of a *company*, unless such power is solely the result of being an officer of such *company*.

(3) *Executive officer* means the president, any vice president in charge of a principal business unit, division or function (such as administration or finance), any other officer who performs a policy-making function, or any other *person* who performs similar policy-making functions, for the *family office*.

(4) *Family client* means:

(i) Any *family member*;

(ii) Any former *family member*;

(iii) Any *key employee*;

(iv) Any former *key employee*, provided that upon the end of such individual's employment by the *family office*, the former *key employee* shall not receive investment advice from the *family office* (or invest additional assets with a *family office*-advised trust, foundation or entity) other than with respect to assets advised (directly or indirectly) by the *family office* immediately prior to the end of such individual's employment, except that a former *key employee* shall be permitted to receive investment advice from the *family office* with respect to additional investments that the former *key employee* was contractually obligated to make, and that relate to a family-office advised investment existing, in each case prior to the time the *person* became a former *key employee*.

(v) Any non-profit organization, charitable foundation, charitable trust (including charitable lead trusts and charitable remainder trusts whose only current beneficiaries are other *family clients* and charitable or non-profit organizations), or other charitable organization, in each case for which all the funding such foundation, trust or organization holds came exclusively from one or more other *family clients*;

(vi) Any estate of a *family member*, former *family member*, *key employee*, or, subject to the condition contained in paragraph (d)(4)(iv) of this section, former *key employee*;

(vii) Any irrevocable trust in which one or more other *family clients* are the only current beneficiaries;

- (viii) Any irrevocable trust funded exclusively by one or more other *family clients* in which other *family clients* and non-profit organizations, charitable foundations, charitable trusts, or other charitable organizations are the only current beneficiaries;
- (ix) Any revocable trust of which one or more other *family clients* are the sole grantor;
- (x) Any trust of which: (A) each trustee or other *person* authorized to make decisions with respect to the trust is a *key employee*; and (B) each settlor or other *person* who has contributed assets to the trust is a *key employee* or the *key employee's* current and/or former spouse or *spousal equivalent* who, at the time of contribution, holds a joint, community property, or other similar shared ownership interest with the *key employee*; or
- (xi) Any *company* wholly owned (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more other *family clients*; provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of “*investment company*” under the Investment Company Act of 1940.
- (5) *Family entity* means any of the trusts, estates, *companies* or other entities set forth in paragraphs (v), (vi), (vii), (viii), (ix), or (xi) of this section, but excluding *key employees* and their trusts from the definition of *family client* solely for purposes of this definition.
- (6) *Family member* means all lineal descendants (including by adoption, stepchildren, foster children, and individuals that were a minor when another *family member* became a legal guardian of that individual) of a common ancestor (who may be living or deceased), and such lineal descendants’ spouses or *spousal equivalents*; provided that the common ancestor is no more than 10 generations removed from the youngest generation of *family members*.
- (7) *Former family member* means a spouse, *spousal equivalent*, or stepchild that was a *family member* but is no longer a *family member* due to a divorce or other similar event.
- (8) *Key employee* means any natural *person* (including any *key employee's* spouse or spouse equivalent who holds a joint, community property, or other similar shared ownership interest with that *key employee*) who is an *executive officer, director*, trustee, general partner, or *person* serving in a similar capacity of the *family office* or its *affiliated family office* or any employee of the *family office* or its *affiliated family office* (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the *family office*) who, in connection with his or her regular functions or duties, participates in the investment activities of the *family office* or *affiliated family office*, provided that such employee has been performing such functions and duties for or on behalf of the *family office* or *affiliated family office*, or substantially similar functions or duties for or on behalf of another *company*, for at least 12 months.

(9) *Spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse.

Rule 202(a)(30)-1 Foreign private advisers.

(a) *Client*. You may deem the following to be a single *client* for purposes of section 202(a)(30) of the Advisers Act:

(1) A natural *person*, and:

(i) Any minor child of the natural *person*;

(ii) Any relative, spouse, *spousal equivalent*, or relative of the spouse or of the *spousal equivalent* of the natural *person* who has the same principal residence;

(iii) All accounts of which the natural *person* and/or the *persons* referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural *person* and/or the *persons* referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2) (i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a “legal organization”) to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special rules regarding clients*. For purposes of this section:

(1) You must count an owner as a *client* if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization, provided, however, that the determination that an owner is a *client* will not affect the applicability of this section with regard to any other owner;

(2) You are not required to count an owner as a *client* solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization’s assets or similar matters;

(3) A limited partnership or limited liability company is a *client* of any general partner, managing member or other *person* acting as *investment adviser* to the partnership or limited liability company;

(4) You are not required to count a *private fund* as a *client* if you count any investor, as that term is defined in paragraph (c)(2) of this section, in that *private fund* as an investor *in the United States* in that *private fund*; and

(5) You are not required to count a *person* as an investor, as that term is defined in paragraph (c)(2) of this section, in a *private fund* you advise if you count such *person* as a *client in the United States*.

Note to paragraphs (a) and (b): These paragraphs are a safe harbor and are not intended to specify the exclusive method for determining who may be deemed a single *client* for purposes of section 202(a)(30) of the Advisers Act.

(c) *Definitions.* For purposes of section 202(a)(30) of the Advisers Act:

(1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV.

(2) *Investor* means:

(i) Any *person* who would be included in determining the number of beneficial owners of the outstanding securities of a *private fund* under section 3(c)(1) of the Investment Company Act of 1940, or whether the outstanding securities of a *private fund* are owned exclusively by qualified purchasers under section 3(c)(7) of that Act; and

(ii) Any beneficial owner of any outstanding short-term paper, as defined in section 2(a)(38) of the Investment Company Act of 1940, issued by the *private fund*.

Note to paragraph (c)(2): You may treat as a single *investor* any *person* who is an *investor* in two or more *private funds* you advise.

(3) *In the United States* means with respect to:

(i) Any *client* or *investor*, any *person* who is a *U.S. person* as defined in rule 902(k) under the Securities Act of 1933, except that any discretionary account or similar account that is held for the benefit of a *person in the United States* by a *dealer* or other professional fiduciary is *in the United States* if the *dealer* or professional fiduciary is a related *person*, as defined in Rule 206(4)-2(d)(7) under the Advisers Act, of the *investment adviser* relying on this section and is not organized, incorporated, or (if an individual) resident *in the United States*.

Note to paragraph (c)(3)(i): A *person* who is *in the United States* may be treated as not being *in the United States* if such *person* was not *in the United States* at the time of becoming a *client* or, in the case of an *investor* in a *private fund*, each time the *investor* acquires securities issued by the fund.

(ii) Any *place of business, in the United States*, as that term is defined in rule 902(l) under the Securities Act of 1933; and

(iii) The public, *in the United States*, as that term is defined in rule 902(l) under the Securities Act of 1933.

(4) *Place of business* has the same meaning as in rule 222-1(a) under the Advisers Act.

(5) *Spousal equivalent* has the same meaning as in rule 202(a)(11)(G)-1(d)(9) under the Advisers Act.

(d) *Holding out*. If you are relying on this section, you shall not be deemed to be holding yourself out generally to the public *in the United States* as an *investment adviser*, within the meaning of section 202(a)(30) of the Advisers Act, solely because you participate in a non-public offering *in the United States* of securities issued by a *private fund* under the Securities Act of 1933.

Section 203. Registration of *investment advisers* [15 U.S.C. 80b-3]

(a) Except as provided in subsection (b) and section 203A, it shall be unlawful for any *investment adviser*, unless registered under this section, to make use of the mails or any means or instrumentality of *interstate commerce* in connection with his or its business as an *investment adviser*.

(b) The provisions of subsection (a) shall not apply to—

(1) any *investment adviser*, other than an investment adviser who acts as an investment adviser to any private fund, all of whose *clients* are residents of the *State* within which such *investment adviser* maintains his or its principal office and *place of business*, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any *national securities exchange*;

(2) any *investment adviser* whose only *clients* are *insurance companies*;

(3) any *investment adviser* that is a foreign private adviser;

(4) any *investment adviser* that is a *charitable organization*, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or is a trustee, *director*, officer, employee, or volunteer of such a *charitable organization* acting within the scope of such *person's* employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such *charitable organization*;

(B) a *fund* that is excluded from the definition of an *investment company* under section 3(c)(10)(B) of the Investment Company Act of 1940; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the trustees, *administrators*, settlors (or potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of the Internal Revenue Code of 1986, any *person* or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, or any trustee, *director*, officer, or employee of or volunteer for any such plan or *person*, if such *person* or entity, acting in such capacity, provides investment

advice exclusively to, or with respect to, any plan, *person*, or entity or any company, account, or *fund* that is excluded from the definition of an *investment company* under section 3(c)(14) of the Investment Company Act of 1940;

(6)(A) any *investment adviser* that is registered with the Commodity Futures Trading Commission as a *commodity trading adviser* whose business does not consist primarily of acting as an *investment adviser*, as defined in section 202(a)(11) of this title, and that does not act as an *investment adviser* to:

- (i) an *investment company* registered under the Investment Company Act of 1940, or
- (ii) a company which has elected to be a *business development company* pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn its election or

(B) any *investment adviser* that is registered with the Commodity Futures Trading Commission as a *commodity trading adviser* and advises a *private fund*, provided that, if after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 [July 21, 2010], the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the *Commission*.

(7) any *investment adviser*, other than any entity that has elected to be regulated or is regulated as a *business development company* pursuant to section 54 of the Investment Company Act of 1940, who solely advises—

(A) *small business investment companies* that are licensees under the Small Business Investment Act of 1958;

(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a *small business investment company* under the Small Business Investment Act of 1958, which notice or license has not been revoked;

(C) applicants that are affiliated with 1 or more licensed *small business investment companies* described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending; or

(8) any investment adviser, other than an entity that has elected to be regulated or is regulated as a business development company pursuant to Section 54 of the Investment Company Act of 1940, who solely advises—

(A) rural business investment companies (as defined in section 2009cc of Title 7); or

(B) companies that have submitted to the Secretary of Agriculture an application in accordance with section 2009cc-3(b) of Title 7 that—

- (i) have received from the Secretary of Agriculture a letter of conditions, which has not been revoked; or

(ii) are affiliated with 1 or more rural business investment companies described in subparagraph (A).

(c)(1) An *investment adviser*, or any *person* who presently contemplates becoming an *investment adviser*, may be registered by filing with the *Commission* an application for registration in such form and containing such of the following information and documents as the *Commission*, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the *investment adviser* engages or intends to engage in business; the name of the *State* or other sovereign power under which such *investment adviser* is organized; the location of his or its principal office, principal place of business, and branch offices, if any; the names and addresses of his or its partners, officers, *directors*, and *persons* performing similar functions or, if such an *investment adviser* be an individual, of such individual; and the number of his or its *employees*;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such *investment adviser* and of his or its partners, officers, *directors*, and *persons* performing similar functions and of any *controlling person* thereof;

(C) the nature of the business of such *investment adviser*, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet *certified* by an independent public accountant and other financial statements (which shall, as the *Commission* specifies, be *certified*);

(E) the nature and scope of the authority of such *investment adviser* with respect to *clients'* funds and accounts;

(F) the basis or bases upon which such *investment adviser* is compensated;

(G) whether such *investment adviser*, or any *person* associated with such *investment adviser*, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such *investment adviser* under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such *investment adviser* consists or is to consist of acting as *investment adviser* and a statement as to whether a substantial part of the business of such *investment adviser*, consists or is to consist of rendering *investment supervisory services*.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the *Commission* shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the *Commission*, by order, shall grant or deny such registration. The *Commission* may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The *Commission* shall grant such registration if the *Commission* finds that the requirements of this section are satisfied and that the applicant is not prohibited from registering as an *investment adviser* under section 203A. The *Commission* shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

(d) Any provision of this title (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of *interstate commerce* are used in connection therewith, shall also prohibit any such act, practice, or course of business by any *investment adviser* registered pursuant to this section or any *person* acting on behalf of such an *investment adviser*, irrespective of any use of the mails or any means or instrumentality of *interstate commerce* in connection therewith.

(e) The *Commission*, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any *investment adviser* if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such *investment adviser*, or any *person* associated with such *investment adviser*, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the *Commission* under this title, or in any proceeding before the *Commission* with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any *material* fact, or has omitted to state in any such application or report any *material* fact which is required to be stated therein.

(2) has been *convicted* within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the *Commission* finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

- (B) arises out of the conduct of the business of a *broker, dealer*, municipal securities *dealer, investment adviser, bank, insurance company*, government securities *broker, dealer*, fiduciary, transfer agent, *credit rating agency*, foreign *person* performing a function substantially equivalent to any of the above, or entity or *person* required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation;
- (C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of *funds* or securities or substantially equivalent activity however denominated by the laws of the relevant foreign government; or
- (D) involves the violation of sections 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code, or a violation of substantially equivalent foreign statute.
- (3) has been *convicted* during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—
- (A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or
- (B) a substantially equivalent crime by a foreign court of competent jurisdiction.
- (4) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an *investment adviser, underwriter, broker, dealer*, municipal securities *dealer*, government securities *broker, dealer*, transfer agent, *credit rating agency*, foreign *person* performing a function substantially equivalent to any of the above, or entity or *person* required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or as an *affiliated person* or employee of any *investment company, bank, insurance company*, foreign entity substantially equivalent to any of the above, or entity or *person* required to be registered under the Commodity Exchange Act, or any substantially equivalent statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.
- (5) has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the Commodity Exchange Act, or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.
- (6) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other *person* of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the Commodity Exchange Act, the rules or regulations under any of such statutes, or the rules of the

Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another *person* who commits such a violation, if such other *person* is subject to his supervision. For the purposes of this paragraph no *person* shall be deemed to have failed reasonably to supervise any *person*, if—

- (A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other *person*, and
 - (B) such *person* has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.
- (7) is subject to any order of the *Commission* barring or suspending the right of the *person* to be associated with an *investment adviser*;
- (8) has been found by a *foreign financial regulatory authority* to have—
- (A) made or caused to be made in any application for registration or report required to be filed with a *foreign securities authority*, or in any proceeding before a *foreign securities authority* with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any *material* fact, or has omitted to state in any application or report to a *foreign securities authority* any *material* fact that is required to be stated therein;
 - (B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or
 - (C) aided, abetted, counseled, commanded, induced, or procured the violation by any other *person* of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the *foreign financial regulatory authority*, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and *rules and regulations* promulgated thereunder, another *person* who commits such a violation, if such other *person* is subject to his supervision; or
- (9) is subject to any final order of a *State* securities commission (or any agency or officer performing like functions), *State* authority that supervises or examines *banks*, savings associations, or credit unions, *State* insurance commission (or any agency or office performing like functions), an appropriate Federal *banking* agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that-

- (A) bars such *person* from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, *banking*, savings association activities, or credit union activities; or
- (B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.
- (f) The *Commission*, by order, shall censure or place limitations on the activities of any *person* associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an *investment adviser*, or suspend for a period not exceeding 12 months or bar any such *person* from being associated with an *investment adviser*, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization, if the *Commission* finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such *person* has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) or has been *convicted* of any offense specified in paragraph (2) or (3) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e). It shall be unlawful for any *person* as to whom such an order suspending or barring him from being associated with an *investment adviser* is in effect willfully to become, or to be, associated with an *investment adviser* without the consent of the *Commission*, and it shall be unlawful for any *investment adviser* to permit such a *person* to become, or remain, a *person* associated with him without the consent of the *Commission*, if such *investment adviser* knew, or in the exercise of reasonable care, should have known, of such order.
- (g) Any successor to the business of an *investment adviser* registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the *Commission*, pursuant to subsection (c) or subsection (e) of this section, shall deny registration to or revoke or suspend the registration of such successor.
- (h) Any *person* registered under this section may, upon such terms and conditions as the *Commission* finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the *Commission*. If the *Commission* finds that any *person* registered under this section, or who has pending an application for registration filed under this section, is no longer in existence, is not engaged in business as an *investment adviser*, or is prohibited from registering as an *investment adviser* under section 203A, the *Commission* shall by order cancel the registration of such *person*.
- (i) Money Penalties In Administrative Proceedings.—
- (1) *Authority of Commission.* (A) IN GENERAL.—In any proceeding instituted pursuant to subsection (e) or (f) against any *person*, the *Commission* may impose a civil

penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such *person*—

(i) has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or this title, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other *person*;

(iii) has willfully made or caused to be made in any application for registration or report required to be filed with the *Commission* under this title, or in any proceeding before the *Commission* with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any *material* fact, or has omitted to state in any such application or report any *material* fact which was required to be stated therein; or

(iv) has failed reasonably to supervise, within the meaning of subsection (e)(6), with a view to preventing violations of the provisions of this title and the *rules and regulations* thereunder, another *person* who commits such a violation, if such other *person* is subject to his supervision:

(B) Cease-and-desist proceedings—In any proceeding instituted pursuant to subsection (k) against any *person*, the *Commission* may impose a civil penalty if the *Commission* finds, on the record, after notice and opportunity for hearing, that such *person*—

(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.

(2) Maximum Amount of Penalty.—

(A) *First Tier*.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for a natural *person* or \$50,000 for any other *person*.

(B) *Second Tier*.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural *person* or \$250,000 for any other *person* if the act or omission described in paragraph (1) *involved* fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

- (C) *Third Tier.*—Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural *person* or \$500,000 for any other *person* if—
- (i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
 - (ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other *persons* or resulted in substantial pecuniary gain to the *person* who committed the act or omission.
- (3) *Determination of Public Interest.*—In considering under this section whether a penalty is in the public interest, the *Commission* may consider—
- (A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;
 - (B) the harm to other *persons* resulting either directly or indirectly from such act or omission;
 - (C) the extent to which any *person* was unjustly enriched, taking into account any restitution made to *persons* injured by such behavior;
 - (D) whether such *person* previously has been found by the *Commission*, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, *State* securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been *convicted* by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 203(e)(2) of this title;
 - (E) the need to deter such *person* and other *persons* from committing such acts or omissions; and
 - (F) such other matters as justice may require.
- (4) *Evidence Concerning Ability to Pay.*—In any proceeding in which the *Commission* may impose a penalty under this section, a respondent may present evidence of the respondent’s ability to pay such penalty. The *Commission* may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such *person’s* ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such *person’s* assets and the amount of such *person’s* assets.
- (j) *Authority to Enter an Order Requiring an Accounting and Disgorgement.*—In any proceeding in which the *Commission* may impose a penalty under this section, the *Commission* may enter an order requiring accounting and disgorgement, including reason-

able interest. The *Commission* is authorized to adopt rules, regulations, and orders concerning *payments* to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(k) **Cease-and-Desist Proceedings.**—

(1) *Authority of the Commission.*—If the *Commission* finds, after notice and opportunity for hearing, that any *person* is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the *Commission* may publish its findings and enter an order requiring such *person*, and any other *person* that is, was, or would be a cause of the violation, due to an act or omission the *person* knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule or regulation. Such order may, in addition to requiring a *person* to cease and desist from committing or causing a violation, require such *person* to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the *Commission* may specify in such order. Any such order may, as the *Commission* deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the *Commission* may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other *person*.

(2) *Hearing.*—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the *Commission* with the consent of any respondent so served.

(3) *Temporary Order.*—

(A) *In General.*—Whenever the *Commission* determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the *Commission* may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the *Commission* deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the *Commission*, notwithstanding section 211(c) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended

by the *Commission* or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) *Applicability*.—This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a *broker, dealer, investment adviser, investment company*, municipal securities *dealer*, government securities *broker*, government securities *dealer*, or transfer agent, or is, or was at the time of the alleged misconduct, an associated *person* of, or a *person* seeking to become associated with, any of the foregoing.

(4) *Review of Temporary Orders*.—

(A) *Commission Review*.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the *Commission* to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior *Commission* hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the *Commission* shall hold a hearing and render a decision on such application at the earliest possible time.

(B) *Judicial Review*.—Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior *Commission* hearing, or

(ii) 10 days after the *Commission* renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior *Commission* hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its *principal office or place of business*, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior *Commission* hearing may not apply to the court except after hearing and decision by the *Commission* on the respondent's application under subparagraph (A) of this paragraph.

(C) *No Automatic Stay of Temporary Order*.—The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the *Commission's* order.

(D) *Exclusive Review*.—Section 213 of this title shall not apply to a temporary order entered pursuant to this section.

(5) *Authority to Enter an Order Requiring an Accounting and Disgorgement*.—In any cease-and-desist proceeding under paragraph (1), the *Commission* may enter an order

requiring accounting and disgorgement, including reasonable interest. The *Commission* is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(l) **Exemption of Venture Capital Fund Advisers.—**

(1) *In General.*—No *investment adviser* that acts as an *investment adviser* solely to 1 or more venture capital funds shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after the date of enactment of this subsection [July 21, 2010], the *Commission* shall issue final rules to define the term ‘venture capital fund’ for purposes of this subsection. The *Commission* shall require such advisers to maintain such records and provide to the *Commission* such annual or other reports as the *Commission* determines necessary or appropriate in the public interest or for the protection of investors.

(2) *Advisers of SBICS*—For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a *business development company* pursuant to section 54 of the Investment Company Act of 1940).

(3) *Advisers of RBICS*—For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940).

(m) **Exemption of and Reporting by Certain Private Fund Advisers.—**

(1) *In General.*—The *Commission* shall provide an exemption from the registration requirements under this section to any *investment adviser* of *private funds*, if each of such *investment adviser* acts solely as an adviser to *private funds* and has *assets under management* in the United States of less than \$150,000,000.

(2) *Reporting.*—The *Commission* shall require *investment advisers* exempted by reason of this subsection to maintain such records and provide to the *Commission* such annual or other reports as the *Commission* determines necessary or appropriate in the public interest or for the protection of investors.

(3) *Advisers of SBICS.*—For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a *business development company* pursuant to section 54 of the Investment Company Act of 1940) shall be excluded from the limit set forth in paragraph (1).

(4) *Advisers of RBICS*—For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated or is regulated as a business devel-

opment company pursuant to section 54 of the Investment Company Act of 1940) shall be excluded from the limit set forth in paragraph (1).

(n) **Registration and Examination of Mid-sized Private Fund Advisers.**—In prescribing regulations to carry out the requirements of this section with respect to *investment advisers* acting as *investment advisers* to mid-sized *private funds*, the *Commission* shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the *investment advisers* of such funds which reflect the level of systemic risk posed by such funds.

Rule 203-1 Application for investment adviser registration.

(a) *Form ADV.* (1) To apply for registration with the *Commission* as an *investment adviser*, you must complete Form ADV by following the instructions in the form and you must file Part 1A of Form ADV, the firm brochure(s) required by Part 2A of Form ADV and Form CRS required by Part 3 of Form ADV electronically with the Investment Adviser Registration Depository (IARD) unless you have received a hardship exemption under Rule 203-3. You are not required to file with the *Commission* the brochure supplements required by Part 2B of Form ADV.

NOTE 1 TO PARAGRAPH (a)(1): Information on how to file with the IARD is available on the *Commission's* website at <http://www.sec.gov/iard>. If you are not required to deliver a brochure or Form CRS to any clients, you are not required to prepare or file a brochure or Form CRS, as applicable, with the *Commission*. If you are not required to deliver a brochure supplement to any *clients* for any particular supervised person, you are not required to prepare a brochure supplement for that supervised person.

(2)(i) On or after June 30, 2020, the *Commission* will not accept any initial application for registration as an *investment adviser* that does not include a Form CRS that satisfies the requirements of Part 3 of Form ADV.

(ii) Beginning on May 1, 2020, any initial application for registration as an investment adviser filed prior to June 30, 2020, must include a Form CRS that satisfies the requirements of Part 3 of Form ADV by no later than June 30, 2020.

(b) *When filed.* Each Form ADV is considered filed with the *Commission* upon acceptance by the IARD.

(c) *Filing fees.* You must pay FINRA (the operator of the IARD) a filing fee. The *Commission* has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed application for registration will not be accepted by FINRA, and thus will not be considered filed with the *Commission*, until you have paid the filing fee.

(d) *Form ADV-NR—(1) General Requirements.* Each *non-resident*, as defined in Rule 0-2(b)(2), general partner or a *non-resident managing agent*, as defined in

Rule 0-2(b)(1)), of any investment adviser registered, or applying for registration with, the *Commission* must submit Form ADV-NR. Form ADV-NR must be completed in connection with the adviser's initial registration with the *Commission*. If a person becomes a non-resident general partner or a *non-resident managing agent* after the date the adviser files its initial registration with the *Commission*, the person must file Form ADV-NR with the *Commission* within 30 days of becoming a *non-resident* general partner or a non-resident managing agent. If a person serves as a general partner or *managing agent* for multiple advisers, they must submit a separate Form ADV-NR for each adviser.

(2) *When an amendment is required.* Each *non-resident* general partner or a *non-resident managing agent* of any *investment adviser* must amend its Form ADV-NR within 30 days whenever any information contained in the form becomes inaccurate by filing with the *Commission* a new Form ADV-NR.

(3) *Electronic filing.* Form ADV-NR (and any amendments to Form ADV-NR) must be filed electronically through the Investment Adviser Registration Depository (IARD), unless a hardship exemption under Rule 203-3 has been granted.

(4) *When filed.* Each Form ADV-NR is considered filed with the *Commission* upon acceptance by the IARD.

(5) *Filing fees.* No fee shall be assessed for filing Form ADV-NR through IARD.

(6) *Form ADV-NR is a report.* Each Form ADV-NR (and any amendment to Form ADV-NR) required to be filed under this rule is a "report" within the meaning of sections 204 and 207 of the Act.

Rule 203-2 Withdrawal from investment adviser registration.

(a) *Form ADV-W.* You must file Form ADV-W to withdraw from *investment adviser* registration with the *Commission* (or to withdraw a pending registration application).

(b) *Electronic filing.* Once you have filed your Form ADV (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV-W you file must be filed with the IARD, unless you have received a hardship exemption under rule 203-3.

(c) *Effective date—upon filing.* Each Form ADV-W filed under this section is effective upon acceptance by the IARD, provided however that your *investment adviser* registration will continue for a period of sixty days after acceptance solely for the purpose of commencing a proceeding under section 203(e) of the Act.

(d) *Filing fees.* You do not have to pay a fee to file Form ADV-W through the IARD.

(e) *Form ADV-W is a report.* Each Form ADV-W required to be filed under this section is a "report" within the meaning of sections 204 and 207 of the Act.

Rule 203-3 Hardship exemptions.

This section provides two “hardship exemptions” from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

(a) Temporary hardship exemption.

(1) *Eligibility for exemption.* If you are registered or are registering with the **Commission** as an *investment adviser* and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated technical difficulties that prevent you from submitting a filing to the IARD system, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

(2) *Application procedures.* To request a temporary hardship exemption, you must:

- (i) File Form ADV-H in paper format no later than one *business day* after the filing that is the subject of the ADV-H was due; and
- (ii) Submit the filing that is the subject of the Form ADV-H in electronic format with the IARD no later than seven *business days* after the filing was due.

(3) *Effective date—upon filing.* The temporary hardship exemption will be granted when you file a completed Form ADV-H.

(b) Continuing hardship exemption.

(1) *Eligibility for exemption.* If you are a “*small business*” (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption. The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

(2) *Application procedures.* To apply for a continuing hardship exemption, you must file Form ADV-H at least ten *business days* before a filing is due. The **Commission** will grant or deny your application within ten *business days* after you file Form ADV-H.

(3) *Effective date—upon approval.* You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to FINRA in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption.* Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business.* You are a “*small business*” for purposes of this section if you are required to answer Item 12 of Form ADV and checked “no” to each question in Item 12 that you were required to answer.

Note to Paragraph (b): FINRA will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

Rule 203(b)(3)-1 [Reserved]

Rule 203(b)(3)-2 [Reserved]

Rule 203(l)-1 *Venture capital fund defined.*

(a) ***Venture capital fund defined.*** For purposes of section 203(l) of the Advisers Act, a ***venture capital fund*** is any entity described in subparagraph (A), (B), or (C) of section 203(b)(7) of the Advisers Act (other than an entity that has elected to be regulated or is regulated as a ***business development company*** pursuant to section 54 of the Investment Company Act of 1940) or any entity described in subparagraph (A) or (B) of section 203(b)(8) of the Act (other than an entity that has elected to be regulated or is regulated as a ***business development company*** pursuant to section 54 of the Investment Company Act of 1940, or any ***private fund*** that:

- (1) Represents to investors and potential investors that it pursues a venture capital strategy;
- (2) Immediately after the acquisition of any asset, other than ***qualifying investments*** or ***short-term holdings***, holds no more than 20 percent of the amount of the fund's aggregate capital contributions and uncalled ***committed capital*** in assets (other than ***short-term holdings***) that are not ***qualifying investments***, valued at cost or fair value, consistently applied by the fund;
- (3) Does not borrow, issue debt obligations, provide guarantees or otherwise incur leverage, in excess of 15 percent of the ***private fund's*** aggregate capital contributions and uncalled ***committed capital***, and any such borrowing, indebtedness, guarantee or leverage is for a non-renewable term of no longer than 120 calendar days, except that any guarantee by the ***private fund*** of a ***qualifying portfolio company's*** obligations up to the amount of the value of the ***private fund's*** investment in the ***qualifying portfolio company*** is not subject to the 120 calendar day limit;
- (4) Only issues securities the terms of which do not provide a holder with any right, except in extraordinary circumstances, to withdraw, redeem or require the repurchase of such securities but may entitle holders to receive distributions made to all holders pro rata; and
- (5) Is not registered under section 8 of the Investment Company Act of 1940, and has not elected to be treated as a ***business development company*** pursuant to section 54 of that Act.

(b) *Certain pre-existing venture capital funds.* For purposes of section 203(l) of the Advisers Act and in addition to any *venture capital fund* as set forth in paragraph (a) of this section, a *venture capital fund* also includes any *private fund* that:

- (1) Has represented to investors and potential investors at the time of the offering of the *private fund's* securities that it pursues a venture capital strategy;
- (2) Prior to December 31, 2010, has sold securities to one or more investors that are not related *persons*, as defined in rule 206(4)-2(d)(7) under the Advisers Act, of any *investment adviser* of the *private fund*; and
- (3) Does not sell any securities to (including accepting any *committed capital* from) any *person* after July 21, 2011.

(c) *Definitions.* For purposes of this section:

(1) *Committed capital* means any commitment pursuant to which a *person* is obligated to:

- (i) Acquire an interest in the *private fund*; or
- (ii) Make capital contributions to the *private fund*.

(2) *Equity security* has the same meaning as in section 3(a)(11) of the Securities Exchange Act of 1934 and rule 3a11-1 thereunder.

(3) *Qualifying investment* means:

- (i) An *equity security* issued by a *qualifying portfolio company* that has been acquired directly by the *private fund* from the *qualifying portfolio company*;
- (ii) Any *equity security* issued by a *qualifying portfolio company* in exchange for an *equity security* issued by the *qualifying portfolio company* described in paragraph (c)(3)(i) of this section; or
- (iii) Any *equity security* issued by a *company* of which a *qualifying portfolio company* is a majority-owned subsidiary, as defined in section 2(a)(24) of the Investment Company Act of 1940, or a predecessor, and is acquired by the *private fund* in exchange for an *equity security* described in paragraph (c)(3)(i) or (c)(3)(ii) of this section.

(4) *Qualifying portfolio company* means any *company* that:

- (i) At the time of any investment by the *private fund*, is not *reporting or foreign traded* and does not *control*, is not *controlled* by or under common *control* with another *company*, directly or indirectly, that is *reporting or foreign traded*;
- (ii) Does not borrow or issue debt obligations in connection with the *private fund's* investment in such *company* and distribute to the *private fund* the proceeds of such borrowing or issuance in exchange for the *private fund's* investment; and

(iii) Is not an *investment company*, a *private fund*, an issuer that would be an *investment company* but for the exemption provided by rule 3a-7 under the Investment Company Act of 1940, or a *commodity pool*.

(5) *Reporting or foreign traded* means, with respect to a *company*, being subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934, or having a *security* listed or traded on any *exchange* or organized market operating in a foreign jurisdiction.

(6) *Short-term holdings* means cash and cash equivalents, as defined in rule 2a51-1(b)(7)(i) under the Investment Company Act of 1940, U.S. Treasuries with a remaining maturity of 60 days or less, and shares of an open-end management *investment company* registered under section 8 of the Investment Company Act of 1940 that is regulated as a money market fund under rule 2a-7 under the Investment Company Act of 1940.

Note: For purposes of this section, an *investment adviser* may treat as a *private fund* any issuer formed under the laws of a jurisdiction other than the United States that has not offered or sold its securities in the United States or to U.S. *persons* in a manner inconsistent with being a *private fund*, provided that the adviser treats the issuer as a *private fund* under the Advisers Act and the rules thereunder for all purposes.

Rule 203(m)-1 Private fund adviser exemption.

(a) *United States investment advisers.* For purposes of section 203(m) of the Advisers Act, an *investment adviser* with its *principal office and place of business* in the *United States* is exempt from the requirement to register under section 203 of the Advisers Act if the *investment adviser*:

- (1) Acts solely as an *investment adviser* to one or more *qualifying private funds*; and
- (2) Manages *private fund assets* of less than \$150 million.

(b) *Non-United States investment advisers.* For purposes of section 203(m) of the Advisers Act, an *investment adviser* with its *principal office and place of business* outside of the *United States* is exempt from the requirement to register under section 203 of the Advisers Act if:

- (1) The *investment adviser* has no client that is a *United States person* except for one or more *qualifying private funds*; and
- (2) All assets managed by the *investment adviser* at a place of business in the *United States* are solely attributable to *private fund assets*, the total value of which is less than \$150 million.

(c) *Frequency of Calculations.* For purposes of this section, calculate *private fund assets* annually, in accordance with General Instruction 15 to Form ADV.

(d) *Definitions.* For purposes of this section:

(d) (1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV, except the following shall be excluded from the definition of *assets under management* for purposes of this section: (i) The regulatory assets under management attributable to a *private fund* that is an entity described in subparagraph (A), (B), or (C) of section 203(b)(7) of the Act (other than an entity that has elected to be regulated or is regulated as a *business development company* pursuant to section 54 of the Investment Company Act of 1940); and (ii) The regulatory assets under management attributable to a *private fund* that is an entity described in subparagraph (A) or (B) of section 203(b)(8) of the Act (other than an entity that has elected to be regulated or is regulated as a *business development company* pursuant to section 54 of the Investment Company Act of 1940).

(2) *Place of business* has the same meaning as in rule 222-1(a) under the Advisers Act.

(3) *Principal office and place of business* of an *investment adviser* means the executive office of the *investment adviser* from which the officers, partners, or managers of the *investment adviser* direct, control, and coordinate the activities of the *investment adviser*.

(4) *Private fund assets* means the *investment adviser's* assets under management attributable to a *qualifying private fund*.

(5) *Qualifying private fund* means any *private fund* that is not registered under section 8 of the Investment Company Act of 1940 and has not elected to be treated as a *business development company* pursuant to section 54 of that Act. For purposes of this section, an *investment adviser* may treat as a *private fund* an issuer that qualifies for an exclusion from the definition of an “*investment company*,” as defined in section 3 of the Investment Company Act of 1940, in addition to those provided by section 3(c)(1) or 3(c)(7) of that Act, provided that the *investment adviser* treats the issuer as a *private fund* under the Advisers Act and the rules thereunder for all purposes.

(6) *Related person* has the same meaning as in rule 206(4)-2(d)(7) under the Advisers Act.

(7) *United States* has the same meaning as in rule 902(l) under the Securities Act of 1933.

(8) *United States person* means any *person* that is a U.S. *person* as defined in rule 902(k) under the Securities Act of 1933, except that any discretionary account or similar account that is held for the benefit of a *United States person* by a *dealer* or other professional fiduciary is a *United States person* if the *dealer* or professional fiduciary is a *related person* of the *investment adviser* relying on this section and is not organized, incorporated, or (if an individual) resident in the *United States*.

Note to paragraph (d)(8): A client will not be considered a *United States person* if the client was not a *United States person* at the time of becoming a client.

Section 203A. *State and federal responsibilities [15 U.S.C. 80b-3a]*

(a) *Advisers Subject to State Authorities.*—

(1) *In General.*—No *investment adviser* that is regulated or required to be regulated as an *investment adviser* in the *State* in which it maintains its *principal office and place of business* shall register under section 203, unless the *investment adviser*—

(A) has *assets under management* of not less than \$25,000,000, or such higher amount as the *Commission* may, by rule, deem appropriate in accordance with the purposes of this title; or

(B) is an adviser to an *investment company* registered under the Investment Company Act of 1940.

(2) *Treatment of Mid-Sized Investment Advisers.*—

(A) *In General.*—No *investment adviser* described in subparagraph (B) shall register under section 203, unless the *investment adviser* is an adviser to an *investment company* registered under the Investment Company Act of 1940, or a *company* which has elected to be a *business development company* pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an *investment adviser* would be required to register with 15 or more States, then the adviser may register under section 203.

(B) *Covered Persons.*—An *investment adviser* described in this subparagraph is an *investment adviser* that—

(i) is required to be registered as an *investment adviser* with the securities commissioner (or any agency or office performing like functions) of the *State* in which it maintains its *principal office and place of business* and, if registered, would be subject to examination as an *investment adviser* by any such commissioner, agency, or office; and

(ii) has *assets under management* between—

(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the *Commission* pursuant to that subparagraph; and

(II) \$100,000,000, or such higher amount as the *Commission* may, by rule, deem appropriate in accordance with the purposes of this title.

(3) *Definition.*—For purposes of this subsection, the term “*assets under management*” means the securities portfolios with respect to which an *investment adviser* provides continuous and regular supervisory or management services.

(b) **Advisers Subject to *Commission* Authority.**—

(1) *In General.*—No law of any *State* or political subdivision thereof requiring the registration, licensing, or qualification as an *investment adviser* or *supervised person* of an *investment adviser* shall apply to any *person*—

(A) that is registered under section 203 as an *investment adviser*, or that is a *supervised person* of such *person*, except that a *State* may license, register, or otherwise qualify any *investment adviser representative* who has a *place of business* located within that *State*;

(B) that is not registered under section 203 because that *person* is excepted from the definition of an *investment adviser* under section 202(a)(11);

(C) that is not registered under section 203 because that *person* is exempt from registration as provided in subsection (b)(7) of such section, or is a *supervised person* of such *person*; or

(D) that is not registered under section 203 of the Investment Advisers Act of 1940 because that person is exempt from registration as provided in subsection (b)(8) of such section, or is a supervised person of such person.

(2) *Limitation.*—Nothing in this subsection shall prohibit the securities commission (or any agency or office performing like functions) of any *State* from investigating and bringing enforcement actions with respect to fraud or deceit against an *investment adviser* or *person associated with an investment adviser*.

(c) **Exemptions.**—Notwithstanding subsection (a), the *Commission*, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the *Commission* of any *person* or class of *persons* to which the application of subsection (a) would be unfair, a burden on *interstate commerce*, or otherwise inconsistent with the purposes of this section.

(d) **State Assistance.**—Upon request of the securities commissioner (or any agency or office performing like functions) of any *State*, the *Commission* may provide such training, technical assistance, or other reasonable assistance in connection with the regulation of *investment advisers* by the *State*.

Rule 203A-1 Eligibility for SEC registration; switching to or from SEC registration.

(a) *Eligibility for SEC registration of mid-sized investment advisers.* If you are an *investment adviser* described in section 203A(a)(2)(B) of the Advisers Act:

(1) *Threshold for SEC registration and registration buffer.* You may, but are not required to register with the *Commission* if you have assets under management of at least \$100,000,000 but less than \$110,000,000, and you need not withdraw your registration unless you have less than \$90,000,000 of assets under management.

(2) *Exceptions.* This paragraph (a) does not apply if:

(i) You are an *investment adviser* to an *investment company* registered under the Investment Company Act of 1940 or to a *company* which has elected to be a *business development company* pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election; or

(ii) You are eligible for an exemption described in Rule 203A-2 under the Advisers Act.

(b) *Switching to or from SEC registration—*

(1) *State-registered advisers—switching to SEC registration.* If you are registered with a state securities authority, you must apply for registration with the *Commission* within 90 days of filing an annual updating amendment to your Form ADV reporting that you are eligible for SEC registration and are not relying on an exemption from registration under sections 203(l) or 203(m) of the Advisers Act.

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the *Commission* and file an annual updating amendment to your Form ADV reporting that you are not eligible for SEC registration and are not relying on an exemption from registration under sections 203(l) or 203(m) of the Advisers Act, you must file Form ADV-W to withdraw your SEC registration within 180 days of your fiscal year end (unless you then are eligible for SEC registration). During this period while you are registered with both the *Commission* and one or more state securities authorities, the Advisers Act and applicable *State* law will apply to your advisory activities.

Rule 203A-2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Advisers Act does not apply to:

(a) *Pension Consultants.*

(1) An *investment adviser* that is a “*pension consultant*,” as defined in this section, with respect to assets of plans having an aggregate value of at least \$200,000,000.

(2) An *investment adviser* is a *pension consultant*, for purposes of paragraph (a) of this section, if the *investment adviser* provides investment advice to:

(i) Any employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”);

(ii) Any governmental plan described in section 3(32) of ERISA; or

(iii) Any church plan described in section 3(33) of ERISA.

(3) In determining the aggregate value of assets of plans, include only that portion of a plan’s assets for which the *investment adviser* provided investment advice (including any

advice with respect to the selection of an *investment adviser* to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the *investment adviser* was last employed or retained by contract to provide investment advice during a 12-month period ended within 90 days of filing an annual updating amendment to Form ADV.

(b) *Investment Advisers Controlling, Controlled By, or Under Common Control with an Investment Adviser Registered with the Commission.* An *investment adviser* that *controls*, is *controlled* by, or is under common *control* with, an *investment adviser* eligible to register, and registered with, the *Commission* (“registered adviser”), provided that the principal office and *place of business* of the *investment adviser* is the same as that of the registered adviser. For purposes of this paragraph, *control* means the power to direct or cause the direction of the management or policies of an *investment adviser*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of an *investment adviser* is presumed to *control* that *investment adviser*.

(c) *Investment advisers expecting to be eligible for Commission registration within 120 days.* An *investment adviser* that:

(1) Immediately before it registers with the *Commission*, is not registered or required to be registered with the *Commission* or a state securities authority of any *State* and has a reasonable expectation that it would be eligible to register with the *Commission* within 120 days after the date the *investment adviser’s* registration with the *Commission* becomes effective;

(2) Indicates on Schedule D of its Form ADV that it will withdraw from registration with the *Commission* if, on the 120th day after the date the *investment adviser’s* registration with the *Commission* becomes effective, the *investment adviser* would be prohibited by section 203A(a) of the Advisers Act from registering with the *Commission*; and

(3) Notwithstanding rule 203A-1(b)(2) under the Advisers Act, files a completed Form ADV-W withdrawing from registration with the *Commission* within 120 days after the date the *investment adviser’s* registration with the *Commission* becomes effective.

(d) *Multi-state investment advisers.* An *investment adviser* that:

(1) Upon submission of its application for registration with the *Commission*, is required by the laws of 15 or more *States* to register as an *investment adviser* with the state securities authority in the respective *States*, and thereafter would, but for this section, be required by the laws of at least 15 *States* to register as an *investment adviser* with the state securities authority in the respective *States*;

(2) Elects to rely on paragraph (d) of this section by:

(i) Indicating on Schedule D of its Form ADV that the *investment adviser* has reviewed the applicable *State* and federal laws and has concluded that, in the case of an application for registration with the *Commission*, it is required by the laws of 15 or more *States* to register as an *investment adviser* with the state securities authorities in the respective *States* or, in the case of an amendment to Form ADV, it would be required by the laws of at least 15 States to register as an *investment adviser* with the state securities authorities in the respective *States*, within 90 days prior to the date of filing Form ADV; and

(ii) Undertaking on Schedule D of its Form ADV to withdraw from registration with the *Commission* if the adviser indicates on an annual updating amendment to Form ADV that the *investment adviser* would be required by the laws of fewer than 15 *States* to register as an *investment adviser* with the state securities authority in the respective *States*, and that the *investment adviser* would be prohibited by section 203A(a) of the Advisers Act from registering with the *Commission*, by filing a completed Form ADV-W within 180 days of the adviser's fiscal year end (unless the adviser then is eligible for *Commission* registration); and

(3) Maintains in an easily accessible place a record of the *States* in which the *investment adviser* has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV that includes a representation that is based on such record.

(e) *Internet investment advisers.*

(1) An *investment adviser* that:

(i) Provides investment advice to all of its clients exclusively through an interactive website, except that the *investment adviser* may provide investment advice to fewer than 15 *clients* through other means during the preceding twelve months;

(ii) Maintains, in an easily accessible place, for a period of not less than five years from the filing of a Form ADV that includes a representation that the adviser is eligible to register with the *Commission* under paragraph (e) of this section, a record demonstrating that it provides investment advice to its *clients* exclusively through an interactive website in accordance with the limits in paragraph (e)(1)(i) of this section; and

(iii) Does not *control*, is not *controlled* by, and is not under common *control* with, another *investment adviser* that registers with the *Commission* under paragraph (b) of this section solely in reliance on the adviser registered under paragraph (e) of this section as its registered adviser.

(2) For purposes of paragraph (e) of this section, interactive website means a website in which computer software-based models or applications provide investment advice to *clients* based on *personal* information each *client* supplies through the website.

(3) An *investment adviser* may rely on the definition of client in rule 202(a)(30)-1 in determining whether it provides investment advice to fewer than 15 *clients* under paragraph (e)(1)(i) of this section.

Rule 203A-3. Definitions.

For purposes of section 203A of the Act and the rules thereunder:

(a)(1) *Investment adviser representative*. “*Investment adviser representative*” of an *investment adviser* means a *supervised person* of the *investment adviser*:

(i) Who has more than five *clients* who are natural *persons* (other than *excepted persons* described in paragraph (a)(3)(i) of this section); and

(ii) More than ten percent of whose *clients* are natural *persons* (other than *excepted persons* described in paragraph (a)(3)(i) of this section).

(2) Notwithstanding paragraph (a)(1) of this section, a *supervised person* is not an *investment adviser representative* if the *supervised person*:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with *clients* of the *investment adviser*; or

(ii) Provides only *impersonal investment advice*.

(3) For purposes of this section:

(i) “*Excepted person*” means a natural *person* who is a *qualified client* as described in rule 205-3(d)(1).

(ii) “*Impersonal investment advice*” means investment advisory services provided by means of written *material* or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) *Supervised persons* may rely on the definition of “*client*” in rule 202(a)(30)-1, to identify *clients* for purposes of paragraph (a)(1) of this section, except that *supervised persons* need not count *clients* that are not residents of the United States.

(b) *Place of business*. “*Place of business*” of an *investment adviser representative* means:

(1) An office at which the *investment adviser representative* regularly provides investment advisory services, solicits, meets with, or otherwise communicates with *clients*; and

(2) Any other location that is held out to the general public as a location at which the *investment adviser representative* provides investment advisory services, solicits, meets with, or otherwise communicates with *clients*.

(c) *Principal office and place of business.* “*Principal office and place of business*” of an *investment adviser* means the executive office of the *investment adviser* from which the officers, partners, or managers of the *investment adviser* direct, *control*, and coordinate the activities of the *investment adviser*.

(d) *Assets under management.* Determine “*assets under management*” by calculating the securities portfolios with respect to which an *investment adviser* provides continuous and regular supervisory or management services as reported on the *investment adviser’s* Form ADV.

(e) *State securities authority.* “*State securities authority*” means the securities commissioner or commission (or any agency, office or officer performing like functions) of any *State*.

Rule 203A-4 [Reserved]

Rule 203A-5 [Reserved]

Rule 203A-6 [Reserved]

Section 204. Reports by investment advisers [15 U.S.C. 80b-4]

(a) **In General.**—Every *investment adviser* who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an *investment adviser* (other than one specifically exempted from registration pursuant to section 203(b) of this title), shall make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof, and make and disseminate such reports as the *Commission*, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such *investment advisers* are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the *Commission* as the *Commission* deems necessary or appropriate in the public interest or for the protection of investors.

(b) **Records and Reports of Private Funds.**—

(1) **In General.**—The *Commission* may require any *investment adviser* registered under this title—

(A) to maintain such records of, and file with the *Commission* such reports regarding, *private funds* advised by the *investment adviser*, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Financial Stability Oversight Council (in this subsection referred to as the ‘Council’); and

- (B) to provide or make available to the Council those reports or records or the information contained therein.
- (2) *Treatment of Records.*—The records and reports of any *private fund* to which an *investment adviser* registered under this title provides investment advice shall be deemed to be the records and reports of the *investment adviser*.
- (3) *Required Information.*—The records and reports required to be maintained by an *investment adviser* and subject to inspection by the *Commission* under this subsection shall include, for each *private fund* advised by the *investment adviser*, a description of—
- (A) the amount of *assets under management* and use of leverage, including off-balance-sheet leverage;
 - (B) counterparty credit risk exposure;
 - (C) trading and investment positions;
 - (D) valuation policies and practices of the fund;
 - (E) types of assets held;
 - (F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;
 - (G) trading practices; and
 - (H) such other information as the *Commission*, in consultation with the Council, determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of *private fund* being advised.
- (4) *Maintenance of Records.*—An *investment adviser* registered under this title shall maintain such records of *private funds* advised by the *investment adviser* for such period or periods as the *Commission*, by rule, may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.
- (5) *Filing of Records.*—The *Commission* shall issue rules requiring each *investment adviser* to a *private fund* to file reports containing such information as the *Commission* deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.
- (6) *Examination of Records.*—
- (A) *Periodic and Special Examinations.*—The *Commission*—
 - (i) shall conduct periodic inspections of the records of *private funds* maintained by an *investment adviser* registered under this title in accordance with a schedule established by the *Commission*; and

(ii) may conduct at any time and from time to time such additional, special, and other examinations as the *Commission* may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

(B) *Availability of Records.*—An *investment adviser* registered under this title shall make available to the *Commission* any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the *Commission* or its representatives may reasonably request.

(7) *Information Sharing.*—

(A) *In General.*—The *Commission* shall make available to the Council copies of all reports, documents, records, and information filed with or provided to the *Commission* by an *investment adviser* under this subsection as the Council may consider necessary for the purpose of assessing the systemic risk posed by a *private fund*.

(B) *Confidentiality.*—The Council shall maintain the confidentiality of information received under this paragraph in all such reports, documents, records, and information, in a manner consistent with the level of confidentiality established for the *Commission* pursuant to paragraph (8). The Council shall be exempt from section 552 of title 5, United States Code, with respect to any information in any report, document, record, or information made available, to the Council under this subsection.

(8) *Commission Confidentiality of Reports.*—Notwithstanding any other provision of law, the *Commission* may not be compelled to disclose any report or information contained therein required to be filed with the *Commission* under this subsection, except that nothing in this subsection authorizes the *Commission*—

(A) to withhold information from Congress, upon an agreement of confidentiality; or

(B) prevent the *Commission* from complying with—

(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

(ii) an order of a court of the United States in an action brought by the United States or the *Commission*.

(9) *Other Recipients Confidentiality.*—Any department, agency, or self-regulatory organization that receives reports or information from the *Commission* under this subsection shall maintain the confidentiality of such reports, documents, records, and information in a manner consistent with the level of confidentiality established for the *Commission* under paragraph (8).

(10) *Public Information Exception.*—

(A) *In General.*—The *Commission*, the Council, and any other department, agency, or self-regulatory organization that receives information, reports, documents, records, or information from the *Commission* under this subsection, shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such report, document, record, or information. Any proprietary information of an *investment adviser* ascertained by the *Commission* from any report required to be filed with the *Commission* pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 210(b) of this title.

(B) *Proprietary Information.*—For purposes of this paragraph, proprietary information includes sensitive, non-public information regarding—

- (i) the investment or trading strategies of the *investment adviser*;
- (ii) analytical or research methodologies;
- (iii) trading data;
- (iv) computer hardware or software containing intellectual property; and
- (v) any additional information that the *Commission* determines to be proprietary.

(11) *Annual Report to Congress.*—The *Commission* shall report annually to Congress on how the *Commission* has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.

(c) *Filing Depositories.*— The *Commission* may, by rule, require an *investment adviser*—

- (1) to file with the *Commission* any fee, application, report, or notice required to be filed by this title or the rules issued under this title through any entity designated by the *Commission* for that purpose; and
- (2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

(d) *Access to Disciplinary and Other Information.*—

(1) *Maintenance of System to Respond to Inquiries.*—

(A) *In General.*—The *Commission* shall require the entity designated by the *Commission* under subsection (b)(1) to establish and maintain a toll-free telephone listing, or a readily accessible electronic or other process, to receive and promptly respond to inquiries regarding registration information (including disciplinary actions, regulatory, judicial, and arbitration proceedings, and other information required by law or rule to be reported) involving *investment advisers* and *persons* associated with *investment advisers*.

(B) *Applicability.*—This subsection shall apply to any *investment adviser* (and the *persons* associated with that adviser), whether the *investment adviser* is registered with the *Commission* under section 203 or regulated solely by a *State*, as described in section 203A.

(2) *Recovery of Costs.*—An entity designated by the *Commission* under subsection (b)(1) may charge *persons* making inquiries, other than individual investors, reasonable fees for responses to inquiries described in paragraph (1).

(3) *Limitation on Liability.*—An entity designated by the *Commission* under subsection (b)(1) shall not have any liability to any *person* for any actions taken or omitted in good faith under this subsection.

(e) **Records of Persons with Custody or Use.**—

(1) *In General.*—Records of *persons* having *custody* or use of the securities, deposits, or credits of a *client*, that relate to such *custody* or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the *Commission*, as the *Commission* deems necessary or appropriate in the public interest or for the protection of investors.

(2) *Certain Persons Subject to Other Regulation.*—Any *person* that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the *Commission* with a detailed listing, in writing, of the securities, deposits, or credits of the *client* within the *custody* or use of such *person*.

(f) **Data Standards For Reports Filed Under this Section.**—

(1) *Requirement.*—The *Commission* shall, by rule, adopt data standards for all reports filed by *investment advisers* with the *Commission* under this section.

(2) *Consistency.*—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

Rule 204-1. Amendments to Form ADV.

(a) *When amendment is required.* You must amend your Form ADV (17 CFR 279.1):

(1) Parts 1 and 2:

(i) At least annually, within 90 days of the end of your fiscal year; and

- (ii) More frequently, if required by the instructions to Form ADV.
- (2) Part 3 at the frequency required by the instructions to Form ADV.
- (b) *Electronic filing of amendments.*
- (1) Subject to paragraph (c) of this section, you must file all amendments to Part 1A, Part 2A, and Part 3 of Form ADV electronically with the IARD, unless you have received a continuing hardship exemption under Rule 203-3. You are not required to file with the **Commission** amendments to brochure supplements required by Part 2B of Form ADV.
- (2) If you have received a continuing hardship exemption under Rule 203-3, you must, when you are required to amend your Form ADV, file a completed Part 1A, Part 2A and Part 3 of Form ADV on paper with the SEC by mailing it to FINRA.
- (c) *Filing fees.* You must pay FINRA (the operator of the IARD) an initial filing fee when you first electronically file Part 1A of Form ADV. After you pay the initial filing fee, you must pay an annual filing fee each time you file your annual updating amendment. No portion of either fee is refundable. The Commission has approved the filing fees. Your amended Form ADV will not be accepted by FINRA, and thus will not be considered filed with the Commission, until you have paid the filing fee.
- (d) Amendments to Form ADV are reports. Each amendment required to be filed under this section is a “report” within the meaning of sections 204 and 207 of the Act.
- (e) *Transition to Filing Form CRS.* If you are registered with the **Commission** or have an application for registration pending with the **Commission** prior to June 30, 2020, you must amend your Form ADV by electronically filing with IARD your initial Form CRS that satisfies the requirements of Part 3 of Form ADV (as amended effective September 30, 2019) beginning on May 1, 2020 and by no later than June 30, 2020.

Note 1 to paragraphs (e): This note applies to paragraphs (a), (b), and (e) of this section. Information on how to file with the IARD is available on our Web site at <http://www.sec.gov/iard>. For the annual updating amendment: Summaries of material changes that are not included in the adviser’s brochure must be filed with the **Commission** as an exhibit to Part 2A in the same electronic file; and if you are not required to prepare a brochure, a summary of material changes, an annual updating amendment to your brochure, or Form CRS you are not required to file them with the **Commission**. See the instructions for Part 2A and Part 3 of Form ADV.

Rule 204(b)-1 Reporting by investment advisers to private funds.

- (a) *Reporting by investment advisers to private funds on Form PF.* If you are an investment adviser registered or required to be registered under section 203 of the Act, you act as an investment adviser to one or more private funds and, as of the end of your most recently

completed fiscal year, you managed private fund assets of at least \$150 million, you must complete and file a report on Form PF by following the instructions in the Form, which specify the information that an investment adviser must provide. Your initial report on Form PF is due no later than the last day on which your next update would be timely in accordance with paragraph (e) if you had previously filed the Form; provided that you are not required to file Form PF with respect to any fiscal quarter or fiscal year ending prior to the date on which your registration becomes effective.

(b) *Electronic filing.* You must file Form PF electronically with the Form PF filing system on the Investment Adviser Registration Depository (IARD).

Note to paragraph (b): Information on how to file Form PF is available on the *Commission's* website at <http://www.sec.gov/iard>.

(c) *When filed.* Each Form PF is considered filed with the *Commission* upon acceptance by the Form PF filing system.

(d) *Filing fees.* You must pay the operator of the Form PF filing system a filing fee as required by the instructions to Form PF. The *Commission* has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed Form PF will not be accepted by the operator of the Form PF filing system, and thus will not be considered filed with the *Commission*, until you have paid the filing fee.

(e) *Updates to Form PF.* You must file an updated Form PF:

- (1) At least annually, no later than the date specified in the instructions to Form PF; and
- (2) More frequently, if required by the instructions to Form PF. You must file all updated reports electronically with the Form PF filing system.

(f) *Temporary hardship exemption.*

(1) If you have unanticipated technical difficulties that prevent you from submitting Form PF on a timely basis through the Form PF filing system, you may request a temporary hardship exemption from the requirements of this section to file electronically.

(2) To request a temporary hardship exemption, you must:

- (i) Complete and file in paper format, in accordance with the instructions to Form PF, Item A of Section 1a and [Section 5] [Effective June 11 2024: reference amended to Section 7] of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption, no later than one business day after the electronic Form PF filing was due; and
- (ii) Submit the filing that is the subject of the Form PF paper filing in electronic format with the Form PF filing system no later than seven business days after the filing was due.

(3) The temporary hardship exemption will be granted when you file Item A of Section 1a and [Section 5] [Effective June 11 2024: reference amended to Section 7] of Form PF, checking the box in Section 1a indicating that you are requesting a temporary hardship exemption.

(4) The hardship exemptions available under rule 203-3 do not apply to Form PF.

(g) *Definitions.* For purposes of this section:

(1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV.

(2) *Private fund assets* means the *investment adviser's assets under management* attributable to *private funds*.

Rule 204-2. Books and records to be maintained by investment advisers.

(a) Every *investment adviser* registered or required to be registered under section 203 of the Act shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the *investment adviser* for the purchase or sale of any security, of any instruction received by the *investment adviser* concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the *person* connected with the *investment adviser* who recommended the transaction to the *client* and the *person* who placed such order; and shall show the account for which entered, the date of entry, and the *bank, broker* or *dealer* by or through whom executed where appropriate. Orders entered pursuant to the exercise of *discretionary power* shall be so designated.

(4) All check books, bank statements, cancelled checks and cash reconciliations of the *investment adviser*.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the *investment adviser* as such.

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such *investment adviser*.

(7) Originals of all written communications received and copies of all written communications sent by such *investment adviser* relating to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or *securities*;

- (iii) The placing or execution of any order to purchase or sell any *security* and for any transaction that is subject to the requirements of Rule 15c6-2(a) under the [Securities Exchange Act of 1934], each confirmation received and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation was sent or received;
- (iv) *Predecessor performance* (as defined in rule 206(4)-1(e)(12)) and the performance or rate of return of any or all managed accounts, *portfolios* (as defined in rule 206(4)-1(e)(11)), or securities recommendations; Provided, however:
- (A) That the *investment adviser* shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the *investment adviser*; and
- (B) That if the *investment adviser* sends any notice, circular, or other *advertisement* (as defined in rule 206(4)-1(e)(1)) offering any report, analysis, publication or other investment advisory service to more than ten *persons*, the *investment adviser* shall not be required to keep a record of the names and addresses of the *persons* to whom it was sent; except that if such notice, circular, or *advertisement* is distributed to *persons* named on any list, the *investment adviser* shall retain with the copy of such notice, circular, or *advertisement* a memorandum describing the list and the source thereof; and
- (v) Any notice required pursuant to Rule 211(h)(2)-3 as well as a record of each addressee and the corresponding date(s) sent.
- (8) A list or other record of all accounts in which the *investment adviser* is vested with any *discretionary power* with respect to the funds, securities or transactions of any *client*.
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any *client* to the *investment adviser*, or copies thereof.
- (10) All written agreements (or copies thereof) entered into by the *investment adviser* with any *client* or otherwise relating to the business of such *investment adviser* as such.
- (11) (i) A copy of each
- (A) *Advertisement* (as defined in rule 206(4)-1(e)(1)) that the *investment adviser* disseminates, directly or indirectly, except:
- (1) For oral *advertisements*, the adviser may instead retain a copy of any written or recorded materials used by the adviser in connection with the oral *advertisement*; and
- (2) For compensated oral *testimonials* and *endorsements* (as defined in rule 206(4)-1(e)(17) and (5)), the adviser may instead make and keep a record of the disclosures provided to *clients* or *investors* pursuant to rule 206(4)-1(b)(1); and

- (B) Notice, circular, newspaper article, investment letter, bulletin, or other communication that the *investment adviser* disseminates, directly or indirectly, to ten or more persons (other than persons associated with such *investment adviser*); and
- (C) If such notice, circular, *advertisement*, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the *investment adviser* indicating the reasons therefor; and
- (ii) A copy of any questionnaire or survey used in the preparation of a *third-party rating* included or appearing in any *advertisement* in the event the adviser obtains a copy of the questionnaire or survey.
- (12) (i) A copy of the investment adviser's code of ethics adopted and implemented pursuant to rule 204A-1 that is in effect, or at any time within the past five years was in effect;
- (ii) A record of any violation of the code of ethics, and of any action taken as a result of the violation; and
- (iii) A record of all written acknowledgments as required by rule 204A-1(a)(5) for each person who is currently, or within the past five years was, a supervised person of the investment adviser.
- (13) (i) A record of each report made by an access person as required by rule 204A-1(b), including any information provided under paragraph (b)(3)(iii) of that section in lieu of such reports;
- (ii) A record of the names of persons who are currently, or within the past five years were, access persons of the investment adviser; and
- (iii) A record of any decision, and the reasons supporting the decision, to approve the acquisition of securities by access persons under rule 204A-1(c), for at least five years after the end of the fiscal year in which the approval is granted.
- (14)(i) A copy of each brochure, brochure supplement and Form CRS, and each amendment or revision to the brochure, brochure supplement and Form CRS, that satisfies the requirements of Part 2 or Part 3 of Form ADV, as applicable; any summary of material changes that satisfies the requirements of Part 2 of Form ADV but is not contained in the brochure; and a record of the dates that each brochure, brochure supplement and Form CRS, each amendment or revision thereto, and each summary of material changes not contained in a brochure given to any client or to any prospective client who subsequently becomes a client.
- (ii) Documentation describing the method used to compute managed assets for purposes of Item 4.E of Part 2A of Form ADV, if the method differs from the method used to compute regulatory *assets under management* in Item 5.F of Part 1A of Form ADV.

- (iii) A memorandum describing any legal or disciplinary event listed in Item 9 of Part 2A or Item 3 of Part 2B (Disciplinary Information) and presumed to be material, if the event involved the *investment adviser* or any of its *supervised persons* and is not disclosed in the brochure or brochure supplement described in paragraph (a)(14)(i) of this section. The memorandum must explain the *investment adviser's* determination that the presumption of materiality is overcome, and must discuss the factors described in Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV.
- (15) (i) If not included in the *advertisement*, a record of the disclosures provided to *clients* or *investors* pursuant to rule 206(4)-1(b)(1)(ii) and (iii);
- (ii) Documentation substantiating the adviser's reasonable basis for believing that a *testimonial* or *endorsement* (as defined in rule 206(4)-1(e)(17) and (5)) complies with rule 206(4)-1 and that the *third-party rating* (as defined in rule 206(4)-1(e)(18)) complies with rule 206(4)-1(c)(1); and
- (iii) A record of the names of all persons who are an investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with the *investment adviser*, or is a partner, officer, director or employee of such a person pursuant to rule 206(4)-1(b)(4)(ii).
- (16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of any performance or rate of return of any or all managed accounts, *portfolios* (as defined in rule 206(4)-1(e)(11)), or securities recommendations presented in any notice, circular, advertisement (as defined in rule 206(4)-1(e)(1)), newspaper article, investment letter, bulletin, or other communication that the *investment adviser* disseminates, directly or indirectly, to any *person* (other than *persons* associated with such *investment adviser*), including copies of all information provided or offered pursuant to rule 206(4)-1(d)(6); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's or investor's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.]
- (17)(i) A copy of the *investment adviser's* policies and procedures formulated pursuant to rule 206(4)-7(a) that are in effect, or at any time within the past five years were in effect;
- (ii) Any records documenting the investment adviser's annual review of those policies and procedures conducted pursuant to rule 206(4)-7(b);
- (iii) A copy of any internal control report obtained or received pursuant to rule 206(4)-2(a)(6)(ii).
- (18) (i) Books and records that pertain to rule 206(4)-5 containing a list or other record of:
- (A) The names, titles and business and residence addresses of all *covered associates* of the *investment adviser*;

- (B) All government entities to which the *investment adviser* provides or has provided investment advisory services, or which are or were investors in any *covered investment pool* to which the *investment adviser* provides or has provided investment advisory services, as applicable, in the past five years, but not prior to September 13, 2010;
- (C) All direct or indirect *contributions* made by the *investment adviser* or any of its *covered associates* to an *official* of a *government entity*, or direct or indirect *payments* to a political party of a *State* or political subdivision thereof, or to a political action committee; and
- (D) The name and business address of each *regulated person* to whom the *investment adviser* provides or agrees to provide, directly or indirectly, *payment* to *solicit* a *government entity* for investment advisory services on its behalf, in accordance with Rule 206(4)-5(a)(2).
- (ii) Records relating to the *contributions* and *payments* referred to in paragraph (a)(18)(i)(C) of this section must be listed in chronological order and indicate:
- (A) The name and title of each contributor;
- (B) The name and title (including any city/county/*state* or other political subdivision) of each recipient of a *contribution* or *payment*;
- (C) The amount and date of each *contribution* or *payment*; and
- (D) Whether any such *contribution* was the subject of the exception for certain returned *contributions* pursuant to Rule 206(4)-5(b)(2).
- (iii) An *investment adviser* is only required to make and keep current the records referred to in paragraphs (a)(18)(i)(A) and (C) of this section if it provides investment advisory services to a *government entity* or a *government entity* is an investor in any *covered investment pool* to which the *investment adviser* provides investment advisory services.
- (iv) For purposes of this section, the terms “*contribution*,” “*covered associate*,” “*covered investment pool*,” “*government entity*,” “*official*,” “*payment*,” “*regulated person*,” and “*solicit*” have the same meanings as set forth in Rule 206(4)-5.
- (19) A record of who the “intended audience” is pursuant to rule 206(4)-1(d)(6) and(e)(10)(ii)(B).
- (20)(i) A copy of any quarterly statement *distributed* pursuant to Rule 211(h)(1)-2, along with a record of each addressee and the corresponding date(s) sent; and
- (ii) All records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any statement delivered pursuant to Rule 211(h)(1)-2.
- (21) For each *private fund* client:
- (i) A copy of any audited financial statements prepared and *distributed* pursuant to Rule 206(4)-10, along with a record of each addressee and the corresponding date(s) sent; or

- (ii) A record documenting steps taken by the adviser to cause a *private fund* client that the adviser does not *control*, is not *controlled* by, and with which it is not under common *control* to undergo a financial statement audit pursuant to Rule 206(4)-10.
- (22) Documentation substantiating the adviser's determination that a *private fund* client is a *liquid fund* or an *illiquid fund* pursuant to Rule 211(h)(1)-2.
- (23) A copy of any *fairness opinion* or *valuation opinion* and material business relationship summary *distributed* pursuant to Rule 211(h)(2)-2, along with a record of each addressee and the corresponding date(s) sent.
- (24) A copy of any notification, consent or other document *distributed* or received pursuant to Rule 211(h)(2)-1, along with a record of each addressee and the corresponding date(s) sent for each such document *distributed* by the adviser.
- (b) If an *investment adviser* subject to paragraph (a) of this section has custody or possession of securities or funds of any *client*, the records required to be made and kept under paragraph (a) of this section shall include:
- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.
 - (2) A separate ledger account for each such *client* showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.
 - (3) Copies of confirmations of all transactions effected by or for the account of any such *client*.
 - (4) A record for each security in which any such *client* has a position, which record shall show the name of each such *client* having any interest in such security, the amount or interest of each such *client*, and the location of each such security.
 - (5) A memorandum describing the basis upon which you have determined that the presumption that any related person is not operationally independent under rule 206(4)-2(d)(5) has been overcome.
- (c) (1) Every *investment adviser* subject to paragraph (a) of this section who renders any investment supervisory or management service to any *client* shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the *investment adviser*, make and keep true, accurate and current:
- (i) Records showing separately for each such *client* the securities purchased and sold and the date, amount and price of each such purchase and sale.
 - (ii) For each security in which any such *client* has a current position, information from which the *investment adviser* can promptly furnish the name of each such *client*, and the current amount or interest of such *client*.
- (2) Every *investment adviser* subject to paragraph (a) of this section that exercises voting authority with respect to *client* securities shall, with respect to those *clients*, make and retain the following:
- (i) Copies of all policies and procedures required by rule 206(4)-6.

- (ii) A copy of each proxy statement that the *investment adviser* receives regarding *client* securities. An *investment adviser* may satisfy this requirement by relying on a third party to make and retain, on the *investment adviser's* behalf, a copy of a proxy statement (provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request) or may rely on obtaining a copy of a proxy statement from the *Commission's* Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.
 - (iii) A record of each vote cast by the *investment adviser* on behalf of a *client*. An *investment adviser* may satisfy this requirement by relying on a third party to make and retain, on the *investment adviser's* behalf, a record of the vote cast (provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request).
 - (iv) A copy of any document created by the adviser that was *material* to making a decision how to vote proxies on behalf of a *client* or that memorializes the basis for that decision.
 - (v) A copy of each written *client* request for information on how the adviser voted proxies on behalf of the *client*, and a copy of any written response by the *investment adviser* to any (written or oral) *client* request for information on how the adviser voted proxies on behalf of the requesting *client*.
- (d) Any books or records required by this section may be maintained by the *investment adviser* in such manner that the identity of any *client* to whom such *investment adviser* renders *investment supervisory services* is indicated by numerical or alphabetical code or some similar designation.
- (e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.
- (2) Partnership articles and any amendments thereto, articles of incorporation, *charters*, minute books, and stock certificate books of the *investment adviser* and of any predecessor, shall be maintained in the principal office of the *investment adviser* and preserved until at least three years after termination of the enterprise.
- (3) (i) Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the *investment adviser*, from the end of the *fiscal year* during which the *investment adviser* last published or otherwise disseminated, directly or indirectly, the notice circular, *advertisement*, newspaper article, investment letter, bulletin or other communication.
- (ii) *Transition rule*. If you are an *investment adviser* that was, prior to July 21, 2011,

exempt from registration under section 203(b)(3) of the Advisers Act, as in effect on July 20, 2011, paragraph (e)(3)(i) of this section does not require you to maintain or preserve books and records that would otherwise be required to be maintained or preserved under the provisions of paragraph (a)(16) of this section to the extent those books and records pertain to the performance or rate of return of such *private fund* (as defined in section 202(a)(29) of the Advisers Act), or other account you advise for any period ended prior to your registration, provided that you continue to preserve any books and records in your possession that pertain to the performance or rate of return of such *private fund* or other account for such period.

(f) An *investment adviser* subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as an *investment adviser* shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the *Commission* in writing, at its principal office, Washington, D.C. 20549, of the exact address where such books and records will be maintained during such period.

(g) Micrographic and electronic storage permitted.

(1) General. The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time by an *investment adviser* on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) General requirements. The *investment adviser* must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the *Commission* (by its examiners or other representatives) may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) Special requirements for electronic storage media. In the case of records on electronic storage media, the *investment adviser* must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the *Commission* (including its examiners and other representatives); and

- (iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.
- (h)(1) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, or with rules adopted by the Municipal Securities Rulemaking Board which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept, maintained and preserved in compliance with this section.
- (2) A record made and kept pursuant to any provision of paragraph (a) of this rule, which contains all the information required under any other provision of paragraph (a), need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) of the section.
- (i) As used in this section the term “*discretionary power*” shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the *investment adviser*, the *client* has directed or approved the purchase or sale of a definite amount of the particular security.
- (j)(1) Except as provided in paragraph (j)(3) of this section, each *non-resident investment adviser* registered or applying for registration pursuant to section 203 of the Act shall keep, maintain and preserve, at a place within the United States designated in a notice from him as provided in paragraph (j)(2) of this section, true, correct, complete and current copies of books and records which he is required to make, keep current, maintain or preserve pursuant to any provisions of any *rule or regulation* of the *Commission* adopted under the Act.
- (2) Except as provided in paragraph (j)(3) of this section, each *non-resident investment adviser* subject to this paragraph (j) shall furnish to the *Commission* a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by him pursuant to paragraph (j)(1) of this section are located. Each *non-resident investment adviser* registered or applying for registration when this paragraph becomes effective shall file such notice within 30 days after such rule becomes effective. Each *non-resident investment adviser* who files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.
- (3) Notwithstanding the provisions of paragraphs (j)(1) and (j)(2) of this section, a *non-resident investment adviser* need not keep or preserve within the United States copies of the books and records referred to in said paragraphs (j)(1) and (j)(2), if:
- (i) Such *non-resident investment adviser* files with the *Commission*, at the time or within the period provided by paragraph (j)(2) of this section, a written undertaking, in form acceptable to the *Commission* and signed by a duly authorized *person*, to furnish to the *Commission*, upon demand, at its principal office in Washington, D.C.,

or at any Regional Office of the *Commission* designated in such demand, true, correct, complete and current copies of any or all of the books and records which he is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the *Commission* adopted under the Act, or any part of such books and records which may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange *Commission* at its principal office in Washington, D.C., or at any Regional Office of said *Commission* specified in a demand for copies of books and records made by or on behalf of said *Commission*, true, correct, complete, and current copies of any or all, or any part, of the books and records which the undersigned is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange *Commission* under the Investment Advisers Act of 1940. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with rule 204-2(j) under the Investment Advisers Act of 1940. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners and *managing agents* filed with the Securities and Exchange *Commission* shall extend to and cover any action to enforce same.

and

(ii) Such *non-resident investment adviser* furnishes to the *Commission*, at his own expense 14 days after written demand therefor forwarded to him by registered mail at his last address of record filed with the *Commission* and signed by the Secretary of the *Commission* or such *person* as the *Commission* may authorize to act in its behalf, true, correct, complete and current copies of any or all books and records which such *investment adviser* is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the *Commission* adopted under the Act, or any part of such books and records which may be specified in said written demand. Such copies shall be furnished to the *Commission* at its principal office in Washington, D.C., or at any Regional Office of the *Commission* which may be specified in said written demand.

(4) For purposes of this rule the term “*non-resident investment adviser*” shall have the meaning set out in rule 0-2(d)(3) under the Act.

(k) Every *investment adviser* that registers under section 203 of the Act after July 8, 1997 shall be required to preserve in accordance with this section the books and records the *investment adviser* had been required to maintain by the State in which the *investment adviser* had its *principal office and place of business* prior to registering with the *Commission*.

Rule 204-3. Delivery of brochures and brochure supplements.

(a) **General requirements.** If you are registered under the Act as an *investment adviser*, you must deliver a brochure and one or more brochure supplements to each *client* or prospective *client* that contains all information required by Part 2 of Form ADV.

(b) **Delivery requirements.** You (or a *supervised person* acting on your behalf) must:

(1) Deliver to a *client* or prospective *client* your *current brochure* before or at the time you enter into an *investment advisory contract* with that *client*.

(2) Deliver to each *client*, annually within 120 days after the end of your fiscal year and without charge, if there are material changes in your brochure since your last annual updating amendment:

(i) A *current brochure*, or

(ii) The summary of material changes to the brochure as required by Item 2 of Form ADV, Part 2A that offers to provide your *current brochure* without charge, accompanied by the website address (if available) and an e-mail address (if available) and telephone number by which a *client* may obtain the *current brochure* from you, and the website address for obtaining information about you through the Investment Adviser Public Disclosure (IAPD) system.

(3) Deliver to each *client* or prospective *client* a *current brochure supplement* for a *supervised person* before or at the time that *supervised person* begins to provide advisory services to the *client*; provided, however, that if investment advice for a *client* is provided by a team comprised of more than five *supervised persons*, a *current brochure supplement* need only be delivered to that *client* for the five *supervised persons* with the most significant responsibility for the day-to-day advice provided to that *client*. For purposes of this section, a *supervised person* will provide advisory services to a *client* if that *supervised person* will:

(i) Formulate investment advice for the *client* and have direct *client* contact; or

(ii) Make discretionary investment decisions for the *client*, even if the *supervised person* will have no direct *client* contact.

(4) Deliver the following to each *client* promptly after you create an amended brochure or brochure supplement, as applicable, if the amendment adds disclosure of an event, or materially revises information already disclosed about an event, in response to Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV (Disciplinary Information), respectively, (i) the amended brochure or brochure supplement, as applicable, along with a statement describing the material facts relating to the change in disciplinary information, or (ii) a statement describing the material facts relating to the change in disciplinary information.

(c) **Exceptions to delivery requirement.**

(1) You are not required to deliver a brochure to a *client*:

(i) That is an *investment company* registered under the Investment Company Act of 1940 or a *business development company* as defined in that Act, provided that the advisory contract with that *client* meets the requirements of section 15(c) of that Act; or

(ii) Who receives only *impersonal investment advice* for which you charge less than \$500 per year.

(2) You are not required to deliver a brochure supplement to a *client*:

(i) To whom you are not required to deliver a brochure under subparagraph (c)(1) of this section;

(ii) Who receives only *impersonal investment advice*; or

(iii) Who is an officer, employee, or other *person* related to the adviser that would be a “*qualified client*” of your firm under rule 205-3(d)(1)(iii).

(d) **Wrap fee program brochures.**

(1) If you are a *sponsor of a wrap fee program*, then the brochure that paragraph (b) of this section requires you to deliver to a *client* or prospective *client* of the *wrap fee program* must be a *wrap fee program* brochure containing all the information required by Part 2A, Appendix 1 of Form ADV. Any additional information in a *wrap fee program* brochure must be limited to information applicable to *wrap fee programs* that you sponsor.

(2) You do not have to deliver a *wrap fee program* brochure if another *sponsor of the wrap fee program* delivers, to the *client* or prospective *client* of the *wrap fee program*, a *wrap fee program* brochure containing all the information required by Part 2A, Appendix 1 of Form ADV.

Note to paragraph (d): A *wrap fee program* brochure does not take the place of any brochure supplements that you are required to deliver under paragraph (b) of this section.

(e) **Multiple brochures.** If you provide substantially different advisory services to different *clients*, you may provide them with different brochures, so long as each *client* receives all information about the services and fees that are applicable to that *client*. The brochure you deliver to a *client* may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that you will provide or charge, or that you propose to provide or charge, to that *client*.

(f) **Other disclosure obligations.** Delivering a brochure or brochure supplement in compliance with this section does not relieve you of any other disclosure obligations you have to your advisory *clients* or prospective *clients* under any federal or *state* laws or regulations.

(g) **Definitions.** For purposes of this section:

- (1) *Impersonal investment advice* means investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts.
- (2) *Current brochure* and *current brochure supplement* mean the most recent revision of the brochure or brochure supplement, including all amendments to date.
- (3) *Sponsor of a wrap fee program* means an *investment adviser* that is compensated under a *wrap fee program* for sponsoring, organizing, or administering the program, or for selecting, or providing advice to *clients* regarding the selection of, other *investment advisers* in the program.
- (4) *Supervised person* means any of your officers, partners or *directors* (or other *persons* occupying a similar status or performing similar functions) or employees, or any other *person* who provides investment advice on your behalf.
- (5) *Wrap fee program* means an advisory program under which a specified fee or fees not based directly upon transactions in a *client's* account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other *investment advisers*) and the execution of *client* transactions.

Rule 204-4 Reporting by exempt reporting advisers.

- (a) *Exempt reporting advisers.* If you are an *investment adviser* relying on the exemption from registering with the *Commission* under section 203(l) or (m) of the Advisers Act, you must complete and file reports on Form ADV (17 CFR 279.1) by following the instructions in the Form, which specify the information that an exempt reporting adviser must provide.
- (b) *Electronic filing.* You must file Form ADV electronically with the Investment Adviser Registration Depository (IARD) unless you have received a hardship exemption under paragraph (e) of this section.

Note to paragraph (b): Information on how to file with the IARD is available on the *Commission's* website at <http://www.sec.gov/iard>.

- (c) *When filed.* Each Form ADV is considered filed with the *Commission* upon acceptance by the IARD.
- (d) *Filing fees.* You must pay FINRA (the operator of the IARD) a filing fee. The *Commission* has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed Form ADV will not be accepted by FINRA, and thus will not be considered filed with the *Commission*, until you have paid the filing fee.
- (e) *Temporary hardship exemption.*
 - (1) *Eligibility for exemption.* If you have unanticipated technical difficulties that prevent submission of a filing to the IARD, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

- (2) Application procedures. To request a temporary hardship exemption, you must:
 - (i) File Form ADV-H in paper format no later than one business day after the filing that is the subject of the ADV-H was due; and
 - (ii) Submit the filing that is the subject of the Form ADV-H in electronic format with the IARD no later than seven business days after the filing was due.
- (3) *Effective date—upon filing.* The temporary hardship exemption will be granted when you file a completed Form ADV-H.
- (f) *Final report.* You must file a final report in accordance with instructions in Form ADV when:
 - (1) You cease operation as an *investment adviser*;
 - (2) You no longer meet the definition of exempt reporting adviser under paragraph (a); or
 - (3) You apply for registration with the *Commission*.

Note to paragraph (f): You do not have to pay a filing fee to file a final report on Form ADV through the IARD.

Rule 204-5 Delivery of Form CRS

- (a) *General requirements.* If you are registered under the Act as an *investment adviser*, you must deliver Form CRS, required by Part 3 of Form ADV, to each retail investor.
- (b) *Delivery requirements.* You (or a *supervised person* acting on your behalf) must:
 - (1) Deliver to each *retail investor* your current Form CRS before or at the time you enter into an *investment advisory contract* with that retail investor.
 - (2) Deliver to each *retail investor* who is an existing client your current Form CRS before or at the time you:
 - (i) Open a new account that is different from the retail investor's existing account(s);
 - (ii) Recommend that the *retail investor* roll over assets from a retirement account into a new or existing account or investment; or
 - (iii) Recommend or provide a new investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.
 - (3) Post the current Form CRS prominently on your website, if you have one, in a location and format that is easily accessible for retail investors.
 - (4) Communicate any changes made to Form CRS to each *retail investor* who is an existing client within 60 days after the amendments are required to be made and without

charge. The communication can be made by delivering the amended Form CRS or by communicating the information through another disclosure that is delivered to the *retail investor*.

(5) Deliver a current Form CRS to each retail investor within 30 days upon request.

(c) *Other disclosure obligations*. Delivering Form CRS in compliance with this section does not relieve you of any other disclosure obligations you have to your retail investors under any Federal or State laws or regulations.

(d) *Definitions*. For purposes of this section:

(1) *Current Form CRS* means the most recent version of the Form CRS.

(2) *Retail investor* means a natural *person*, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.

(3) *Supervised person* means any of your officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on your behalf.

(e) *Transition rule*.

(1) Within 30 days after the date by which you are first required by Rule 204-1(b) to electronically file your Form CRS with the *Commission*, you must deliver to each of your existing clients who is a *retail investor* your *current Form CRS* as required by Part 3 of Form ADV.

(2) As of the date by which you are first required to electronically file your Form CRS with the *Commission*, you must begin using your Form CRS as required by Part 3 of Form ADV to comply with the requirements of paragraph (b) of this section.

Section 204A. Prevention of misuse of nonpublic information [15 U.S.C. 80b-4a]

Every *investment adviser* subject to section 204 of this title shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such *investment adviser's* business, to prevent the misuse in violation of this Act or the Securities Exchange Act of 1934, or the rules or regulations thereunder, of *material*, nonpublic information by such *investment adviser* or any *person* associated with such *investment adviser*. The *Commission*, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this Act or Securities Exchange Act of 1934 (or the rules or regulations thereunder) of *material*, nonpublic information.

Rule 204A-1 Investment adviser codes of ethics.

(a) **Adoption of code of ethics.** If you are an *investment adviser* registered or required to be registered under section 203 of the Act, you must establish, maintain and enforce a written code of ethics that, at a minimum, includes:

- (1) A standard (or standards) of business conduct that you require of your *supervised persons*, which standard must reflect your fiduciary obligations and those of your *supervised persons*;
- (2) Provisions requiring your *supervised persons* to comply with applicable *federal securities laws*;
- (3) Provisions that require all of your *access persons* to report, and you to review, their personal *securities* transactions and holdings periodically as provided below;
- (4) Provisions requiring *supervised persons* to report any violations of your code of ethics promptly to your chief compliance officer or, provided your chief compliance officer also receives reports of all violations, to other *persons* you designate in your code of ethics; and
- (5) Provisions requiring you to provide each of your *supervised persons* with a copy of your code of ethics and any amendments, and requiring your *supervised persons* to provide you with a written acknowledgment of their receipt of the code and any amendments.

(b) **Reporting requirements.**

(1) Holdings reports. The code of ethics must require your *access persons* to submit to your chief compliance officer or other persons you designate in your code of ethics a report of the *access person's* current *securities* holdings that meets the following requirements:

(i) Content of holdings reports. Each holdings report must contain, at a minimum:

- (A) The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each *reportable security* in which the *access person* has any direct or indirect *beneficial ownership*;
- (B) The name of any broker, dealer or bank with which the *access person* maintains an account in which any *securities* are held for the *access person's* direct or indirect benefit; and
- (C) The date the *access person* submits the report.

(ii) Timing of holdings reports. Your *access persons* must each submit a holdings report:

- (A) No later than 10 days after the *person* becomes an *access person*, and the information must be current as of a date no more than 45 days prior to the date the *person* becomes an *access person*.

- (B) At least once each 12-month period thereafter on a date you select, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.
- (2) Transaction reports. The code of ethics must require *access persons* to submit to your chief compliance officer or other persons you designate in your code of ethics quarterly *securities* transactions reports that meet the following requirements:
- (i) Content of transaction reports. Each transaction report must contain, at a minimum, the following information about each transaction involving a *reportable security* in which the *access person* had, or as a result of the transaction acquired, any direct or indirect *beneficial ownership*:
 - (A) The date of the transaction, the title and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable *security* involved;
 - (B) The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);
 - (C) The price of the *security* at which the transaction was effected;
 - (D) The name of the broker, dealer or bank with or through which the transaction was effected; and
 - (E) The date the *access person* submits the report.
 - (ii) Timing of transaction reports. Each *access person* must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.
- (3) Exceptions from reporting requirements. Your code of ethics need not require an *access person* to submit:
- (i) Any report with respect to *securities* held in accounts over which the *access person* had no direct or indirect influence or control;
 - (ii) A transaction report with respect to transactions effected pursuant to an *automatic investment plan*;
 - (iii) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that you hold in your records so long as you receive the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.
- (c) Pre-approval of certain investments. Your code of ethics must require your *access persons* to obtain your approval before they directly or indirectly acquire *beneficial ownership* in any *security* in an *initial public offering* or in a *limited offering*.

(d) Small advisers. If you have only one access person (i.e., yourself), you are not required to submit reports to yourself or to obtain your own approval for investments in any *security* in an *initial public offering* or in a *limited offering*, if you maintain records of all of your holdings and transactions that this section would otherwise require you to report.

(e) Definitions. For the purpose of this section:

(1) *Access person* means:

(i) Any of your *supervised persons*:

(A) Who has access to nonpublic information regarding any clients' purchase or sale of *securities*, or nonpublic information regarding the portfolio holdings of any reportable fund, or

(B) Who is involved in making *securities* recommendations to clients, or who has access to such recommendations that are nonpublic.

(ii) If providing investment advice is your primary business, all of your *directors*, officers and partners are presumed to be *access persons*.

(2) *Automatic investment plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An automatic investment plan includes a dividend reinvestment plan.

(3) *Beneficial ownership* is interpreted in the same manner as it would be under rule 16a-1(a)(2) under the Securities Exchange Act of 1934 in determining whether a *person* has *beneficial ownership* of a *security* for purposes of section 16 of the Securities Exchange Act of 1934 and the *rules and regulations* thereunder. Any report required by paragraph (b) of this section may contain a statement that the report will not be construed as an admission that the *person* making the report has any direct or indirect *beneficial ownership* in the *security* to which the report relates.

(4) *Federal securities laws* means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), the Investment Company Act of 1940, the Investment Advisers Act of 1940, Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)), any rules adopted by the *Commission* under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311 – 5314; 5316 – 5332) as it applies to *funds* and *investment advisers*, and any rules adopted thereunder by the *Commission* or the Department of the Treasury.

(5) *Fund* means an *investment company* registered under the Investment Company Act.

(6) *Initial public offering* means an offering of *securities* registered under the Securities Act of 1933, the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934.

(7) *Limited offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(a)(2) or section 4(a)(5) or pursuant to rule 504 or rule 506 of Regulation S-K.

(8) Purchase or sale of a *security* includes, among other things, the writing of an option to purchase or sell a *security*.

(9) *Reportable fund* means:

(i) Any *fund* for which you serve as an *investment adviser* as defined in section 2(a)(20) of the Investment Company Act of 1940 (i.e., in most cases you must be approved by the *fund's* board of *directors* before you can serve); or

(ii) Any *fund* whose *investment adviser* or principal *underwriter controls* you, is *controlled* by you, or is under common *control* with you. For purposes of this section, *control* has the same meaning as it does in section 2(a)(9) of the Investment Company Act of 1940.

(10) *Reportable security* means a *security* as defined in section 202(a)(18) of the Act, except that it does not include:

(i) Direct obligations of the Government of the United States;

(ii) Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements;

(iii) Shares issued by money market *funds*;

(iv) Shares issued by open-end *funds* other than *reportable funds*; and

(v) Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are *reportable funds*.

Section 205. *Investment advisory contracts* [15 U.S.C. 80b-5]

(a) No *investment adviser* registered or required to be registered with the *Commission* shall enter into, extend, or renew any *investment advisory contract*, or in any way perform any *investment advisory contract* entered into, extended, or renewed on or after the effective date of this title [November 1, 1940], if such contract—

(1) provides for compensation to the *investment adviser* on the basis of a share of capital gains upon or capital appreciation of the *funds* or any portion of the *funds* of the *client*;

(2) fails to provide, in substance, that no *assignment* of such contract shall be made by the *investment adviser* without the consent of the other party to the contract; or

(3) fails to provide, in substance, that the *investment adviser*, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

(b) Paragraph (1) of this subsection (a) shall not—

(1) be construed to prohibit an *investment advisory contract* which provides for compensation based upon the total value of a *fund* averaged over a definite period, or as of definite dates, or taken as of a definite date;

(2) apply to an *investment advisory contract* with—

(A) an *investment company* registered under the Investment Company Act, or

(B) any other *person* (except a trust, governmental plan, collective trust *fund*, or *separate account* referred to in section 3(c)(11) of the Investment Company Act), provided that the contract relates to the investment of assets in excess of \$1 million, if the contract provides for compensation based on the asset value of the company or *fund* under management averaged over a *specified period* and increasing and decreasing proportionately with the *investment performance* of the company or *fund* over a *specified period* in relation to the *investment record* of an appropriate index of securities prices or such other measure of *investment performance* as the *Commission* by rule, regulation, or order may specify;

(3) apply with respect to any *investment advisory contract* between an *investment adviser* and a *business development company*, as defined in this title, if (A) the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the *funds* of the *business development company* over a *specified period* or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 61(a)(4)(B)(iii) of the Investment Company Act is satisfied, and (B) the *business development company* does not have outstanding any option, warrant, or right issued pursuant to section 61(a)(4)(B) of the Investment Company Act and does not have a profit-sharing plan described in section 57(n) of the Investment Company Act;

(4) apply to an *investment advisory contract* with a company excepted from the definition of an *investment company* under section 3(c)(7) of the Investment Company Act; or

(5) apply to an *investment advisory contract* with a *person* who is not a resident of the United States.

(c) For purposes of paragraph (2) of subsection (b) of this section, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the *investment performance* of such company or *fund* is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the *Commission* by order shall determine otherwise.

(d) As used in paragraphs (2) and (3) of subsection (a) of this section, “*investment advisory contract*” means any contract or agreement whereby a *person* agrees to act as *investment*

adviser to or to manage any investment or trading account of another *person* other than an *investment company* registered under the Investment Company Act.

(e) The *Commission*, by rule or regulation, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any *person* or transaction, or any class or classes of *persons* or transactions, from subsection (a)(1), if and to the extent that the exemption relates to an *investment advisory contract* with any *person* that the *Commission* determines does not need the protections of subsection (a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, amount of *assets under management*, relationship with a registered *investment adviser*, and such other factors as the *Commission* determines are consistent with this section. With respect to any factor used in any rule or regulation by the *Commission* in making a determination under this subsection, if the *Commission* uses a dollar amount test in connection with such factor, such as a net asset threshold, the *Commission* shall, by order, not later than 1 year after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 [July 21, 2010], and every 5 years thereafter, adjust for the effects of inflation on such test. Any such adjustment that is not a multiple of \$100,000 shall be rounded to the nearest multiple of \$100,000.

(f) Authority to restrict mandatory pre-dispute arbitration.—The *Commission*, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or *clients* of any *investment adviser* to arbitrate any future dispute between them arising under the *Federal securities laws*, the *rules and regulations* thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.

Rule 205-1. Definition of “investment performance” of an investment company and “investment record” of an appropriate index of securities prices.

(a) “*Investment performance*” of an *investment company* for any period shall mean the sum of:

- (1) the change in its net asset value per share during such period;
- (2) the value of its cash distributions per share accumulated to the end of such period; and
- (3) the value of capital gains taxes per share paid or payable on undistributed realized long-term capital gains accumulated to the end of such period; expressed as a percentage of its net asset value per share at the beginning of such period. For this purpose, the value of distributions per share of realized capital gains, of dividends per share paid from investment income and of capital gains taxes per share paid or payable on undistributed realized long-term capital gains shall be treated as reinvested in shares of the *investment company* at the net asset value per share in effect at the close of business on the record date for the *payment* of such distributions and dividends and the date on

which provision is made for such taxes, after giving effect to such distributions, dividends and taxes.

(b) *“Investment record”* of an appropriate index of securities prices for any period shall mean the sum of:

- (1) the change in the level of the index during such period; and
- (2) the value, computed consistently with the index, of cash distributions made by companies whose securities comprise the index accumulated to the end of such period; expressed as a percentage of the index level at the beginning of such period. For this purpose cash distributions on the securities which comprise the index shall be treated as reinvested in the index at least as frequently as the end of each calendar quarter following the *payment* of the dividend.

Exhibit I

[Method of computing the investment record of the standard & poor’s 500 stock composite index for calendar 1971]

Quarterly ending—	Index value ¹	Quarterly dividend yield-composite index	
		Annual percent ²	Quarterly percent ³ (¼ of annual)
Dec. 1970	92.15		
Mar. 1971	100.31	3.10	0.78
June 1971	99.70	3.11	.78
Sept. 1971	98.34	3.14	.79
Dec. 1971	102.09	3.01	.75

¹ Source: Standard & Poor’s Trade and Securities Statistics, Jan. 1972, p. 33.

² *Id.* See Standard & Poor’s Trade and Securities Statistics Security and Price Index Record—1970 Edition, p. 133 for explanation of quarterly dividend yield.

³ Quarterly percentages have been rounded to two decimal places.

Change in index value for 1971: 102.09 – 92.15 = 9.94.

Accumulated value of dividends for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}} = \frac{\text{March}}{1.0078} \times \frac{\text{June}}{1.0079} \times \frac{\text{Sept.}}{1.0079} \times \frac{\text{Dec.}}{1.0075} - 1.00 = .0314$$

Aggregate value of dividends paid, assuming quarterly reinvestment and computed consistently with the index:

$$(\text{Percent yield as computed above}) \times (\text{ending index value}) = \text{Aggregate value of dividends paid}$$

For 1971:

$$.0314 \times 102.09 = 3.21$$

Investment record of Standard & Poor's 500 stock composite index assuming quarterly reinvestment dividends:

$$\frac{9.94 + 3.21}{92.15} = 14.27 \text{ percent}$$

The same method can be extended to cases where an *investment company's* fiscal quarters do not coincide with the fiscal quarters of the S & P dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	93.99
Index value Nov. 30, 1970	87.20
Change in index value	6.79

<u>Quarter ending—</u>	<u>Dividend yield</u>		<u>Rate for each month of quarter (1/12 of annual)</u>
	<u>Annual rate</u>	<u>¼ of annual</u>	
Dec. 1970	3.41	0.85	0.28
Mar. 1971	3.10	.78	.26
June 1971	3.11	.78	.26
Sept. 1971	3.14	.79	.26
Dec. 1971	3.01	.75	.25

Accumulated value of dividends reinvested:

December = 1.0028

January - March = 1.0078

April - June = 1.0078

July - September = 1.0079

October - November = 1.0053⁴

⁴ The rate for October and November would be two-thirds of the yield for the quarter ended Sept. 30 (i.e., .667 x .79 = 5269) since the yield for the quarter ended Dec. 31 would not be available as of Nov. 30.

Dividend yield:

$$(1.0028 \times 1.0078 \times 1.0078 \times 1.0079 \times 1.0053) - 1.00 = .0320$$

Aggregate value of dividends paid computed consistently with the index:

$$.0320 \times 93.99 = 3.01$$

Investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 30, 1971:

$$\frac{6.79 + 3.01}{87.20} = 11.24 \text{ percent}$$

Exhibit II

[Method of Computing the Investment Record of the New York Stock Exchange Composite Index for Calendar 1971]

(1)—Quarter ending	(2)—Index value ¹	(3)—Aggregate market value of shares listed on the NYSE as of end of quarter (billions of dollars) ²	(4)—Quarterly value of estimated cash payments of shares listed on the NYSE (millions of dollars) ³	(5)—Estimated yield ⁴ (quarterly percent)
Dec. 1970	50.23			
Mar. 1971	55.44	\$709	\$5,106	0.72
June 1971	55.09	710	4,961	.70
Sept. 1971	54.33	709	5,006	.71
Dec. 1971	56.43	742	5,183	.70

¹ Source: New York Stock Exchange Composite Index as reported daily by the New York Stock Exchange.

² Source: Monthly Review, New York Stock Exchange.

³ Source: The Exchange, New York Stock Exchange magazine, May, Aug., Nov. 1971 and Feb. 1972 editions. Upon request the Statistics Division of the Research Department of the NYSE will make this figure available within 10 days of the end of each quarter.

⁴ The ratio of column 4 to column 3.

Change in NYSE Composite Index value for 1971: $56.43 - 50.23 = 6.20$.

Accumulated Value of Dividends of NYSE Composite Index for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}} = \frac{\text{March}}{1.0072} \times \frac{\text{June}}{1.0070} \times \frac{\text{Sept.}}{1.0071} \times \frac{\text{Dec.}}{1.0070} - 1.00 = 0.0286$$

Aggregate value of dividends paid on NYSE Composite Index assuming quarterly reinvestment:

For 1971:

$$.0286 \times 56.43 = 1.61$$

Investment record of the New York Stock Exchange Composite Index assuming quarterly reinvestment of dividends:

$$\frac{6.20 + 1.61}{50.23} = 15.55 \text{ percent}$$

The same method can be extended to cases where an *investment company's* fiscal quarters do not coincide with the fiscal quarters of the NYSE dividend record or to instances where a "rolling period" is used for performance comparisons as indicated by the following example of the calculation of the investment record of the NYSE Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	51.84
Index value Nov. 30, 1970	47.41
Change in index value	4.43

<u>Quarter ending</u>	<u>Dividend yield quarterly percent</u>	<u>Rate for each month of quarter ($\frac{1}{12}$ of annual)</u>
Dec. 1970	0.79	0.26
Mar. 197172	.24
June 197170	.23
Sept. 197171	.24
Dec. 197170	.23

Accumulated value of dividends reinvested:

December = 1.0026

January - March = 1.0072

April - June = 1.0070

July - September = 1.0071

October - November = 1.0047⁴

⁴ The rate for October and November would be two thirds of the yield for the quarter ended September 30 (i.e., $.667 \times .71 = 4736$), since the yield for the quarter ended December 31 would not be available as of November 30.

Dividend yield:

$$(1.0026 \times 1.0072 \times 1.0070 \times 1.0071 \times 1.0047) - 1.00 = .0289$$

Aggregate value of dividends paid computed consistently with the index:

$$.0289 \times 51.84 = 1.50$$

Investment record of the NYSE Composite Index for the 12 months ended November 30, 1971:

$$\frac{4.43 + 1.50}{47.41} = 12.51 \text{ percent}$$

Rule 205-2. Definition of “specified period” over which the asset value of the company or fund under management is averaged.

(a) For purposes of this rule:

(1) “*Fulcrum fee*” shall mean the fee which is paid or earned when the *investment company’s* performance is equivalent to that of the index or other measure of performance.

(2) “*Rolling period*” shall mean a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes.

(b) The *specified period* over which the asset value of the company or *fund* under management is averaged shall mean the period over which the *investment performance* of the company or *fund* and the *investment record* of an appropriate index of securities prices or such other measure of *investment performance* are computed.

(c) Notwithstanding paragraph (b) of this section, the *specified period* over which the asset value of the company or *fund* is averaged for the purpose of computing the *fulcrum fee* may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if

(1) The performance related portion of the fee is computed over a *rolling period* and the total fee is payable at the end of each subperiod of the *rolling period*; and

(2) The *fulcrum fee* is computed on the basis of the asset value averaged over the most recent subperiod or subperiods of the *rolling period*.

Rule 205-3. Exemption from the compensation prohibition of section 205(1) for investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act will not be deemed to prohibit an *investment adviser* from entering into, performing, renewing or extending an *investment advisory contract* that provides for compensation to the *investment adviser* on the basis of a share of the capital gains upon, or the capital appreciation of, the *funds*, or any portion of the *funds*, of a *client*, Provided, That the *client* entering into the contract subject to this section is a *qualified client*, as defined in paragraph (d)(1) of this section.

(b) *Identification of the client.* In the case of a *private investment company*, as defined in paragraph (d)(3) of this section, an *investment company* registered under the Investment Company Act of 1940, or a *business development company*, as defined in section 202(a)(22) of the Act, each equity owner of any such company (except for the *investment adviser* entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a *client* for purposes of paragraph (a) of this section.

(c) *Transition rules.*

(1) *Registered investment advisers.* If a registered *investment adviser* entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of this section; *Provided*, however, that if a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), the conditions of this section in effect at that time will apply with regard to that person or company.

(2) *Registered investment advisers that were previously not registered.* If an *investment adviser* was not required to register with the *Commission* pursuant to section 203 of the Act and was not registered, section 205(a)(1) of the Act will not apply to an advisory contract entered into when the adviser was not required to register and was not registered, or to an account of an equity owner of a private investment company advised by the adviser if the account was established when the adviser was not required to register and was not registered;

Provided, however, that section 205(a)(1) of the Act will apply with regard to a natural person or company who was not a party to the contract and becomes a party (including an equity owner of a private investment company advised by the adviser) when the adviser is required to register.

(3) *Certain transfers of interests.* Solely for purposes of paragraphs (c)(1) and (c)(2) of this section, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to “become a party” to the contract and will not cause section 205(a)(1) of the Act to apply to such transferee.

(d) *Definitions.* For the purposes of this section:

(1) The term “*qualified client*” means:

(i) A natural *person* who, or a company that, immediately after entering into the contract has under the management of the *investment adviser* at least the applicable dollar amount specified in the *most recent order*;

(ii) A natural *person* who, or a company that, the *investment adviser* entering into the contract (and any *person* acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural *person*, with assets held jointly with a spouse) of more than the applicable dollar amount specified in the *most recent order*. For purposes of calculating a natural person’s net worth:

(1) The person’s primary residence must not be included as an asset;

(2) Indebtedness secured by the person’s primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(3) Indebtedness that is secured by the person’s primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a *qualified purchaser* as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(iii) A natural *person* who immediately prior to entering into the contract is:

(A) An *executive officer, director*, trustee, general partner, or *person* serving in a similar capacity, of the *investment adviser*; or

(B) An employee of the *investment adviser* (other than an employee performing solely clerical, secretarial or administrative functions with regard to the *investment adviser*) who, in connection with his or her regular functions or duties, participates in the investment activities of such *investment adviser*, provided that such employee has been performing such functions and duties for or on behalf of the *investment adviser*, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(2) The term “*company*” has the same meaning as in section 202(a)(5) of the Act, but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(3) The term “*private investment company*” means a company that would be defined as an *investment company* under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

(4) The term “*executive officer*” means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other *person* who performs similar policy-making functions, for the *investment adviser*.

(5) The term “*most recent order*” means the most recently issued Commission order in accordance with paragraph (e) of this section and as published in the Federal Register.

(e) *Inflation adjustments.* Pursuant to section 205(e) of the Act, the dollar amounts referenced in paragraphs (d)(1)(i) and (d)(1)(ii)(A) of this section shall be adjusted, by order of the *Commission*, issued on or about May 1, 2026 and approximately every five years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 1997;

(2) For the dollar amount in paragraph (d)(1)(i) of this section, multiplying \$750,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of \$100,000; and

(3) For the dollar amount in paragraph (d)(1)(ii)(A) of this section, multiplying \$1,500,000 times the quotient obtained in paragraph (e)(1) of this section and rounding the product to the nearest multiple of \$100,000.

Section 206. Prohibited transactions by *investment advisers* [15 U.S.C. 80b-6]

It shall be unlawful for any *investment adviser*, by use of the mails or any means or instrumentality of *interstate commerce*, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any *client* or prospective *client*;

(2) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any *client* or prospective *client*;

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a *client*, or acting as *broker* for a *person* other than such *client*, knowingly to effect any sale or purchase of any security for the account of such *client*, without disclosing to such *client* in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the *client* to such transaction. The prohibitions of this paragraph (3) shall not apply to any transaction with a customer of a *broker* or *dealer* if such *broker* or *dealer* is not acting as an *investment adviser* in relation to such transaction; or

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The *Commission* shall, for the purposes of this paragraph (4) by *rules and regulations* define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

Rule 206(3)-1. Exemption of investment advisers registered as broker-dealers in connection with the provision of certain investment advisory services.

(a) An *investment adviser* which is a *broker* or *dealer* registered pursuant to section 15 of the Securities Exchange Act of 1934 shall be exempt from section 206(3) in connection with any transaction in relation to which such *broker* or *dealer* is acting as an *investment adviser* solely (1) by means of publicly distributed written *materials* or publicly made oral statements; (2) by means of written *materials* or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (3) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or (4) any combination of the foregoing services: *Provided, however*, that such *materials* and oral statements include a statement that if the purchaser of the advisory communication uses the services of the adviser in connection with a sale or purchase of a security which is a subject of such communication, the adviser may act as principal for its own account or as agent for another *person*.

(b) For the purpose of this rule, publicly distributed written *materials* are those which are distributed to 35 or more *persons* who pay for such *materials*, and publicly made oral statements are those made simultaneously to 35 or more *persons* who pay for access to such statements.

Note: The requirement that the *investment adviser* disclose that it may act as principal or agent for another *person* in the sale or purchase of a security that is the subject of investment advice does not relieve the *investment adviser* of any disclosure obligation which, depending upon the nature of the relationship between the *investment adviser* and the *client*, may be imposed by subparagraphs (1) or (2) of section 206 or the other provisions of the federal securities laws.

Rule 206(3)-2. Agency cross transactions for advisory clients.

(a) An *investment adviser*, or a *person* registered as a *broker-dealer* under section 15 of the Securities Exchange Act of 1934 and *controlling, controlled* by, or under common *control* with an *investment adviser*, shall be deemed in compliance with the provisions of section 206(3) of the Act in effecting an *agency cross transaction for an advisory client*, if:

(1) The advisory *client* has executed a written consent prospectively authorizing the *investment adviser*, or any other *person* relying on this rule, to effect agency cross transactions for such advisory *client*, provided that such written consent is obtained after full written disclosure that with respect to agency cross transactions the *investment adviser* or

such other *person* will act as *broker* for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

(2) The *investment adviser*, or any other *person* relying on this rule, sends to each such *client* a written confirmation at or before the completion of each such transaction, which confirmation includes (i) a *statement* of the nature of such transaction, (ii) the date such transaction took place, (iii) an offer to furnish upon request, the time when such transaction took place, and (iv) the source and amount of any other remuneration received or to be received by the *investment adviser* and any other *person* relying on this rule in connection with the transaction, Provided, however, that if, in the case of a purchase, neither the *investment adviser* nor any other *person* relying on this rule was participating in a distribution, or in the case of a sale, neither the *investment adviser* nor any other *person* relying on this rule was participating in a tender offer, the written confirmation may *state* whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer;

(3) The *investment adviser*, or any other *person* relying on this rule, sends to each such *client*, at least annually, and with or as part of any written statement or summary of such account from the *investment adviser* or such other *person*, a written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary, and the total amount of all commissions or other remuneration received or to be received by the *investment adviser* or any other *person* relying on this rule in connection with such transactions during such period;

(4) Each written disclosure statement and confirmation required by this rule includes a conspicuous statement that the written consent referred to in paragraph (a)(1) of this section may be revoked at any time by written notice to the *investment adviser*, or to any other *person* relying on this rule, from the advisory *client*; and

(5) No such transaction is effected in which the same *investment adviser* or an *investment adviser* and any *person controlling, controlled* by or under common *control* with such *investment adviser* recommended the transaction to both any seller and any purchaser.

(b) For purposes of this rule the term “*agency cross transaction for an advisory client*” shall mean a transaction in which a *person* acts as an *investment adviser* in relation to a transaction in which such *investment adviser*, or any *person controlling, controlled* by or under common *control* with such *investment adviser*, acts as *broker* for both such advisory *client* and for another *person* on the other side of the transaction.

(c) This rule shall not be construed as relieving in any way the *investment adviser* or another *person* relying on this rule from acting in the best interests of the advisory *client*, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory *client*; nor shall it relieve such *person* or *persons* from any dis-

closure obligation which may be imposed by subparagraphs (1) or (2) of section 206 of the Act or by other applicable provisions of the federal securities laws.

Rule 206(4)-1 Investment Adviser Marketing.

As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b6(4)), it is unlawful for any *investment adviser* registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), directly or indirectly, to disseminate any *advertisement* that violates any of paragraphs (a) through (d) of this section.

(a) *General prohibitions.* An *advertisement* may not:

- (1) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;
- (2) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission;
- (3) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the *investment adviser*;
- (4) Discuss any potential benefits to clients or investors connected with or resulting from the *investment adviser's* services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;
- (5) Include a reference to specific investment advice provided by the *investment adviser* where such investment advice is not presented in a manner that is fair and balanced;
- (6) Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or
- (7) Otherwise be materially misleading.

(b) *Testimonials and endorsements.* An *advertisement* may not include any *testimonial* or *endorsement*, and an adviser may not provide compensation, directly or indirectly, for a *testimonial* or *endorsement*, unless the investment adviser complies with the conditions in paragraphs (b)(1) through (3) of this section, subject to the exemptions in paragraph (b)(4) of this section.

(1) *Required disclosures.* The *investment adviser* discloses, or reasonably believes that the person giving the *testimonial or endorsement* discloses, the following at the time the *testimonial or endorsement* is disseminated:

(i) Clearly and prominently:

(A) That the *testimonial* was given by a current *client* or *investor*, and the *endorsement* was given by a person other than a current *client* or *investor*, as applicable;

(B) That cash or non-cash compensation was provided for the *testimonial or endorsement*, if applicable; and

(C) A brief statement of any material conflicts of interest on the part of the person giving the *testimonial or endorsement* resulting from the *investment adviser's* relationship with such person;

(ii) The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the *testimonial or endorsement*; and

(iii) A description of any material conflicts of interest on the part of the person giving the *testimonial or endorsement* resulting from the *investment adviser's* relationship with such person and/or any compensation arrangement.

(2) *Adviser oversight and compliance.* The *investment adviser* must have:

(i) A reasonable basis for believing that the *testimonial or endorsement* complies with the requirements of this section; and

(ii) A written agreement with any person giving a *testimonial or endorsement* that describes the scope of the agreed-upon activities and the terms of compensation for those activities.

(3) *Disqualification.* An *investment adviser* may not compensate a person, directly or indirectly, for a *testimonial or endorsement* if the adviser knows, or in the exercise of reasonable care should know, that the person giving the *testimonial or endorsement* is an *ineligible person* at the time the *testimonial or endorsement* is disseminated. This paragraph shall not disqualify any person for any matter(s) that occurred prior to May 4, 2021, if such matter(s) would not have disqualified such person under rule 206(4)-3(a)(1)(ii), as in effect prior to May 4, 2021.

(4) *Exemptions.* (i) A *testimonial or endorsement* disseminated for no compensation or *de minimis compensation* is not required to comply with paragraphs (b)(2)(ii) and (3) of this section;

(ii) A *testimonial or endorsement* by the investment adviser's partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common

control with the *investment adviser*, or is a partner, officer, director or employee of such a person is not required to comply with paragraphs (b)(1) and (2)(ii) of this section, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the *testimonial or endorsement* is disseminated and the investment adviser documents such person's status at the time the *testimonial or endorsement* is disseminated;

(iii) A *testimonial or endorsement* by a *broker or dealer* registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)) is not required to comply with:

(A) Paragraph (b)(1) of this section if the *testimonial or endorsement* is a recommendation subject to §240.15l-1 (Regulation Best Interest) under that Act;

(B) Paragraphs (b)(1)(ii) and (iii) of this section if the *testimonial or endorsement* is provided to a person that is not a *retail customer* (as that term is defined in rule 15l-1 (Regulation Best Interest) under the Securities Exchange Act of 1934 (15 U.S.C. 78o(a))); and

(C) Paragraph (b)(3) of this section if the *broker or dealer* is not subject to statutory disqualification, as defined under section 3(a)(39) of that Act; and

(iv) A *testimonial or endorsement* by a person that is covered by rule 506(d) of Regulation D under the Securities Act of 1933 with respect to a rule 506 securities offering and whose involvement would not disqualify the offering under that rule is not required to comply with paragraph (b)(3) of this section.

(c) *Third-party ratings*. An *advertisement* may not include any *third-party rating*, unless the investment adviser:

(1) Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the *third-party rating* is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result; and

(2) Clearly and prominently discloses, or the *investment adviser* reasonably believes that the *third-party rating* clearly and prominently discloses:

(i) The date on which the rating was given and the period of time upon which the rating was based;

(ii) The identity of the third party that created and tabulated the rating; and

(iii) If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the *third-party rating*.

- (d) *Performance*. An *investment adviser* may not include in any *advertisement*:
- (1) Any presentation of *gross performance*, unless the *advertisement* also presents *net performance*:
 - (i) With at least equal prominence to, and in a format designed to facilitate comparison with, the *gross performance*; and
 - (ii) Calculated over the same time period, and using the same type of return and methodology, as the *gross performance*.
 - (2) Any performance results, of any *portfolio* or any composite aggregation of related *portfolios*, in each case other than any *private fund*, unless the *advertisement* includes performance results of the same *portfolio* or composite aggregation for one-, five-, and ten-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant *portfolio* did not exist for a particular prescribed period, then the life of the *portfolio* must be substituted for that period.
 - (3) Any statement, express or implied, that the calculation or presentation of performance results in the *advertisement* has been approved or reviewed by the Commission.
 - (4) Any *related performance*, unless it includes all related *portfolios*; provided that *related performance* may exclude any related *portfolios* if:
 - (i) The advertised performance results are not materially higher than if all related *portfolios* had been included; and
 - (ii) The exclusion of any related *portfolio* does not alter the presentation of any applicable time periods prescribed by paragraph (d)(2) of this section.
 - (5) Any *extracted performance*, unless the *advertisement* provides, or offers to provide promptly, the performance results of the total *portfolio* from which the performance was extracted.
 - (6) Any *hypothetical performance* unless the investment adviser:
 - (i) Adopts and implements policies and procedures reasonably designed to ensure that the *hypothetical performance* is relevant to the likely financial situation and investment objectives of the intended audience of the *advertisement*,
 - (ii) Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such *hypothetical performance*, and
 - (iii) Provides (or, if the intended audience is an investor in a *private fund* provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such *hypothetical performance* in making investment decisions; Provided that the *investment adviser* need not comply with the other conditions on performance in paragraphs (d)(2), (4), and (5) of this section.

- (7) Any *predecessor performance* unless:
- (i) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;
 - (ii) The accounts managed at the predecessor *investment adviser* are sufficiently similar to the accounts managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors;
 - (iii) All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods prescribed in paragraph (d)(2) of this section; and
 - (iv) The *advertisement* clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.
- (e) *Definitions*. For purposes of this section:
- (1) *Advertisement* means: (i) Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes *hypothetical performance*, that offers the investment adviser's investment advisory services with regard to securities to prospective clients or investors in a *private fund* advised by the investment adviser or offers new investment advisory services with regard to securities to current clients or investors in a *private fund* advised by the investment adviser, but does not include:
- (A) Extemporaneous, live, oral communications;
 - (B) Information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or
 - (C) A communication that includes *hypothetical performance* that is provided:
 - (1) In response to an unsolicited request for such information from a prospective or current client or investor in a *private fund* advised by the investment adviser; or
 - (2) To a prospective or current investor in a *private fund* advised by the investment adviser in a one-on-one communication; and
- (ii) Any *endorsement* or *testimonial* for which an *investment adviser* provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.

(2) *De minimis compensation* means compensation paid to a person for providing a *testimonial* or *endorsement* of a total of \$1,000 or less (or the equivalent value in non-cash compensation) during the preceding 12 months.

(3) A *disqualifying Commission action* means a Commission opinion or order barring, suspending, or prohibiting the person from acting in any capacity under the Federal securities laws.

(4) A *disqualifying event* is any of the following events that occurred within 10 years prior to the person disseminating an *endorsement* or *testimonial*:

(i) A conviction by a court of competent jurisdiction within the United States of any felony or misdemeanor involving conduct described in paragraph (2)(A) through (D) of section 203(e) of the Act;

(ii) A conviction by a court of competent jurisdiction within the United States of engaging in, any of the conduct specified in paragraphs (1), (5), or (6) of section 203(e) of the Act;

(iii) The entry of any final order by any entity described in paragraph (9) of section 203(e) of the Act, or by the U.S. Commodity Futures Trading Commission or a self-regulatory organization (as defined in the Form ADV Glossary of Terms), of the type described in paragraph (9) of section 203(e) of the Act;

(iv) The entry of an order, judgment or decree described in paragraph (4) of section 203(e) of the Act, and still in effect, by any court of competent jurisdiction within the United States; and

(v) A Commission order that a person cease and desist from committing or causing a violation or future violation of:

(A) Any scienter-based anti-fraud provision of the Federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and rule 10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)), and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(vi) A *disqualifying event* does not include an event described in paragraphs (e)(4)(i) through (v) of this section with respect to a person that is also subject to:

(A) An order pursuant to section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-9) with respect to such event; or

(B) A Commission opinion or order with respect to such event that is not a *disqualifying Commission action*; provided that for each applicable type of order or opinion described in paragraphs (e)(4)(vi)(A) and (B) of this section:

(1) The person is in compliance with the terms of the order or opinion, including, but not limited to, the payment of disgorgement, prejudgment interest, civil or administrative penalties, and fines; and

(2) For a period of 10 years following the date of each order or opinion, the *advertisement* containing the *testimonial* or *endorsement* must include a statement that the person providing the *testimonial* or *endorsement* is subject to a Commission order or opinion regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the Commission's website.

(5) *Endorsement* means any statement by a person other than a current client or investor in a *private fund* advised by the investment adviser that:

(i) Indicates approval, support, or recommendation of the investment adviser or its *supervised persons* or describes that person's experience with the investment adviser or its *supervised persons*;

(ii) Directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a *private fund* advised by, the investment adviser; or

(iii) Refers any current or prospective client or investor to be a client of, or an investor in a *private fund* advised by, the investment adviser.

(6) *Extracted performance* means the performance results of a subset of investments extracted from a *portfolio*.

(7) *Gross performance* means the performance results of a *portfolio* (or portions of a *portfolio* that are included in *extracted performance*, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant *portfolio*.

(8) *Hypothetical performance* means performance results that were not actually achieved by any *portfolio* of the investment adviser.

(i) *Hypothetical performance* includes, but is not limited to:

(A) Performance derived from model *portfolios*;

(B) Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and

(C) Targeted or projected performance returns with respect to any *portfolio* or to the investment advisory services with regard to securities offered in the *advertisement*, however:

(ii) *Hypothetical performance* does not include:

(A) An interactive analysis tool where a client or investor, or prospective client, or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices; provided that the *investment adviser*:

(1) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) Explains that the results may vary with each use and over time;

(3) If applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) Discloses that the tool generates outcomes that are hypothetical in nature; or

(B) *Predecessor performance* that is displayed in compliance with paragraph (d)(7) of this section.

(9) *Ineligible person* means a person who is subject to a *disqualifying Commission action* or is subject to any *disqualifying event*, and the following persons with respect to the *ineligible person*:

(i) Any employee, officer, or director of the *ineligible person* and any other individuals with similar status or functions within the scope of association with the *ineligible person*;

(ii) If the *ineligible person* is a partnership, all general partners; and

(iii) If the *ineligible person* is a limited liability company managed by elected managers, all elected managers.

(10) *Net performance* means the performance results of a *portfolio* (or portions of a *portfolio* that are included in *extracted performance*, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant *portfolio*, including, if applicable, advisory fees, advisory fees paid to underlying invest-

ment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. For purposes of this rule, *net performance*:

- (i) May reflect the exclusion of custodian fees paid to a bank or other third-party organization for safekeeping funds and securities; and/or
 - (ii) If using a model fee, must reflect one of the following:
 - (A) The deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted; or
 - (B) The deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the *advertisement* is disseminated.
- (11) *Portfolio* means a group of investments managed by the investment adviser. A *portfolio* may be an account or a *private fund* and includes, but is not limited to, a *portfolio* for the account of the investment adviser or its *advisory affiliate* (as defined in the Form ADV Glossary of Terms).
- (12) *Predecessor performance* means investment performance achieved by a group of investments consisting of an account or a *private fund* that was not advised at all times during the period shown by the investment adviser advertising the performance.
- (13) *Private fund* has the same meaning as in section 202(a)(29) of the Act.
- (14) *Related performance* means the performance results of one or more related *portfolios*, either on a *portfolio-by-portfolio* basis or as a composite aggregation of all *portfolios* falling within stated criteria.
- (15) *Related portfolio* means a *portfolio* with substantially similar investment policies, objectives, and strategies as those of the services being offered in the *advertisement*.
- (16) *Supervised person* has the same meaning as in section 202(a)(25) of the Act.
- (17) *Testimonial* means any statement by a current client or investor in a *private fund* advised by the investment adviser:
 - (i) About the client or investor's experience with the investment adviser or its *supervised persons*;
 - (ii) That directly or indirectly solicits any current or prospective client or investor to be a client of, or an investor in a *private fund* advised by, the investment adviser; or
 - (iii) That refers any current or prospective client or investor to be a client of, or an investor in a *private fund* advised by, the investment adviser.
- (18) *Third-party rating* means a rating or ranking of an investment adviser provided by a person who is not a related person (as defined in the Form ADV Glossary of Terms), and such person provides such ratings or rankings in the ordinary course of its business.

Rule 206(4)-2 Custody of funds or securities of clients by investment advisers.

(a) *Safekeeping required.* If you are an *investment adviser* registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b-6(4)) for you to have custody of client funds or securities unless:

- (1) *Qualified custodian.* A *qualified custodian* maintains those funds and securities:
 - (i) In a separate account for each client under that client's name; or
 - (ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.
- (2) *Notice to clients.* If you open an account with a *qualified custodian* on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the *qualified custodian's* name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If you send account statements to a client to which you are required to provide this notice, include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from the adviser.
- (3) *Account statements to clients.* You have a reasonable basis, after due inquiry, for believing that the *qualified custodian* sends an account statement, at least quarterly, to each of your clients for which it maintains funds or *securities*, identifying the amount of funds and of each *security* in the account at the end of the period and setting forth all transactions in the account during that period.
- (4) *Independent verification.* The client funds and securities of which you have custody are verified by actual examination at least once during each calendar year, except as provided below, by an *independent public accountant*, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if you maintain client funds or securities pursuant to this section as a *qualified custodian*, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:
 - (i) File a certificate on Form ADV-E (17 CFR 279.8) with the *Commission* within 120 days of the time chosen by the accountant in paragraph (a)(4) of this section, stating that it has examined the funds and *securities* and describing the nature and extent of the examination;
 - (ii) Upon finding any material discrepancies during the course of the examination, notify the *Commission* within one business day of the finding, by means of a facsimile.

ile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations; and

(iii) Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file within four business days Form ADV-E accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant; and

(B) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(5) *Special rule for limited partnerships and limited liability companies.* If you or a *related person* is a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (a)(3) of this section must be sent to each limited partner (or member or other beneficial owner).

(6) *Investment advisers acting as qualified custodians.* If you maintain, or if you have custody because a related person maintains, client funds or *securities* pursuant to this section as a *qualified custodian* in connection with advisory services you provide to clients:

(i) The *independent public accountant* you retain to perform the independent verification required by paragraph (a)(4) of this section must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(ii) You must obtain, or receive from your *related person*, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an *independent public accountant*:

(A) The internal control report must include an opinion of an *independent public accountant* as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and *securities* held by either you or a related person on behalf of your advisory clients, during the year;

(B) The *independent public accountant* must verify that the funds and *securities* are reconciled to a custodian other than you or your *related person*; and

(C) The *independent public accountant* must be registered with, and subject to regular inspection as of the commencement of the professional engagement period,

and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(7) **Independent representatives.** A client may designate an *independent representative* to receive, on his behalf, notices and account statements as required under paragraphs (a)(2) and (a)(3) of this section.

(b) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(1)) (“mutual fund”), you may use the mutual fund’s transfer agent in lieu of *a qualified custodian* for purposes of complying with paragraph (a) of this section.

(2) **Certain privately offered securities.**

(i) You are not required to comply with paragraph (a)(1) of this section with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(B) Uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(C) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or a limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this section.

(3) **Fee deduction.** Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if:

(i) you have *custody* of the funds and securities solely as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee; and

(ii) if the *qualified custodian* is a *related person*, you can rely on paragraph (b)(6) of this section.

(4) **Limited partnerships subject to annual audit.** You are not required to comply with paragraphs (a)(2) and (a)(3) of this section and you shall be deemed to have complied with paragraph (a)(4) of this section with respect to the account of a limited partnership

(or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in rule 1-02(d) of Regulation S-X (17 CFR 210.1-02(d))):

(i) At least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year;

(ii) By an *independent public accountant* that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(iii) Upon liquidation and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) promptly after the completion of such audit.

(5) *Registered investment companies.* You are not required to comply with this section (17 CFR 275.206(4)-2) with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64).

(6) *Certain Related Persons.* Notwithstanding paragraph (a)(4) of this section, you are not required to obtain an independent verification of client funds and securities if:

(i) you have *custody* under this rule solely because a *related person* holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients; and

(ii) your related person is operationally independent of you.

(c) *Delivery to Related Person.* Sending an account statement under paragraph (a)(5) of this section or distributing audited financial statements under paragraph (b)(4) of this section shall not satisfy the requirements of this section if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are your *related persons*.

(d) *Definitions.* For the purposes of this section:

(1) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. *Control* includes:

(i) Each of your firm's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control your firm;

(ii) A person is presumed to *control* a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

- (B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;
 - (iii) A person is presumed to *control* a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;
 - (iv) A person is presumed to *control* a limited liability company if the person:
 - (A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
 - (B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or
 - (C) Is an elected manager of the limited liability company; or
 - (v) A person is presumed to *control* a trust if the person is a trustee or managing agent of the trust.
- (2) *Custody* means holding, directly or indirectly, client funds or *securities*, or having any authority to obtain possession of them. You have *custody* if a related person holds, directly or indirectly, client funds or *securities*, or has any authority to obtain possession of them, in connection with advisory services you provide to clients. *Custody* includes:
- (i) Possession of client funds or *securities* (but not of checks drawn by clients and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;
 - (ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or *securities* maintained with a custodian upon your instruction to the custodian; and
 - (iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or *securities*.
- (3) *Independent public accountant* means a public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).
- (4) *Independent representative* means a person that:
- (i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

- (ii) Does not control, is not controlled by, and is not under common control with you; and
 - (iii) Does not have, and has not had within the past two years, a material business relationship with you.
- (5) **Operationally independent:** for purposes of paragraph (b)(6) of this section, a related person is presumed not to be operationally independent unless each of the following conditions is met and no other circumstances can reasonably be expected to compromise the operational independence of the related person: (i) client assets in the custody of the related person are not subject to claims of the adviser's creditors; (ii) advisory personnel do not have custody or possession of, or direct or indirect access to client assets of which the related person has *custody*, or the power to *control* the disposition of such client assets to third parties for the benefit of the adviser or its related persons, or otherwise have the opportunity to misappropriate such client assets; (iii) advisory personnel and personnel of the related person who have access to advisory client assets are not under common supervision; and (iv) advisory personnel do not hold any position with the related person or share premises with the related person.
- (6) **Qualified custodian** means:
- (i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b-2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);
 - (ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;
 - (iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and *security futures*, or other *securities* incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and
 - (iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.
- (7) **Related person** means any person, directly or indirectly, controlling or controlled by you, and any person that is under common control with you.

Rule 206(4)-3. [Reserved.]

Rule 206(4)-4. [Reserved.]

Rule 206(4)-5 *Political contributions by certain investment advisers.*

(a) *Prohibitions.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act, it shall be unlawful:

(1) For any *investment adviser* registered (or required to be registered) with the *Commission*, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, as defined in Rule 204-4(a), to provide investment advisory services for compensation to a *government entity* within two years after a contribution to an official of the *government entity* is made by the *investment adviser* or any *covered associate* of the *investment adviser* (including a *person* who becomes a *covered associate* within two years after the contribution is made); and

(2) For any *investment adviser* registered (or required to be registered) with the *Commission*, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, or any of the *investment adviser's covered associates*:

(i) To provide or agree to provide, directly or indirectly, *payment* to any *person* to solicit a *government entity* for *investment advisory services* on behalf of such *investment adviser* unless such *person* is:

(A) A *regulated person*; or

(B) An *executive officer*, general partner, managing member (or, in each case, a *person* with a similar status or function), or employee of the *investment adviser*; and

(ii) To coordinate, or to *solicit* any *person* or political action committee to make, any:

(A) *Contribution* to an *official* of a *government entity* to which the *investment adviser* is providing or seeking to provide investment advisory services; or

(B) *Payment* to a political party of a *State* or locality where the *investment adviser* is providing or seeking to provide investment advisory services to a *government entity*.

(b) *Exceptions.*

(1) *De minimis exception.* Paragraph (a)(1) of this section does not apply to *contributions* made by a *covered associate*, if a natural *person*, to *officials* for whom the *covered associate* was entitled to vote at the time of the *contributions* and which in the aggregate do not exceed \$350 to any one *official*, per election, or to *officials* for whom the *covered associate* was *not* entitled to vote at the time of the *contributions* and which in the aggregate do not exceed \$150 to any one *official*, per election.

(2) *Exception for certain new covered associates.* The prohibitions of paragraph (a)(1) of this section shall not apply to an *investment adviser* as a result of a *contribution* made by a natural *person* more than six months prior to becoming a *covered associate* of the *investment adviser* unless such *person*, after becoming a *covered associate*, *solicits clients* on behalf of the *investment adviser*.

(3) *Exception for certain returned contributions.*

(i) An *investment adviser* that is prohibited from providing investment advisory services for compensation pursuant to paragraph (a)(1) of this section as a result of a *contribution* made by a *covered associate* of the *investment adviser* is excepted from such prohibition, subject to paragraphs (b)(3)(ii) and (b)(3)(iii) of this section, upon satisfaction of the following requirements:

(A) The *investment adviser* must have discovered the *contribution* which resulted in the prohibition within four months of the date of such *contribution*;

(B) Such *contribution* must not have exceeded \$350; and

(C) The contributor must obtain a return of the *contribution* within 60 calendar days of the date of discovery of such *contribution* by the *investment adviser*.

(ii) In any calendar year, an *investment adviser* that has reported on its annual updating amendment to Form ADV (17 CFR 279.1) that it has more than 50 employees is entitled to no more than three exceptions pursuant to paragraph (b)(3)(i) of this section, and an *investment adviser* that has reported on its annual updating amendment to Form ADV that it has 50 or fewer employees is entitled to no more than two exceptions pursuant to paragraph (b)(3)(i) of this section.

(iii) An *investment adviser* may not rely on the exception provided in paragraph (b)(3)(i) of this section more than once with respect to *contributions* by the same *covered associate* of the *investment adviser* regardless of the time period.

(c) *Prohibitions as applied to covered investment pools.* For purposes of this section, an *investment adviser* to a *covered investment pool* in which a *government entity* invests or is *solicited* to invest shall be treated as though that *investment adviser* were providing or seeking to provide investment advisory services directly to the *government entity*.

(d) *Further prohibition.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business within the meaning of section 206(4) of Advisers Act, it shall be unlawful for any *investment adviser* registered (or required to be registered) with the *Commission*, or unregistered in reliance on the exemption available under section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser or any of the *investment adviser's covered associates* to do anything indirectly which, if done directly, would result in a violation of this section.

(e) *Exemptions.* The *Commission*, upon application, may conditionally or unconditionally exempt an *investment adviser* from the prohibition under paragraph (a)(1) of this sec-

tion. In determining whether to grant an exemption, the *Commission* will consider, among other factors:

- (1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act;
 - (2) Whether the *investment adviser*:
 - (i) Before the *contribution* resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this section; and
 - (ii) Prior to or at the time the *contribution* which resulted in such prohibition was made, had no actual knowledge of the *contribution*; and
 - (iii) After learning of the *contribution*:
 - (A) Has taken all available steps to cause the contributor involved in making the *contribution* which resulted in such prohibition to obtain a return of the *contribution*; and
 - (B) Has taken such other remedial or preventive measures as may be appropriate under the circumstances;
 - (3) Whether, at the time of the *contribution*, the contributor was a *covered associate* or otherwise an employee of the *investment adviser*, or was seeking such employment;
 - (4) The timing and amount of the *contribution* which resulted in the prohibition;
 - (5) The nature of the election (e.g, Federal, *State* or local); and
 - (6) The contributor's apparent intent or motive in making the *contribution* which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such *contribution*.
- (f) *Definitions.* For purposes of this section:
- (1) *Contribution* means any gift, subscription, loan, advance, or deposit of money or anything of value made for:
 - (i) The purpose of influencing any election for Federal, *State* or local office;
 - (ii) *Payment* of debt incurred in connection with any such election; or
 - (iii) Transition or inaugural expenses of the successful candidate for *State* or local office.
 - (2) *Covered associate* of an *investment adviser* means:
 - (i) Any general partner, managing member or *executive officer*, or other individual with a similar status or function;

- (ii) Any employee who *solicits* a *government entity* for the *investment adviser* and any *person* who supervises, directly or indirectly, such employee; and
 - (iii) Any political action committee *controlled* by the *investment adviser* or by any *person* described in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.
- (3) *Covered investment pool* means:
- (i) An *investment company* registered under the Investment Company Act of 1940 that is an investment option of a *plan or program of a government entity*; or
 - (ii) Any *company* that would be an *investment company* under section 3(a) of the Investment Company Act of 1940, but for the exclusion provided from that definition by either section 3(c)(1), section 3(c)(7) or section 3(c)(11) of that Act.
- (4) *Executive officer* of an *investment adviser* means:
- (i) The president;
 - (ii) Any vice president in charge of a principal business unit, division or function (such as sales, administration or finance);
 - (iii) Any other officer of the *investment adviser* who performs a policy-making function; or
 - (iv) Any other *person* who performs similar policy-making functions for the *investment adviser*.
- (5) *Government entity* means any *State* or political subdivision of a *State*, including:
- (i) Any agency, authority, or instrumentality of the *State* or political subdivision;
 - (ii) A pool of assets sponsored or established by the *State* or political subdivision or any agency, authority or instrumentality thereof, including, but not limited to a “defined benefit plan” as defined in section 414(j) of the Internal Revenue Code, or a *State* general fund;
 - (iii) A *plan or program of a government entity*; and
 - (iv) Officers, agents, or employees of the *State* or political subdivision or any agency, authority or instrumentality thereof, acting in their *official* capacity.
- (6) *Official* means any *person* (including any election committee for the *person*) who was, at the time of the *contribution*, an incumbent, candidate or successful candidate for elective office of a *government entity*, if the office:
- (i) Is directly or indirectly responsible for, or can influence the outcome of, the hiring of an *investment adviser* by a *government entity*; or
 - (ii) Has authority to appoint any *person* who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an *investment adviser* by a *government entity*.

(7) **Payment** means any gift, subscription, loan, advance, or deposit of money or anything of value.

(8) **Plan or program of a government entity** means any participant-directed investment program or plan sponsored or established by a **State** or political subdivision or any agency, authority or instrumentality thereof, including, but not limited to, a “qualified tuition plan” authorized by section 529 of the Internal Revenue Code, a retirement plan authorized by section 403(b) or 457 of the Internal Revenue Code, or any similar program or plan.

(9) **Regulated person** means:

(i) An **investment adviser** registered with the **Commission** that has not, and whose **covered associates** have not, within two years of **soliciting a government entity**:

(A) Made a **contribution** to an **official** of that **government entity**, other than as described in paragraph (b)(1) of this section; and

(B) Coordinated or **solicited** any **person** or political action committee to make any **contribution** or **payment** described in paragraphs (a)(2)(ii)(A) and (B) of this section;

(ii) A “broker,” as defined in section 3(a)(4) of the Securities Exchange Act of 1934 or a “dealer,” as defined in section 3(a)(5) of that Act, that is registered with the **Commission**, and is a member of a national securities association registered under section 15A of that Act, provided that:

(A) The rules of the association prohibit members from engaging in distribution or solicitation activities if certain political **contributions** have been made; and

(B) The **Commission**, by order, finds that such rules impose substantially equivalent or more stringent restrictions on broker-dealers than this section imposes on **investment advisers** and that such rules are consistent with the objectives of this section; and

(iii) A “municipal advisor” registered with the **Commission** under section 15B of the Securities Exchange Act of 1934 and subject to rules of the Municipal Securities Rulemaking Board, provided that:

(A) Such rules prohibit municipal advisors from engaging in distribution or solicitation activities if certain political **contributions** have been made; and

(B) The **Commission**, by order, finds that such rules impose substantially equivalent or more stringent restrictions on municipal advisors than this section imposes on **investment advisers** and that such rules are consistent with the objectives of this section.

(10) *Solicit* means:

- (i) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a *client* for, or referring a *client* to, an *investment adviser*; and
- (ii) With respect to a *contribution* or *payment*, to communicate, directly or indirectly, for the purpose of obtaining or arranging a *contribution* or *payment*.

Rule 206(4)-6 Proxy voting.

If you are an *investment adviser* registered or required to be registered under section 203 of the Act, it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act, for you to exercise voting authority with respect to *client* securities, unless you:

- (a) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote *client* securities in the best interest of *clients*, which procedures must include how you address *material* conflicts that may arise between your interests and those of your *clients*;
- (b) Disclose to *clients* how they may obtain information from you about how you voted with respect to their securities; and
- (c) Describe to *clients* your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting *client*.

Rule 206(4)-7. Compliance procedures and practices.

If you are an *investment adviser* registered or required to be registered under section 203 of the Investment Advisers Act of 1940, it shall be unlawful within the meaning of section 206 of the Act for you to provide investment advice to *clients* unless you:

- (a) Policies and procedures. Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your *supervised persons*, of the Act and the rules that the *Commission* has adopted under the Act;
- (b) Annual review. Review and document in writing, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and
- (c) Chief compliance officer. Designate an individual (who is a *supervised person*) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

Rule 206(4)-8 Pooled investment vehicles.

(a) Prohibition. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any *investment adviser* to a pooled investment vehicle to:

(1) Make any untrue statement of a *material* fact or to omit to state a *material* fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the *pooled investment vehicle*; or

(2) Otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the *pooled investment vehicle*.

(b) Definition. For purposes of this section “*pooled investment vehicle*” means any investment company as defined in section 3(a) of the Investment Company Act of 1940 or any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by either section 3(c)(1) or section 3(c)(7) of that Act.

Rule 206(4)-9

[Reserved]

Rule 206(4)-10

Private fund adviser audits. [Compliance Date March 14, 2025]

(a) As a means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, an investment adviser that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 shall cause each *private fund* that it advises (other than a *securitized asset fund*), directly or indirectly, to undergo a financial statement audit (as defined in Rule 1-02(d) of Regulation S-X that meets the requirements of Rule 206(4)-2(b)(4)(i) through (b)(4)(iii) and shall cause audited financial statements to be delivered in accordance with Rule 206(4)-2(c), if the *private fund* does not otherwise undergo such an audit;

(b) For a *private fund* (other than a *securitized asset fund*) that the adviser does not *control* and is neither *controlled* by nor under common *control* with, the adviser is prohibited from providing investment advice, directly or indirectly, to the *private fund* if the adviser fails to take all reasonable steps to cause the *private fund* to undergo a financial statement audit that meets the requirements of Rule 206(4)-2(b)(4) and to cause audited financial statements to be delivered in accordance with Rule 206(4)-2(c), if the *private fund* does not otherwise undergo such an audit; and

(c) For purposes of this section, defined terms shall have the meanings set forth in Rule 206(4)-2(d), except for the term *securitized asset fund*, which shall have the meaning set forth in Rule 211(h)(1)-1.

Section 206A. Exemptions [15 U.S.C. 80b-6a]

The *Commission*, by *rules and regulations*, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any *person* or transaction, or any class or classes of *persons*, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Section 207. *Material* misstatements [15 U.S.C. 80b-7]

It shall be unlawful for any *person* willfully to make any untrue statement of a *material* fact in any registration application or report filed with the *Commission* under section 203 or 204, or willfully to omit to state in any such application or report any *material* fact which is required to be stated therein.

Section 208. General prohibitions [15 U.S.C. 80b-8]

(a) It shall be unlawful for any *person* registered under section 203 of this title to represent or imply in any manner whatsoever that such *person* has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or any officer thereof.

(b) No provision of subsection (a) shall be construed to prohibit a statement that a *person* is registered under this title or under the Securities Exchange Act of 1934, if such statement is true in fact and if the effect of such registration is not misrepresented.

(c) It shall be unlawful for any *person* registered under section 203 of this title to represent that he is an investment counsel or to use the name “investment counsel” as descriptive of his business unless (1) his or its principal business consists of acting as *investment adviser*, and (2) a substantial part of his or its business consists of rendering *investment supervisory services*.

(d) It shall be unlawful for any *person* indirectly, or through or by any other *person*, to do any act or thing which it would be unlawful for such *person* to do directly under the provisions of this title or any rule or regulation thereunder.

Section 209. Enforcement of title [15 U.S.C. 80b-9]

(a) Whenever it shall appear to the *Commission*, either upon complaint or otherwise, that the provisions of this title or of any rule or regulation prescribed under the authority

thereof, have been or are about to be violated by any *person*, it may in its discretion require, and in any event shall permit, such *person* to file with it a statement in writing, under oath or otherwise, as to all the facts and circumstances relevant to such violation, and may otherwise investigate all such facts and circumstances.

(b) For the purposes of any investigation or any proceeding under this title, any member of the *Commission* or any officer thereof designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or *material* to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any *State* or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any *person*, the *Commission* may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such *person* resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such *person* to appear before the *Commission* or member or officer designated by the *Commission*, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such *person* is an inhabitant or wherever he may be found. Any *person* who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the *Commission*, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Whenever it shall appear to the *Commission* that any *person* has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this title, or of any rule, regulation, or order hereunder, or that any *person* has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order hereunder. Upon a showing that such *person* has engaged, is engaged, or is about to engage in any such act or practice, or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The *Commission* may transmit such

evidence as may be available concerning any violation of the provisions of this title, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

(e) Money Penalties in Civil Actions.—

(1) Authority of *Commission*.—Whenever it shall appear to the *Commission* that any *person* has violated any provision of this title, the rules or regulations thereunder, or a cease-and-desist order entered by the *Commission* pursuant to section 203(k) of this title, the *Commission* may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the *person* who committed such violation.

(2) Amount of Penalty.—

(A) First Tier.—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural *person* or \$50,000 for any other *person*, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second Tier.—Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural *person* or \$250,000 for any other *person*, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third Tier.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural *person* or \$500,000 for any other *person*, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other *persons*.

(3) Procedures for Collection.—

(A) *Payment* of Penalty to Treasury.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in Section 308 of the Sarbanes-Oxley Act of 2002 and section 21F of the Securities Exchange Act of 1934.

(B) Collection of Penalties.—If a *person* upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the

Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not Exclusive.—The actions authorized by this subsection may be brought in addition to any other action that the *Commission* or the Attorney General is entitled to bring.

(D) Jurisdiction and Venue.—For purposes of section 214 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title.

(4) Special Provisions Relating to a Violation of a Cease-and-Desist Order.—In an action to enforce a cease-and-desist order entered by the *Commission* pursuant to section 203(k), each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.

(f) Aiding and Abetting—For purposes of any action brought by the *Commission* under subsection (e), any *person* that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the *person* that committed such violation.

Section 210. Publicity [15 U.S.C. 80b-10]

(a) The information contained in any registration application or report or amendment thereto filed with the *Commission* pursuant to any provision of this title shall be made available to the public, unless and except insofar as the *Commission*, by *rules and regulations* upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the *Commission* under this title and made available to the public shall be furnished to any *person* at such reasonable charge and under such reasonable limitations as the *Commission* shall prescribe.

(b) Subject to the provisions of subsections (c) and (d) of section 209 of this title and section 24(c) of the Securities Exchange Act of 1934, the *Commission*, or any member, officer, or employee thereof, shall not make public the fact that any examination or investigation under this title is being conducted, or the results of or any facts ascertained during any such examination or investigation; and no member, officer, or employee of the *Commission* shall disclose to any *person* other than a member, officer, or employee of the *Commission* any information obtained as a result of any such examination or investigation except with the approval of the *Commission*. The provisions of this subsection shall not apply—

(1) in the case of any hearing which is public under the provisions of section 212; or

(2) in the case of a resolution or request from either House of Congress.

(c) No provision of this title shall be construed to require, or to authorize the *Commission* to require any *investment adviser* engaged in rendering *investment supervisory services* to

disclose the identity, investments, or affairs of any *client* of such *investment adviser*, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this title or for purposes of assessment of potential systemic risk.

Section 210A. Consultation [15 U.S.C. 80b-10a]

(a) Examination Results and Other Information.

(1) The *appropriate Federal banking agency* shall provide the *Commission* upon request the results of any examination, reports, records, or other information to which such agency may have access

(A) with respect to the investment advisory activities of any—

(i) *bank* holding company or savings and loan holding company;

(ii) *bank*; or

(iii) *separately identifiable department or division* of a *bank*, that is registered under section 203 of this title; and

(B) in the case of a *bank* holding company or savings and loan holding company or *bank* that has a *subsidiary* or a *separately identifiable department or division* registered under that section, with respect to the investment advisory activities of such *bank* or *bank* holding company.

(2) The *Commission* shall provide to the *appropriate Federal banking agency* upon request the results of any examination, reports, records, or other information with respect to the investment advisory activities of any *bank* holding company or savings and loan holding company, *bank*, or *separately identifiable department or division* of a *bank*, which is registered under section 203 of this title.

(3) Notwithstanding any other provision of law, the *Commission* and the *appropriate Federal banking agencies* shall not be compelled to disclose any information provided under paragraph (1) or (2). Nothing in this paragraph shall authorize the *Commission* or such agencies to withhold information from Congress, or prevent the *Commission* or such agencies from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States, the *Commission*, or such agencies. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(b) **Effect on Other Authority.** Nothing in this section shall limit in any respect the authority of the *appropriate Federal banking agency* with respect to such *bank* holding company or savings and loan holding company (or affiliates or subsidiaries thereof), *bank*, or subsidiary, department, or division of a bank under any other provision of law.

(c) **Definition.** For purposes of this section, the term “*appropriate Federal banking agency*” shall have the same meaning as given in section 3 of the Federal Deposit Insurance Act.

Section 211. Rules, regulations and orders [15 U.S.C. 80b-11]

(a) The *Commission* shall have authority from time to time to make, issue, amend, and rescind such *rules and regulations* and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the *Commission* elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title, except that the *Commission* may not define the term “client” for purposes of paragraphs (1) and (2) of section 206 to include an investor in a private fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser. For the purposes of its rules or regulations the *Commission* may classify *persons* and matters within its jurisdiction and prescribe different requirements for different classes of *persons* or matters.

(b) Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the *rules and regulations* of the *Commission* under this title, and amendments thereof, shall be effective upon publication in the manner which the *Commission* shall prescribe, or upon such later date as may be provided in such *rules and regulations*.

(c) Orders of the *Commission* under this title shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the *Commission* shall be given by *personal* service upon each party or by registered mail or *certified* mail or confirmed telegraphic notice to the party’s last known business address. Notice to *interested persons*, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(d) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the *Commission*, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

[The Dodd-Frank Act amended Section 211 of the Investment Advisers Act of 1940 by adding subsection (e), (g)-(i) but did not add a subsection (f).]

(e) Disclosure Rules on Private Funds.—

The *Commission* and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010 [July 21, 2010], jointly promulgate rules to establish the form and content of the reports required to be filed with the *Commission* under subsection 204(b) and with the Commodity Futures Trading Commission by *investment advisers* that are registered both under this title and the Commodity Exchange Act.

(g) Standard of Conduct

(1) In General.—The *Commission* may promulgate rules to provide that the standard of conduct for all brokers, dealers, and *investment advisers*, when providing personalized investment advice about securities to retail customers (and such other customers as the *Commission* may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or *investment adviser* providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to *investment advisers* under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the *Commission* shall not ascribe a meaning to the term “customer” that would include an investor in a *private fund* managed by an *investment adviser*, where such *private fund* has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or *investment adviser*.

(2) *Retail Customer* Defined.—For purposes of this subsection, the term “*retail customer*” means a natural *person*, or the legal representative of such natural *person*, who—

(A) receives personalized investment advice about securities from a broker, dealer, or *investment adviser*; and

(B) uses such advice primarily for personal, family, or household purposes.

(h) Other Matters- The *Commission* shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and *investment advisers*, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and *investment advisers* that the *Commission* deems contrary to the public interest and the protection of investors.

(i) Harmonization of Enforcement-The enforcement authority of the *Commission* with respect to violations of the standard of conduct applicable to an *investment adviser* shall include—

(1) the enforcement authority of the *Commission* with respect to such violations provided under this Act; and

(2) the enforcement authority of the *Commission* with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment

advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the *Commission* shall seek to prosecute and sanction violators of the standard of conduct applicable to an *investment adviser* under this Act to same extent as the *Commission* prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.

Rule 211(h)(1)-1

Definitions

For purposes of Rules 206(4)-10, 211(h)(1)-2, 211(h)(2)-1, 211(h)(2)-2, and 211(h)(2)-3:

Adviser clawback means any obligation of the adviser, its *related persons*, or their respective owners or interest holders to restore or otherwise return *performance-based compensation* to the *private fund* pursuant to the *private fund's* governing agreements.

Adviser-led secondary transaction means any transaction initiated by the investment adviser or any of its *related persons* that offers *private fund* investors the choice between:

- (1) Selling all or a portion of their interests in the *private fund*; and
- (2) Converting or exchanging all or a portion of their interests in the *private fund* for interests in another vehicle advised by the adviser or any of its *related persons*.

Committed capital means any commitment pursuant to which a person is obligated to acquire an interest in, or make capital contributions to, the *private fund*.

Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. For the purposes of this definition, *control* includes:

- (1) Each of an investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to *control* the investment adviser;
- (2) A person is presumed to *control* a corporation if the person:
 - (i) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or
 - (ii) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;
- (3) A person is presumed to *control* a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

- (4) A person is presumed to *control* a limited liability company if the person:
- (i) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
 - (ii) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or
 - (iii) Is an elected manager of the limited liability company;
- (5) A person is presumed to *control* a trust if the person is a trustee or managing agent of the trust.

Covered portfolio investment means a *portfolio investment* that allocated or paid the investment adviser or its *related persons portfolio investment* compensation during the *reporting period*.

Distribute, distributes, or distributed means send or sent to all of the *private fund*'s investors, unless the context otherwise requires; provided that, if an investor is a pooled investment vehicle that is *controlling, controlled* by, or under common *control* with (a "*control relationship*") the adviser or its *related persons*, the adviser must look through that pool (and any pools in a *control relationship* with the adviser or its *related persons*) in order to send to investors in those pools.

Election form means a written solicitation *distributed* by, or on behalf of, the adviser or any *related person* requesting *private fund* investors to make a binding election to participate in an *adviser-led secondary transaction*.

Fairness opinion means a written opinion stating that the price being offered to the *private fund* for any *assets* being sold as part of an *adviser-led secondary transaction* is fair.

Fund-level subscription facilities means any subscription facilities, subscription line financing, capital call facilities, capital commitment facilities, bridge lines, or other indebtedness incurred by the *private fund* that is secured by the *unfunded capital commitments* of the *private fund*'s investors.

Gross IRR means an *internal rate of return* that is calculated gross of all fees, expenses, and *performance-based compensation* borne by the *private fund*.

Gross MOIC means a *multiple of invested capital* that is calculated gross of all fees, expenses, and *performance-based compensation* borne by the *private fund*.

Illiquid fund means a *private fund* that:

- (1) Is not required to redeem interests upon an investor's request; and
- (2) Has limited opportunities, if any, for investors to withdraw before termination of the fund.

Independent opinion provider means a person that:

- (1) Provides *fairness opinions* or *valuation opinions* in the ordinary course of its business; and

(2) Is not a *related person* of the adviser.

Internal rate of return means the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero.

Liquid fund means a *private fund* that is not an *illiquid fund*.

Multiple of invested capital means, as of the end of the applicable fiscal quarter:

- (1) The sum of:
 - (i) The unrealized value of the *illiquid fund*; and
 - (ii) The value of all distributions made by the *illiquid fund*;
- (2) Divided by the total capital contributed to the *illiquid fund* by its investors.

Net IRR means an *internal rate of return* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the *private fund*.

Net MOIC means a *multiple of invested capital* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the *private fund*.

Performance-based compensation means allocations, payments, or distributions of capital based on the *private fund's* (or any of its investments') capital gains, capital appreciation and/or other profit.

Portfolio investment means any entity or issuer in which the *private fund* has directly or indirectly invested.

Portfolio investment compensation means any compensation, fees, and other amounts allocated or paid to the investment adviser or any of its *related persons* by the *portfolio investment* attributable to the *private fund's* interest in such *portfolio investment*, including, but not limited to, origination, management, consulting, monitoring, servicing, transaction, administrative, advisory, closing, disposition, directors, trustees or similar fees or payments.

Related person means:

- (1) All officers, partners, or directors (or any person performing similar functions) of the adviser;
- (2) All persons directly or indirectly *controlling* or *controlled* by the adviser;
- (3) All current employees (other than employees performing only clerical, administrative, support or similar functions) of the adviser; and
- (4) Any person under common *control* with the adviser.

Reporting period means the *private fund's* fiscal quarter covered by the quarterly statement or, for the initial quarterly statement of a newly formed *private fund*, the period covering the *private fund's* first two full fiscal quarters of operating results.

Securitized asset fund means any *private fund* whose primary purpose is to issue asset backed securities and whose investors are primarily debt holders.

Similar pool of assets means a pooled investment vehicle (other than an investment company registered under the Investment Company Act of 1940, a company that elects to be regulated as such, or a *securitized asset fund*) with substantially similar investment policies, objectives, or strategies to those of the *private fund* managed by the investment adviser or its *related persons*.

Statement of contributions and distributions means a document that presents:

- (1) All capital inflows the *private fund* has received from investors and all capital outflows the *private fund* has *distributed* to investors since the *private fund's* inception, with the value and date of each inflow and outflow; and
- (2) The net asset value of the *private fund* as of the end of the *reporting period*.

Unfunded capital commitments means *committed capital* that has not yet been contributed to the *private fund* by investors.

Valuation opinion means a written opinion stating the value (as a single amount or a range) of any assets being sold as part of an *adviser-led secondary transaction*.

Rule 211(h)(1)-2 Private fund quarterly statements.

(a) *Quarterly statements.* As a means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, an investment adviser that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 shall prepare a quarterly statement that complies with paragraphs (a) through (g) of this section for any *private fund* (other than a *securitized asset fund*) that it advises, directly or indirectly, that has at least two full fiscal quarters of operating results, and *distribute* the quarterly statement to the *private fund's* investors, if such *private fund* is not a fund of funds, within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the *private fund* and 90 days after the end of each fiscal year of the *private fund* and, if such *private fund* is a fund of funds, within 75 days after the end of the first three fiscal quarters of each fiscal year and 120 days after the end of each fiscal year, in either case, unless such a quarterly statement is prepared and *distributed* by another person.

(b) *Fund table.* The quarterly statement must include a table for the *private fund* that discloses, at a minimum, the following information, presented both before and after the application of any offsets, rebates, or waivers for the information required by paragraphs (b)(1) and (2) of this section:

- (1) A detailed accounting of all compensation, fees, and other amounts allocated or paid to the investment adviser or any of its *related persons* by the *private fund* during the *reporting period*, with separate line items for each category of allocation or payment

reflecting the total dollar amount, including, but not limited to, management, advisory, sub-advisory, or similar fees or payments, and *performance-based compensation*;

(2) A detailed accounting of all fees and expenses allocated to or paid by the *private fund* during the *reporting period* (other than those listed in paragraph (b)(1) of this section), with separate line items for each category of fee or expense reflecting the total dollar amount, including, but not limited to, organizational, accounting, legal, administration, audit, tax, due diligence, and travel fees and expenses; and

(3) The amount of any offsets or rebates carried forward during the *reporting period* to subsequent periods to reduce future payments or allocations to the adviser or its *related persons*.

(c) *Portfolio investment* table. The quarterly statement must include a separate table for the *private fund's covered portfolio investments* that discloses, at a minimum, the following information for each *covered portfolio investment*: a detailed accounting of all *portfolio investment* compensation allocated or paid to the investment adviser or any of its *related persons* by the *covered portfolio investment* during the *reporting period*, with separate line items for each category of allocation or payment reflecting the total dollar amount, presented both before and after the application of any offsets, rebates, or waivers.

(d) *Calculations and cross-references*. The quarterly statement must include prominent disclosure regarding the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated and include cross references to the sections of the *private fund's* organizational and offering documents that set forth the applicable calculation methodology.

(e) *Performance*.

(1) No later than the time the adviser sends the initial quarterly statement, the adviser must determine that the *private fund* is an *illiquid fund* or a *liquid fund*.

(2) The quarterly statement must present the following with equal prominence:

(i) *Liquid funds*. For a *liquid fund*:

(A) Annual net total returns for each fiscal year over the past 10 fiscal years or since inception, whichever time period is shorter;

(B) Average annual net total returns over the one-, five-, and 10-fiscal-year periods; and

(C) The cumulative net total return for the current fiscal year as of the end of the most recent fiscal quarter covered by the quarterly statement.

(ii) *Illiquid funds*. For an *illiquid fund*:

(A) The following performance measures, shown since inception of the *illiquid fund* through the end of the quarter covered by the quarterly statement (or, to the

extent quarter-end numbers are not available at the time the adviser *distributes* the quarterly statement, through the most recent practicable date) and computed with and without the impact of any *fund-level subscription facilities*:

- (1) *Gross IRR* and gross MOIC for the *illiquid fund*;
- (2) *Net IRR* and *net MOIC* for the *illiquid fund*; and
- (3) *Gross IRR* and gross MOIC for the realized and unrealized portions of the *illiquid fund*'s portfolio, with the realized and unrealized performance shown separately.

(B) A *statement of contributions and distributions* for the *illiquid fund*.

(iii) *Other matters*. The quarterly statement must include the date as of which the performance information is current through and prominent disclosure of the criteria used and assumptions made in calculating the performance.

(f) *Consolidated reporting*. To the extent doing so would provide more meaningful information to the *private fund*'s investors and would not be misleading, the adviser must consolidate the reporting required by paragraphs (a) through (e) of this section to cover similar pools of assets.

(g) *Format and content*. The quarterly statement must use clear, concise, plain English and be presented in a format that facilitates review from one quarterly statement to the next.

(h) *Definitions*. For purposes of this section, defined terms shall have the meanings set forth in Rule 211(h)(1)-1.

Rule 211(h)(2)-1 Private fund adviser restricted activities.

[Compliance Dates:

September 16, 2024 for investment advisers with \$1.5 billion or more in private funds' assets under management]

March 14, 2025 for investment advisers with less than \$1.5 billion in private funds' assets under management]

(a) An investment adviser to a *private fund* (other than a *securitized asset fund*) may not, directly or indirectly, do the following with respect to the *private fund*, or any investor in that *private fund*:

- (1) Charge or allocate to the *private fund* fees or expenses associated with an investigation of the adviser or its *related persons* by any governmental or regulatory authority, unless the investment adviser requests each investor of the *private fund* to consent to, and obtains written consent from at least a majority in interest of the *private fund*'s investors that are not *related persons* of the adviser for, such charge or

allocation; provided, however, that the investment adviser may not charge or allocate to the *private fund* fees or expenses related to an investigation that results or has resulted in a court or governmental authority imposing a sanction for a violation of the Investment Advisers Act of 1940 or the rules promulgated thereunder;

(2) Charge or allocate to the *private fund* any regulatory or compliance fees or expenses, or fees or expenses associated with an examination, of the adviser or its *related persons*, unless the investment adviser *distributes* a written notice of any such fees or expenses, and the dollar amount thereof, to the investors of such *private fund* client in writing within 45 days after the end of the fiscal quarter in which the charge occurs;

(3) Reduce the amount of an *adviser clawback* by actual, potential, or hypothetical taxes applicable to the adviser, its *related persons*, or their respective owners or interest holders, unless the investment adviser *distributes* a written notice to the investors of such *private fund* client that sets forth the aggregate dollar amounts of the *adviser clawback* before and after any reduction for actual, potential, or hypothetical taxes within 45 days after the end of the fiscal quarter in which the *adviser clawback* occurs;

(4) Charge or allocate fees or expenses related to a *portfolio investment* (or potential *portfolio investment*) on a non-pro rata basis when multiple *private funds* and other clients advised by the adviser or its *related persons* (other than a *securitized asset fund*) have invested (or propose to invest) in the same *portfolio investment*, unless:

(i) The non-pro rata charge or allocation is fair and equitable under the circumstances; and

(ii) Prior to charging or allocating such fees or expenses to a *private fund* client, the investment adviser *distributes* to each investor of the *private fund* a written notice of the non-pro rata charge or allocation and a description of how it is fair and equitable under the circumstances; and

(5) Borrow money, securities, or other *private fund assets*, or receive a loan or an extension of credit, from a *private fund* client, unless the adviser:

(i) *Distributes* to each investor a written description of the material terms of, and requests each investor to consent to, such borrowing, loan, or extension of credit; and

(ii) Obtains written consent from at least a majority in interest of the *private fund's* investors that are not *related persons* of the adviser.

(b) Paragraphs (a)(1) and (a)(5) of this section shall not apply with respect to contractual agreements governing a *private fund* (and, with respect to paragraph (a)(5) of this section, contractual agreements governing a borrowing, loan, or extension of credit entered into by

a *private fund*) that has commenced operations as of the compliance date and that were entered into in writing prior to the compliance date if paragraph (a)(1) or (a)(5) of this section, as applicable, would require the parties to amend such governing agreements; provided that this paragraph (b) does not permit an investment adviser to such a fund to charge or allocate to the *private fund* fees or expenses related to an investigation that results or has resulted in a court or governmental authority imposing a sanction for a violation of the Investment Advisers Act of 1940 or the rules promulgated thereunder.

(c) For purposes of this section, defined terms shall have the meanings set forth in Rule 211(h)(1)-1.

Rule 211(h)(2)-2 *Adviser-led secondaries.*

September 16, 2024 for investment advisers with \$1.5 billion or more in private funds' assets under management]

March 14, 2025 for investment advisers with less than \$1.5 billion in private funds' assets under management]

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(4)), an investment adviser that is registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3) conducting an *adviser-led secondary transaction* with respect to any *private fund* that it advises (other than a *securitized asset fund*) shall comply with paragraphs (a)(1) and (2) of this section. The investment adviser shall:

- (1) Obtain, and *distribute* to investors in the *private fund*, a *fairness opinion* or *valuation opinion* from an *independent opinion provider*; and
- (2) Prepare, and *distribute* to investors in the *private fund*, a written summary of any material business relationships the adviser or any of its *related persons* has, or has had within the two-year period immediately prior to the issuance of the *fairness opinion* or *valuation opinion*, with the *independent opinion provider*; in each case, prior to the due date of the *election form* in respect of the *adviser-led secondary transaction*.

(b) For purposes of this section, defined terms shall have the meanings set forth in Rule 211(h)(1)-1.

Rule 211(h)(2)-3 Preferential treatment.

September 16, 2024 for investment advisers with \$1.5 billion or more in private funds' assets under management]

March 14, 2025 for investment advisers with less than \$1.5 billion in private funds' assets under management]

(a) An investment adviser to a *private fund* (other than a *securitized asset fund*) may not, directly or indirectly, do the following with respect to the *private fund*, or any investor in that *private fund*:

(1) Grant an investor in the *private fund* or in a *similar pool of assets* the ability to redeem its interest on terms that the adviser reasonably expects to have a material, negative effect on other investors in that *private fund* or in a *similar pool of assets*, except:

(i) If such ability to redeem is required by the applicable laws, rules, regulations, or orders of any relevant foreign or U.S. Government, State, or political subdivision to which the investor, the *private fund*, or any *similar pool of assets* is subject; or

(ii) If the investment adviser has offered the same redemption ability to all other existing investors, and will continue to offer such redemption ability to all future investors, in the *private fund* and any *similar pool of assets*;

(2) Provide information regarding the portfolio holdings or exposures of the *private fund*, or of a *similar pool of assets*, to any investor in the *private fund* if the adviser reasonably expects that providing the information would have a material, negative effect on other investors in that *private fund* or in a *similar pool of assets*, except if the investment adviser offers such information to all other existing investors in the *private fund* and any *similar pool of assets* at the same time or substantially the same time.

(b) An investment adviser to a *private fund* (other than a *securitized asset fund*) may not, directly or indirectly, provide any preferential treatment to any investor in the *private fund* unless the adviser provides written notices as follows:

(1) Advance written notice for prospective investors in a private fund. The investment adviser shall provide to each prospective investor in the *private fund*, prior to the investor's investment in the *private fund*, a written notice that provides specific information regarding any preferential treatment related to any material economic terms that the adviser or its *related persons* provide to other investors in the same *private fund*.

(2) Written notice for current investors in a private fund. The investment adviser shall *distribute* to current investors:

(i) For an *illiquid fund*, as soon as reasonably practicable following the end of the *private fund's* fundraising period, written disclosure of all preferential treatment the adviser or its *related persons* has provided to other investors in the same *private fund*;

(ii) For a *liquid fund*, as soon as reasonably practicable following the investor's investment in the *private fund*, written disclosure of all preferential treatment the adviser or its *related persons* has provided to other investors in the same *private fund*; and

(iii) On at least an annual basis, a written notice that provides specific information regarding any preferential treatment provided by the adviser or its *related persons* to other investors in the same *private fund* since the last written notice provided in accordance with this section, if any.

(c) For purposes of this section, defined terms shall have the meanings set forth in Rule 211(h)(1)-1.

(d) Paragraph (a) of this section shall not apply with respect to contractual agreements governing a *private fund* that has commenced operations as of the compliance date and that were entered into in writing prior to the compliance date if paragraph (a) of this section would require the parties to amend such governing agreements.

Section 212. Hearings [15 U.S.C. 80b-12]

Hearings may be public and may be held before the *Commission*, any member or members thereof, or any officer or officers of the *Commission* designated by it, and appropriate records thereof shall be kept.

Section 213. Court review of orders [15 U.S.C. 80b-13]

(a) Any *person* or party aggrieved by an order issued by the *Commission* under this title may obtain a review of such order in the United States Court of Appeals within any circuit wherein such *person* resides or has his *principal office or place of business*, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the *Commission* be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the *Commission*, or any officer thereof designated by the *Commission* for that purpose, and thereupon the *Commission* shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the *Commission* shall be considered by the court unless such objection shall have been urged before the *Commission* or unless there were reasonable grounds for failure so to do. The findings of the *Commission* as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is *material* and that there were reasonable grounds for failure to adduce such evidence in the

proceeding before the *Commission*, the court may order such additional evidence to be taken before the *Commission* and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The *Commission* may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the *Commission* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the *Commission's* order.

Section 214. Jurisdiction of offenses and suits [15 U.S.C. 80b-14]

(a) In General. The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with *State* and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the *Commission* under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. No costs shall be assessed for or against the *Commission* in any proceeding under this title brought by or against the *Commission* in any court.

(b) Extraterritorial Jurisdiction.—

The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the *Commission* or the United States alleging a violation of section 206 involving—

- (1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or
- (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.

Section 215. Validity of contracts [15 U.S.C. 80b-15]

(a) Any condition, stipulation, or provision binding any *person* to waive compliance with any provision of this title or with any rule, regulation, or order thereunder shall be void.

(b) Every contract made in violation of any provision of this title and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any *person* who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any *person* who, not being a party to such contract, shall have *acquired* any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision.

Section 216. Annual reports of *Commission*

[Report requirement terminated by 104 Public Law 66 (1995) § 3003, effective May 15, 2000]

Section 217. Penalties [15 U.S.C. 80b-17]

Any *person* who willfully violates any provision of this title, or any rule, regulation, or order promulgated by the *Commission* under authority thereof, shall, upon conviction, be fined not more than \$10,000, imprisoned for not more than five years, or both.

Section 218. Hiring and leasing authority of *Commission* [15 U.S.C. 80b-18]

The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the *Commission*—

- (1) to appoint and fix the compensation of such other employees as may be necessary for carrying out its functions under this title, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.

Section 219. Separability of provisions [15 U.S.C. 80b-19]

If any provision of this title or the application of such provision to any *person* or circumstances shall be held invalid, the remainder of the title and the application of such provision to *persons* or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 220. Short title [15 U.S.C. 80b-20]

This title may be cited as the “Investment Advisers Act of 1940.”

Section 221. Effective date [15 U.S.C. 80b-21]

This title shall become effective on November 1, 1940.

Section 222. State regulation of *investment advisers* [15 U.S.C. 80b-18a]

(a) *Jurisdiction of State Regulators.*—Nothing in this title shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any *State* over any security or any *person* insofar as it does not conflict with the provisions of this title or the *rules and regulations* thereunder.

(b) *Dual Compliance Purposes.*—No *State* may enforce any law or regulation that would require an *investment adviser* to maintain any books or records in addition to those required under the laws of the *State* in which it maintains its *principal office and place of business*, if the *investment adviser*—

(1) is registered or licensed as such in the *State* in which it maintains its *principal office and place of business*; and

(2) is in compliance with the applicable books and records requirements of the *State* in which it maintains its *principal office and place of business*.

(c) *Limitation on Capital and Bond Requirements.*—No *State* may enforce any law or regulation that would require an *investment adviser* to maintain a higher minimum net capital or to post any bond in addition to any that is required under the laws of the *State* in which it maintains its *principal office and place of business*, if the *investment adviser*—

(1) is registered or licensed as such in the *State* in which it maintains its *principal office and place of business*; and

(2) is in compliance with the applicable net capital or bonding requirements of the *State* in which it maintains its *principal office and place of business*.

(d) *National De Minimis Standard*.—No law of any *State* or political subdivision thereof requiring the registration, licensing, or qualification as an *investment adviser* shall require an *investment adviser* to register with the securities commissioner of the *State* (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser—

(1) does not have a *place of business* located within the *State*; and

(2) during the preceding 12-month period, has had fewer than 6 *clients* who are residents of that *State*.

Rule 222-1. Definitions.

For purposes of section 222 of the Act:

(a) *Place of business*. “*Place of business*” of an *investment adviser* means:

(1) An office at which the *investment adviser* regularly provides investment advisory services, solicits, meets with, or otherwise communicates with *clients*; and

(2) Any other location that is held out to the general public as a location at which the *investment adviser* provides investment advisory services, solicits, meets with, or otherwise communicates with *clients*.

(b) *Principal office and place of business*. “*Principal office and place of business*” of an *investment adviser* means the executive office of the *investment adviser* from which the officers, partners, or managers of the *investment adviser* direct, *control*, and coordinate the activities of the *investment adviser*.

Rule 222-2. Definition of “client” for purposes of the national de minimis standard.

For purposes of section 222(d)(2) of the Act, an *investment adviser* may rely upon the definition of “*client*” provided by rule 202(a)(30)-1 without giving regard to paragraph (b)(4) of that section.

Section 223. Custody of client accounts [15 U.S.C. 80b-18b]

An *investment adviser* registered under this title shall take such steps to safeguard client assets over which such adviser has *custody*, including, without limitation, verification of such assets by an independent public accountant, as the *Commission* may, by rule, prescribe.

Section 224. Rule of construction relating to the Commodity Exchange Act [15 U.S.C. 80b-18c]

Nothing in this title shall relieve any *person* of any obligation or duty, or affect the availability of any right or remedy available to the Commodity Futures Trading Commission or any private party, arising under the Commodity Exchange Act governing *commodity pools*, *commodity pool operators*, or *commodity trading advisors*.

Rule 0-2 General procedures for serving non-residents.

(a) General procedures for serving process, pleadings, or other papers on *non-resident investment advisers*, general partners and *managing agents*. Under Forms ADV and ADV-NR, a *person* may serve process, pleadings, or other papers on a *non-resident investment adviser*, or on a *non-resident* general partner or *non-resident managing agent* of an *investment adviser* by serving any or all of its appointed agents:

(1) A *person* may serve a *non-resident investment adviser*, *non-resident* general partner, or *non-resident managing agent* by furnishing the *Commission* with one copy of the process, pleadings, or papers, for each named party, and one additional copy for the *Commission's* records.

(2) If process, pleadings, or other papers are served on the *Commission* as described in this section, the Secretary of the *Commission* (Secretary) will promptly forward a copy to each named party by registered or *certified* mail at that party's last address filed with the *Commission*.

(3) If the Secretary certifies that the *Commission* was served with process, pleadings, or other papers pursuant to paragraph (a)(1) of this section and forwarded these documents to a named party pursuant to paragraph (a)(2) of this section, this certification constitutes evidence of service upon that party.

(b) *Definitions.* For purposes of this section:

(1) "*Managing agent*" means any *person*, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(2) "*Non-resident*" means:

(i) An individual who resides in any place not subject to the jurisdiction of the United States;

(ii) A corporation that is incorporated in or that has its *principal office and place of business* in any place not subject to the jurisdiction of the United States; and

(iii) A partnership or other unincorporated organization or association that has its *principal office and place of business* in any place not subject to the jurisdiction of the United States.

(3) "*Principal office and place of business*" has the same meaning as in rule 203A-3(c).

Rule 0-3. References to rules and regulations.

The term "*rules and regulations*" refers to all *rules and regulations* adopted by the *Commission* pursuant to the Act, including the forms for registration and reports and the accompanying instructions thereto.

Rule 0-4 General requirements of papers and applications.

(a) *Filings.* (1) All papers required to be filed with the *Commission* shall, unless otherwise provided by the *rules and regulations*, be delivered through the mails or otherwise to the Secretary of the Securities and Exchange *Commission*, Washington, DC 20549. Except as otherwise provided by the *rules and regulations*, such papers shall be deemed to have been filed with the *Commission* on the date when they are actually received by it.

(2) All filings required to be made electronically with the Investment Adviser Registration Depository (“IARD”) shall, unless otherwise provided by the *rules and regulations* in this part, be deemed to have been filed with the *Commission* upon acceptance by the IARD. Filings required to be made through the IARD on a day that the IARD is closed shall be considered timely filed with the *Commission* if filed with the IARD no later than the following business day.

(3) Filings required to be made through the IARD during the period in December of each year that the IARD is not available for submission of filings shall be considered timely filed with the *Commission* if filed with the IARD no later than the following January 7.

Note to Paragraph (a)(3): Each year the IARD shuts down to filers for several days during the end of December to process renewals of *state* notice filings and registrations. During this period, advisers are not able to submit filings through the IARD. Check the *Commission’s* website at www.sec.gov/iard for the dates of the annual IARD shutdown.

(b) *Formal specifications respecting applications.* Every *application* for an order under any provision of the Act, for which a form with instructions is not specifically prescribed, and every amendment to such *application*, shall be filed electronically pursuant to Regulation S-T. Any filings made in paper, including filings made pursuant to a hardship exemption under Regulation S-T, shall be filed in quintuplicate. One copy shall be signed by the applicant, but the other four copies may have facsimile or typed signatures. Such *applications* shall be on paper no larger than 8 ½ x 11 inches in size. To the extent that the reduction of larger documents would render them illegible, those documents may be filed on paper larger than 8 ½ x 11 inches in size. The left margin should be at least 1 ½ inches wide and, if the *application* is bound, it should be bound on the left side. All typewritten or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying and microfilming.

(c) *Authorization respecting applications.* (1) Every *application* for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the *Commission*, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the person signing and filing such *application* to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of

stockholders, directors, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the *application*.

(2) If an amendment to any such *application* shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall *state* that the authorization described in the original *application* is applicable to the individual who signs such amendment and that such authorization still remains in effect.

(3) When any such *application* or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the *Commission*.

(d) *Verification of applications and statements of fact.* Every *application* for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and every amendment to such *application*, and every statement of fact formally filed in support of, or in opposition to, any *application* or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

The undersigned states that he or she has duly executed the attached _____ dated _____, 20____, for and on behalf of _____ (Name of company); that he or she is the _____ (Title of officer) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize the undersigned to execute and file such instrument has been taken. The undersigned further states that he or she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his or her knowledge, information and belief.

(Signature)

(e) *Statement of grounds for application.* Each *application* should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and of the *rules and regulations* under which *application* is made.

(f) *Name and address.* Every *application* shall contain the name and address of each applicant and the name and address of any person to whom any applicant wishes any question regarding the *application* to be directed.

(g) [Reserved]

(h) *Definition of application.* For purposes of this rule, an “*application*” means any application for an order of the *Commission* under the Act other than an *application* for registration as an investment adviser.

(i) The manually signed original (or in the case of duplicate originals) one duplicate original of all registrations, *applications*, statements, reports, or other documents filed under the Investment Advisers Act of 1940, as amended, shall be numbered sequentially (in addition to

any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

Rule 0-5. Procedure with respect to applications and other matters.

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an *application*, or upon the *Commission's* own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the Federal Register and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any *interested person* may, within the period of time specified therein, submit to the *Commission* in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course following the expiration of the period of time referred to in paragraph (a), unless the *Commission* thereafter orders a hearing on the matter.

(c) The *Commission* will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of any *interested person*, or (2) upon its own motion.

(d) *Definition of Application.*

For purposes of this rule, an "*application*" means any *application* for an order of the *Commission* under the Act other than an *application* for registration as an *investment adviser*.

Rule 0-6. Incorporation by reference in applications.

(a) *Exhibits.* Any document or part thereof, including any financial statement or part thereof, filed with the *Commission* pursuant to any Act administered by the *Commission* may be incorporated by reference as an exhibit to any application filed with the *Commission* by the same or any other *person*. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant must file with the reference a statement containing the text of any such modification and the date thereof.

(b) *General.* Include an express statement clearly describing the specific location of the information you are incorporating by reference. The statement must identify the document where the information was originally filed or submitted and the location of the information within that document. The statement must be made at the particular place where the information is required, if applicable. Information must not be incorporated by reference in

any case where such incorporation would render the disclosure incomplete, unclear, or confusing. For example, unless expressly permitted or required, disclosure must not be incorporated by reference from a second document if that second document incorporates information pertinent to such disclosure by reference to a third document.

(c) *Definition of Application.* For purposes of this rule, an “application” means any *application* for an order of the *Commission* under the Act other than an *application* for registration as an investment adviser.

Rule 0-7 Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of *Commission* rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act [5 U.S.C. 601 *et seq.*] and unless otherwise defined for purposes of a particular rulemaking proceeding, the term “*small business*” or “*small organization*” for purposes of the Investment Advisers Act of 1940 shall mean an *investment adviser* that:

(1) Has *assets under management*, as defined under Section 203A(a)(3) of the Act and reported on its annual updating amendment to Form ADV, of less than \$25 million, or such higher amount as the *Commission* may by rule deem appropriate under Section 203A(a)(1)(A) of the Act;

(2) Did not have *total assets* of \$5 million or more on the last day of the most recent *fiscal year*; and

(3) Does not *control*, is not *controlled* by, and is not under common *control* with another *investment adviser* that has *assets under management* of \$25 million or more (or such higher amount as the *Commission* may deem appropriate), or any *person* (other than a natural *person*) that had *total assets* of \$5 million or more on the last day of the most recent *fiscal year*.

(b) For purposes of this section:

(1) “*Control*” means the power, directly or indirectly, to direct the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise.

(i) A *person* is presumed to *control* a corporation if the *person*:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s *voting securities*; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities.

(ii) A *person* is presumed to *control* a partnership if the *person* has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

- (iii) A *person* is presumed to *control* a limited liability company (LLC) if the *person*:
- (A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;
 - (B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or
 - (C) Is an elected manager of the LLC.
- (iv) A *person* is presumed to *control* a trust if the *person* is a trustee or *managing agent* of the trust.
- (2) “*Total assets*” means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other person with its subsidiaries consolidated, whichever is larger.

INVESTMENT ADVISERS ACT OF 1940

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APPENDIX A

Exemption From State Regulation of Securities Offerings Securities Act of 1933

Section 18. Exemption From State Regulation of Securities Offerings. [15 U.S.C. 77r(a)]

(a) Scope of Exemption.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities.—For purposes of this section, the following are covered securities:

(1) Exclusive federal registration of nationally traded securities.—A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 11A of the Securities Exchange Act of 1934, as amended, that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2) *Exclusive federal registration of investment companies.*—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) *Sales to qualified purchasers.*—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term ‘qualified purchaser’ differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) *Exemption in connection with certain exempt offerings.*—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) section 4(4) of the Securities Act of 1933, as amended;

(C) section 4(6) of the Securities Act of 1933, as amended;

(D) a rule or regulation adopted pursuant to section 3(b)(2) of the Securities Act of 1933, as amended and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10) or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996; or

(G) section 4(a)(7)

(c) *Preservation of Authority.*—

(1) *Fraud authority.*—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions

- (A) with respect to—
 - (i) fraud or deceit; or
 - (ii) unlawful conduct by a broker, dealer or funding portal; and
 - (B) in connection to a transaction described under section 4(6) [of the Securities Act of 1933], with respect to—
 - (i) fraud or deceit; or
 - (ii) unlawful conduct by a broker, dealer, funding portal, or issuer.
- (2) *Preservation of filing requirements.*—
- (A) *Notice filings permitted.*—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission) solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.
 - (B) *Preservation of fees.*—
 - (i) *In general.*—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996 [October 11, 1996], filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.
 - (ii) *Schedule.*—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).
 - (C) *Availability of preemption contingent on payment of fees.*—
 - (i) *In general.*—During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 [October 11, 1996] and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).
 - (ii) *Delays.*—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) *Fees not permitted on listed securities.*—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1) of this section, or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1) of this section.

(F) *Fees not permitted on crowd-funded securities.*—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term “State” includes the District of Columbia and the territories of the United States.

(3) *Enforcement of requirements.*—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) *Definitions.*—For purposes of this section, the following definitions shall apply:

(1) *Offering document.*—The term ‘offering document’—

(A) has the meaning given the term ‘prospectus’ in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) *Prepared by or on behalf of the issuer.*—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996 [October 11, 1996], the Commission shall, by rule, define the term ‘prepared by or on behalf of the issuer’ for purposes of this section.

(3) *State.*—The term ‘State’ has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) *Senior security.*—The term ‘senior security’ means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

Rule 146. Rules Under Section 18 of the Act

(a) *Prepared by or on behalf of the issuer.* An offering document (as defined in Section 18(d)(1) of the Act [15 U.S.C. 77r(d)(1)]) is “prepared by or on behalf of the issuer” for purposes of Section 18 of the Act, if the issuer or an agent or representative:

- (1) Authorizes the document’s production, and
- (2) Approves the document before its use.

(b) *Covered securities for purposes of Section 18.*

(1) For purposes of Section 18(b) of the Act (15 U.S.C. 77r), the Commission finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York Stock Exchange (“NYSE”), the NYSE American LLC (“NYSE American”), or the National Market System of the Nasdaq Stock Market (“Nasdaq/NGM”), and that securities listed, or authorized for listing, on such exchanges shall be deemed covered securities:

- (i) Tier I of the NYSE Arca, Inc.;
- (ii) Tier I of the NASDAQ PHLX LLC;
- (iii) The Chicago Board Options Exchange, Incorporated;
- (iv) Options listed on NASDAQ ISE, LLC;
- (v) The Nasdaq Capital Market;
- (vi) Tier I and Tier II of Bats BZX Exchange, Inc.; and
- (vii) Investors Exchange LLC

(2) The designation of securities in paragraphs (b)(1)(i) through (vii) of this section as covered securities is conditioned on such exchanges’ listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, NYSE American, or Nasdaq/NGM.

APPENDIX B
Securities Act of 1933

Rule 156 and Rule 482 Advertising By An *Investment Company*

Rule 156 *Under the Securities Act of 1933—Investment Company Sales Literature.*

(a) Under the federal securities laws, including Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, it is unlawful for any *person*, directly or indirectly, by the use of any *means or instrumentality of interstate commerce* or of the mails, to use sales literature which is *materially* misleading in connection with the offer or sale of securities issued by an *investment company*. Under these provisions, sales literature is *materially* misleading if it: (1) Contains an untrue statement of a *material* fact or (2) omits to state a *material* fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a *material* fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a *material* fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below.

(1) A statement could be misleading because of:

- (i) Other statements being made in connection with the offer of sale or sale of the securities in question;
- (ii) The absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading; or
- (iii) General economic or financial conditions or circumstances.

(2) Representations about past or future investment performance could be misleading because of statements or omissions made involving a *material* fact, including situations where:

- (i) Portrayals of past income, gain or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading; and
- (ii) Representations, whether express or implied, about future investment performance, including:
 - (A) Representations, as to security of capital, possible future gains or income, or expenses associated with an investment;
 - (B) Representations implying that future gain or income may be inferred from or predicted based on past investment performance; or

(C) Portrayals of past performance, made in a manner which would imply that gains or income realized in the past would be repeated in the future.

(3) A statement involving a *material* fact about the characteristics or attributes of an *investment company* could be misleading because of:

(i) Statements about possible benefits connected with or resulting from services to be provided or methods of operation which do not give equal prominence to discussion of any risks or limitations associated therewith;

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the *investment company* or an investment in securities issued by such company, services, security of investment or *funds*, effects of government supervision, or other attributes; and

(iii) Unwarranted or incompletely explained comparisons to other *investment vehicles* or to indexes.

(4) Representations about the fees or expenses associated with an investment in the fund could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.

(c) For purposes of this section, the term sales literature shall be deemed to include any communication (whether in writing, by radio, or by television) used by any *person* to offer to sell or induce the sale of securities of any *investment company*. Communications between *issuers*, *underwriters* and *dealers* are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

(d) Nothing in this section may be construed to prevent a *business development company* or a registered closed-end investment company from qualifying for an exemption under rule 168 or rule 169.

Rule 482 *Advertising by an investment company as satisfying requirements of Section 10.*

(a) *Scope of rule.* This section applies to an advertisement or other sales material (advertisement) with respect to securities of an investment company registered under the Investment Company Act of 1940 (1940 Act), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) or § Rule 498(d) or Rule 498A(g) or (j)(2) [of the Securities Act of 1933] or to a summary prospectus under Rule 498 or Rule 498A [of the Securities Act of 1933]. An advertisement that complies with this section, which may include information the substance of which is

not included in the prospectus specified in section 10(a) of the Act (15 U.S.C. 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

Note to paragraph (a): The fact that an advertisement complies with this section does not relieve the investment company, underwriter, or dealer of any obligations with respect to the advertisement under the antifraud provisions of the Federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company advertisements are misleading, see Rule 156 under the Securities Act of 1933. In addition, an advertisement that complies with this section is subject to the legibility requirements of Rule 420 under the Securities Act of 1933.

(b) *Required disclosure.* This paragraph describes information that is required to be included in an advertisement in order to comply with this section.

(1) *Availability of additional information.* An advertisement must include a statement that advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus and, if available, the summary prospectus contain this and other information about the investment company; identifies a source from which an investor may obtain a prospectus and, if available, a summary prospectus; and states that the prospectus and, if available, the summary prospectus should be read carefully before investing.

(2) *Advertisements used prior to effectiveness of registration statement.* An advertisement that is used prior to effectiveness of the investment company's registration statement or the determination of the public offering price (in the case of a registration statement that becomes effective omitting information from the prospectus contained in the registration statement in reliance upon Rule 430A under the Securities Act of 1933 must include the "Subject to Completion" legend required by Rule 481(b)(2) under the Securities Act of 1933.

(3) *Advertisements including performance data.* An advertisement that includes performance data of an open-end management investment company or a separate account registered under the 1940 Act as a unit investment trust offering variable annuity contracts (trust account) must include the following:

(i) A legend disclosing that the performance data quoted represents past performance; that past performance does not guarantee future results; that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify either a toll-free (or collect) telephone number or a website where an investor may obtain performance data current to the most recent month-end unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. An advertisement for a

money market fund that is a government money market fund, as defined in Rule 2a-7(a)(16) of [the 1940 Act] or a retail money market fund, as defined in Rule 2a-7(a)(25) [of the 1940 Act] may omit the disclosure about principal value fluctuation; and

Note to paragraph (b)(3)(i): The date of use refers to the date or dates when an advertisement is used by investors, not the date on which an advertisement is published or submitted for publication. The date of use refers to the entire period of use by investors and not simply the first date on which an advertisement is used.

(ii) If a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee, and if the sales load or fee is not reflected, a statement that the performance data does not reflect the deduction of the sales load or fee, and that, if reflected, the load or fee would reduce the performance quoted.

(4) *Money market funds.*

(i) An advertisement for an investment company that holds itself out to be a money market fund, that is not a government money market fund, as defined in Rule 2a-7(a)(16) under the 1940 Act, or a retail money market fund, as defined in Rule 2a-7(a)(25) under the 1940 Act, must include the following statement:

You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(ii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in Rule 2a-7(a)(16) under the 1940 Act or a retail money market fund, as defined in Rule 2a-7(a)(25) under the 1940 Act, and that is subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii) under the 1940 Act (or is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii) under the 1940 Act pursuant to Rule 2a-7(c)(2)(iii) under the 1940 Act, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii)), must include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at \$1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or

guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(iii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in Rule 2a-7(a)(16) under the 1940 Act, that is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii) under the 1940 Act pursuant to Rule 2a-7(c)(2)(iii) under the 1940 Act, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii)), must include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at \$1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Note to paragraph (b)(4). If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, the statement may omit the last sentence ("The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.") for the term of the agreement. For purposes of this Note, the term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on Rule 17a-9 under the 1940 Act, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term "financial support" excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

(5) *Presentation.* In a print advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by paragraph (b)(3) of this section may appear in a type size no smaller than that of the

performance data. If an advertisement is delivered through an electronic medium, the legibility requirements for the statements required by paragraphs (b)(1) through (b)(4) of this section relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them. In a radio or television advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be given emphasis equal to that used in the major portion of the advertisement. The statements required by paragraph (b)(3) of this section must be presented in close proximity to the performance data, and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote.

(6) *Commission legend.* An advertisement that complies with this section need not contain the Commission legend required by Rule 481(b)(1) under the Securities Act of 1933.

(c) *Use of applications.* An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the investment company, except that a prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by which a unit investment trust offers variable annuity or variable life insurance contracts may contain a contract application although the prospectus includes, or is accompanied by, information about an investment company in which the unit investment trust invests that, pursuant to this section, is deemed a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)).

(d) *Performance data for non-money market funds.* In the case of an open-end management investment company or a trust account (other than a money market fund referred to in paragraph (e) of this section), any quotation of the company's performance contained in an advertisement shall be limited to quotations of:

(1) *Current yield.* A current yield that:

(i) Is based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of total return; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(2) *Tax-equivalent yield.* A tax-equivalent yield that:

(i) Is based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter);

- (ii) Is accompanied by quotations of yield as provided for in paragraph (d)(1) of this section and total return as provided for in paragraph (d)(3) of this section;
 - (iii) Is set out in no greater prominence than the required quotations of yield and total return;
 - (iv) Relates to the same base period as the required quotation of yield; and
 - (v) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.
- (3) *Average annual total return.* Average annual total return for one, five, and ten year periods, except that if the company's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:
- (i) Be based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter);
 - (ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;
 - (iii) Be set out with equal prominence; and
 - (iv) Adjacent to the quotation and with no less prominence than the quotation, identify the length of and the last day of the one, five, and ten year periods.
- (4) *After-tax return.* For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods, except that if the company's registration statement under the Securities Act of 1933 has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:
- (i) Be based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter);
 - (ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;
 - (iii) Be accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;
 - (iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

- (v) Be set out with equal prominence and be set out in no greater prominence than the required quotations of total return; and
 - (vi) Adjacent to the quotations and with no less prominence than the quotations, identify the length of and the last day of the one, five, and ten year periods.
- (5) *Other performance measures.* Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:
- (i) Reflects all elements of return;
 - (ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;
 - (iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (d)(4) of this section;
 - (iv) Is set out in no greater prominence than the required quotations of total return; and
 - (v) Adjacent to the measurement and with no less prominence than the measurement, identifies the length of and the last day of the period for which performance is measured.
- (e) *Performance data for money market funds.* In the case of a money market fund:
- (1) *Yield.* Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter) and may include:
 - (i) A quotation of current yield that, adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing that quotation;
 - (ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence; or
 - (iii) A quotation or quotations of tax-equivalent yield or tax-equivalent effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.
 - (2) *Total return.* Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (e)(1)(i) of this section. Place the quotations of total return and current yield next

to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(f) Advertisements that make tax representations. An advertisement for an open-end management investment company (other than a company that is permitted under Rule 35d-1(a)(4) under the 1940 Act to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance must accompany any quotation of the company's performance permitted by paragraph (d) of this section with quotations of total return as provided for in paragraph (d)(4) of this section.

(g) Timeliness of performance data. All performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (i) The total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication; and

(ii) Total return quotations current to the most recent month ended seven business days prior to the date of use are provided at the toll-free (or collect) telephone number or website identified pursuant to paragraph (b)(3)(i) of this section; or

(2) The total return quotations are current to the most recent month ended seven business days prior to the date of use of the advertisement.

Note to paragraph (g): The date of use refers to the date or dates when an advertisement is used by investors, not the date on which an advertisement is published or submitted for publication. The date of use refers to the entire period of use by investors and not simply the first date on which an advertisement is used.

(h) *Filing.* An advertisement that complies with this section need not be filed as part of the registration statement filed under the Securities Act of 1933.

Note to paragraph (h): These advertisements, unless filed with NASD Regulation, Inc., are required to be filed in accordance with the requirements of Rule 497 under the Securities Act of 1933.

(i) *Advertisements including fee or expense figures.* An advertisement that provides fee or expense figures for an investment company must include the following:

(1) The maximum amount of any *sales load*, or any other nonrecurring fee, and the total annual expenses without any fee waiver or expense reimbursement arrangement, based on the methods of computation prescribed by the investment company's registra-

tion statement form under the 1940 Act or under the Act for a prospectus and presented at least as prominently as any other fee or expense figure included in the advertisement; and

(2) The expected termination date of a fee waiver or expense reimbursement arrangement, if the advertisement provides total annual expenses net of fee waiver or expense reimbursement arrangement amounts.

(j) *Timeliness of fee and expense information.* Fee and expense information contained in an advertisement must be as of the date of the investment company's most recent prospectus or, if the company no longer has an effective registration statement under the Act, as of the date of its most recent annual shareholder report, except that a company may provide more current information if available.

[Compliance date for paragraphs (i) and (j) is July 24, 2024]

APPENDIX C
Securities Act of 1933

Rule 154 *Delivery of prospectuses to investors at the same address.*

(a) *Delivery of a single prospectus.* If you must deliver a prospectus under the federal securities laws, for purposes of sections 5(b) and 2(a)(10) of the Securities Act of 1933 or Rule 15c2-8(b) under the Securities Exchange Act of 1934, you will be considered to have delivered a prospectus to investors who share an address if:

- (1) You deliver a prospectus to the shared address;
- (2) You address the prospectus to the investors as a group (for example, “ABC Fund [or Corporation] Shareholders,” “Jane Doe and Household,” “The Smith Family”) or to each of the investors individually (for example, “John Doe and Richard Jones”); and
- (3) The investors consent in writing to delivery of one prospectus.

(b) *Implied consent.* You do not need to obtain written consent from an investor under paragraph (a)(3) of this section if all of the following conditions are met:

- (1) The investor has the same last name as the other investors, or you reasonably believe that the investors are members of the same family;
- (2) You have sent the investor a notice at least 60 days before you begin to rely on this section concerning delivery of prospectuses to that investor. The notice must be a separate written statement and:
 - (i) State that only one prospectus will be delivered to the shared address unless you receive contrary instructions;
 - (ii) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the investor can use to notify you that he or she wishes to receive a separate prospectus;
 - (iii) State the duration of the consent;
 - (iv) Explain how an investor can revoke consent;
 - (v) State that you will begin sending individual copies to an investor within 30 days after you receive revocation of the investor’s consent; and
 - (vi) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: “Important Notice Regarding Delivery of Shareholder Documents.” This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

Note to paragraph (b)(2): The notice should be written in plain English. See Rule 421(d)(2) under the Securities Act of 1933 for a discussion of plain English principles.

(3) You have not received the reply form or other notification indicating that the investor wishes to continue to receive an individual copy of the prospectus, within 60 days after you sent the notice; and

(4) You deliver the prospectus to a post office box or to a residential street address. You can assume a street address is a residence unless you have information that indicates it is a business.

(c) *Revocation of consent.* If an investor, orally or in writing, revokes consent to delivery of one prospectus to a shared address (provided under paragraphs (a)(3) or (b) of this section), you must begin sending individual copies to that investor within 30 days after you receive the revocation. If the individual's consent concerns delivery of the prospectus of a registered open-end management investment company, at least once a year you must explain to investors who have consented how they can revoke their consent. The explanation must be reasonably designed to reach these investors.

(d) *Definition of address.* For purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If you have reason to believe that an address is the street address of a multi-unit building, the address must include the unit number.

APPENDIX D

Securities Exchange Act of 1934

Rule 14a-3(e) Information to be furnished to security holders.

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as described in Rule 14a-16, to all security holders of record who share an address if:

(A) The registrant delivers one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the shared address;

(B) The registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to the security holders as a group (for example, “ABC Fund [or Corporation] Security Holders,” “Jane Doe and Household,” “The Smith Family”), to each of the security holders individually (for example, “John Doe and Richard Jones”) or to the security holders in a form to which each of the security holders has consented in writing;

Note to paragraph (e)(1)(i)(B): Unless the registrant addresses the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to the security holders as a group or to each of the security holders individually, it must obtain, from each security holder to be included in the household group, a separate affirmative written consent to the specific form of address the registrant will use.

(C) The security holders consent, in accordance with paragraph (e)(1)(ii) of this section, to delivery of one annual report to security holders or proxy statement, as applicable;

(D) With respect to delivery of the proxy statement or Notice of Internet Availability of Proxy Materials, the registrant delivers, together with or subsequent to delivery of the proxy statement, a separate proxy card for each security holder at the shared address; and

(E) The registrant includes an undertaking in the proxy statement to deliver promptly upon written or oral request a separate copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, to a security holder at a shared address to which a single copy of the document was delivered.

(ii) *Consent*—(A) *Affirmative written consent*. Each security holder must affirmatively consent, in writing, to delivery of one annual report to security holders or proxy statement, as applicable. A security holder’s affirmative written consent will be considered valid only if the security holder has been informed of:

(1) The duration of the consent;

- (2) The specific types of documents to which the consent will apply;
- (3) The procedures the security holder must follow to revoke consent; and
- (4) The registrant's obligation to begin sending individual copies to a security holder within thirty days after the security holder revokes consent.

(B) *Implied consent.* The registrant need not obtain affirmative written consent from a security holder for purposes of paragraph (e)(1)(ii)(A) of this section if all of the following conditions are met:

- (1) The security holder has the same last name as the other security holders at the shared address or the registrant reasonably believes that the security holders are members of the same family;
- (2) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to security holders, proxy statements or Notices of Internet Availability of Proxy Materials to that security holder. The notice must:
 - (i) Be a separate written document;
 - (ii) State that only one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, will be delivered to the shared address unless the registrant receives contrary instructions;
 - (iii) Include a toll-free telephone number, or be accompanied by a reply form that is pre-addressed with postage provided, that the security holder can use to notify the registrant that the security holder wishes to receive a separate annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials;
 - (iv) State the duration of the consent;
 - (v) Explain how a security holder can revoke consent;
 - (vi) State that the registrant will begin sending individual copies to a security holder within thirty days after the security holder revokes consent; and
 - (vii) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: "Important Notice Regarding Delivery of Security Holder Documents." This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to security holders, this statement may appear either on the notice or on the envelope in which the notice is delivered.

Note to paragraph (e)(1)(ii)(B)(2): The notice should be written in plain English. See Rule 421(d)(2) under the Securities Act of 1933 for a discussion of plain English principles.

(3) The registrant has not received the reply form or other notification indicating that the security holder wishes to continue to receive an individual copy of the annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials, as applicable, within 60 days after the registrant sent the notice required by paragraph (e)(1)(ii)(B)(2) of this section; and

(4) The registrant delivers the document to a post office box or residential street address.

Note to paragraph (e)(1)(ii)(B)(4): The registrant can assume that a street address is residential unless the registrant has information that indicates the street address is a business.

(iii) *Revocation of consent.* If a security holder, orally or in writing, revokes consent to delivery of one annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a shared address, the registrant must begin sending individual copies to that security holder within 30 days after the registrant receives revocation of the security holder's consent.

(iv) *Definition of address.* Unless otherwise indicated, for purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the registrant has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

Note to paragraph (e)(1): A person other than the registrant making a proxy solicitation may deliver a single proxy statement to security holders of record or beneficial owners who have separate accounts and share an address if: (a) the registrant or intermediary has followed the procedures in this section; and (b) the registrant or intermediary makes available the shared address information to the person in accordance with Rule 14a-7(a)(2)(i) and (ii).

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report to security holders, proxy statement or Notice of Internet Availability of Proxy Materials to a security holder if:

(i) An annual report to security holders and a proxy statement, or a Notice of Internet Availability of Proxy Materials, for two consecutive annual meetings; or

(ii) All, and at least two, payments (if sent by first class mail) of dividends or interest on securities, or dividend reinvestment confirmations, during a twelve month period, have been mailed to such security holder's address and have been returned as undeliverable. If any such security holder delivers or causes to be delivered to the registrant written notice setting forth his then current address for security holder communications purposes, the registrant's obligation to deliver an annual report to security holders, a proxy statement or a Notice of Internet Availability of Proxy Materials under this section is reinstated.

Rule 14c-3(c) Annual report to be furnished security holders.

(c) A registrant will be considered to have delivered a Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement to security holders of record who share an address if the requirements set forth in Rule 14a-3(e)(1) are satisfied with respect to the Notice of Internet Availability of Proxy Materials, annual report to security holders or information statement, as applicable.

Rule 14a-16 Internet availability of proxy materials.

(a) (1) A registrant shall furnish a proxy statement pursuant to Rule 14a-3(a) [under the Securities Exchange Act], or an annual report to security holders pursuant to Rule 14a-3(b) [under the Securities Exchange Act], to a security holder by sending the security holder a Notice of Internet Availability of Proxy Materials, as described in this section, 40 calendar days or more prior to the security holder meeting date, or if no meeting is to be held, 40 calendar days or more prior to the date the votes, consents or authorizations may be used to effect the corporate action, and complying with all other requirements of this section.

(2) Unless the registrant chooses to follow the full set delivery option set forth in paragraph (n) of this section, it must provide the record holder or respondent bank with all information listed in paragraph (d) of this section in sufficient time for the record holder or respondent bank to prepare, print and send a Notice of Internet Availability of Proxy Materials to beneficial owners at least 40 calendar days before the meeting date.

(b) (1) All materials identified in the Notice of Internet Availability of Proxy Materials must be publicly accessible, free of charge, at the Web site address specified in the notice on or before the time that the notice is sent to the security holder and such materials must remain available on that Web site through the conclusion of the meeting of security holders.

(2) All additional soliciting materials sent to security holders or made public after the Notice of Internet Availability of Proxy Materials has been sent must be made publicly accessible at the specified Web site address no later than the day on which such materials are first sent to security holders or made public.

(3) The Web site address relied upon for compliance under this section may not be the address of the Commission's electronic filing system.

(4) The registrant must provide security holders with a means to execute a proxy as of the time the Notice of Internet Availability of Proxy Materials is first sent to security holders.

(c) The materials must be presented on the Web site in a format, or formats, convenient for both reading online and printing on paper.

(d) The Notice of Internet Availability of Proxy Materials must contain the following:

(1) A prominent legend in bold-face type that states:

“Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date]”;

(2) An indication that the communication is not a form for voting and presents only an overview of the more complete proxy materials, which contain important information and are available on the Internet or by mail, and encouraging a security holder to access and review the proxy materials before voting;

(3) The Internet Web site address where the proxy materials are available;

(4) Instructions regarding how a security holder may request a paper or e-mail copy of the proxy materials at no charge, including the date by which they should make the request to facilitate timely delivery, and an indication that they will not otherwise receive a paper or e-mail copy;

(5) The date, time, and location of the meeting, or if corporate action is to be taken by written consent, the earliest date on which the corporate action may be effected;

(6) A clear and impartial identification of each separate matter intended to be acted on and the soliciting person’s recommendations, if any, regarding those matters, but no supporting statements;

(7) A list of the materials being made available at the specified Web site;

(8) A toll-free telephone number, an e-mail address, and an Internet Web site where the security holder can request a copy of the proxy statement, annual report to security holders, and form of proxy, relating to all of the registrant’s future security holder meetings and for the particular meeting to which the proxy materials being furnished relate;

(9) Any control/identification numbers that the security holder needs to access his or her form of proxy;

(10) Instructions on how to access the form of proxy, provided that such instructions do not enable a security holder to execute a proxy without having access to the proxy statement and, if required by Rule 14a-3(b), the annual report to security holders; and

(11) Information on how to obtain directions to be able to attend the meeting and vote in person.

(e) (1) The Notice of Internet Availability of Proxy Materials may not be incorporated into, or combined with, another document, except that it may be incorporated into, or combined with, a notice of security holder meeting required under state law, unless state law prohibits such incorporation or combination.

(2) The Notice of Internet Availability of Proxy Materials may contain only the information required by paragraph (d) of this section and any additional information required to be included in a notice of security holders meeting under state law; provided that:

(i) The registrant must revise the information on the Notice of Internet Availability of Proxy Materials, including any title to the document, to reflect the fact that:

(A) The registrant is conducting a consent solicitation rather than a proxy solicitation; or

(B) The registrant is not soliciting proxy or consent authority, but is furnishing an information statement pursuant to Rule 14c-2; and

(ii) The registrant may include a statement on the Notice to educate security holders that no personal information other than the identification or control number is necessary to execute a proxy.

(f) (1) Except as provided in paragraph (h) of this section, the Notice of Internet Availability of Proxy Materials must be sent separately from other types of security holder communications and may not accompany any other document or materials, including the form of proxy.

(2) Notwithstanding paragraph (f)(1) of this section, the registrant may accompany the Notice of Internet Availability of Proxy Materials with:

(i) A pre-addressed, postage-paid reply card for requesting a copy of the proxy materials;

(ii) A copy of any notice of security holder meeting required under state law if that notice is not combined with the Notice of Internet Availability of Proxy Materials;

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company's prospectus, a summary prospectus that satisfies the requirements of Rule 498 (b) or Rule 498A(b) or (c) [under the Securities Act of 1933] a Notice under Rule 30e-3 under the Investment Company Act, or a report that is required to be transmitted to stockholders by section 30(e) of the Investment Company Act and its implementing regulations (e.g., Rule 30 e-1 and Rule 30e-2 under the Investment Company Act of 1940); and

(iv) An explanation of the reasons for a registrant's use of the rules detailed in this section and the process of receiving and reviewing the proxy materials and voting as detailed in this section.

(g) *Plain English.* (1) To enhance the readability of the Notice of Internet Availability of Proxy Materials, the registrant must use plain English principles in the organization, language, and design of the notice.

(2) The registrant must draft the language in the Notice of Internet Availability of Proxy Materials so that, at a minimum, it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

- (ii) Definite, concrete, everyday words;
- (iii) Active voice;
- (iv) Tabular presentation or bullet lists for complex material, whenever possible;
- (v) No legal jargon or highly technical business terms; and
- (vi) No multiple negatives.

(3) In designing the Notice of Internet Availability of Proxy Materials, the registrant may include pictures, logos, or similar design elements so long as the design is not misleading and the required information is clear.

(h) The registrant may send a form of proxy to security holders if:

(1) At least 10 calendar days or more have passed since the date it first sent the Notice of Internet Availability of Proxy Materials to security holders and the form of proxy is accompanied by a copy of the Notice of Internet Availability of Proxy Materials; or

(2) The form of proxy is accompanied or preceded by a copy, via the same medium, of the proxy statement and any annual report to security holders that is required by Rule 14a-3(b).

(i) The registrant must file a form of the Notice of Internet Availability of Proxy Materials with the Commission pursuant to Rule 14a-6(b) no later than the date that the registrant first sends the notice to security holders.

(j) *Obligation to provide copies.* (1) The registrant must send, at no cost to the record holder or respondent bank and by U.S. first class mail or other reasonably prompt means, a paper copy of the proxy statement, information statement, annual report to security holders, and form of proxy (to the extent each of those documents is applicable) to any record holder or respondent bank requesting such a copy within three business days after receiving a request for a paper copy.

(2) The registrant must send, at no cost to the record holder or respondent bank and via e-mail, an electronic copy of the proxy statement, information statement, annual report to security holders, and form of proxy (to the extent each of those documents is applicable) to any record holder or respondent bank requesting such a copy within three business days after receiving a request for an electronic copy via e-mail.

(3) The registrant must provide copies of the proxy materials for one year after the conclusion of the meeting or corporate action to which the proxy materials relate, provided that, if the registrant receives the request after the conclusion of the meeting or corporate action to which the proxy materials relate, the registrant need not send copies via First Class mail and need not respond to such request within three business days.

(4) The registrant must maintain records of security holder requests to receive materials in paper or via e-mail for future solicitations and must continue to provide copies of the

materials to a security holder who has made such a request until the security holder revokes such request.

(k) *Security holder information.* (1) A registrant or its agent shall maintain the Internet Web site on which it posts its proxy materials in a manner that does not infringe on the anonymity of a person accessing such Web site.

(2) The registrant and its agents shall not use any e-mail address obtained from a security holder solely for the purpose of requesting a copy of proxy materials pursuant to paragraph (j) of this section for any purpose other than to send a copy of those materials to that security holder. The registrant shall not disclose such information to any person other than an employee or agent to the extent necessary to send a copy of the proxy materials pursuant to paragraph (j) of this section.

(l) A person other than the registrant may solicit proxies pursuant to the conditions imposed on registrants by this section, provided that:

(1) A soliciting person other than the registrant is required to provide copies of its proxy materials only to security holders to whom it has sent a Notice of Internet Availability of Proxy Materials; and

(2) A soliciting person other than the registrant must send its Notice of Internet Availability of Proxy Materials by the later of:

(i) 40 Calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(ii) The date on which it files its definitive proxy statement with the Commission, provided its preliminary proxy statement is filed no later than 10 calendar days after the date that the registrant files its definitive proxy statement.

(3) *Content of the soliciting person's Notice of Internet Availability of Proxy Materials.*

(i) If, at the time a soliciting person other than the registrant sends its Notice of Internet Availability of Proxy Materials, the soliciting person is not aware of all matters on the registrant's agenda for the meeting of security holders, the soliciting person's Notice on Internet Availability of Proxy Materials must provide a clear and impartial identification of each separate matter on the agenda to the extent known by the soliciting person at that time. The soliciting person's notice also must include a clear statement indicating that there may be additional agenda items of which the soliciting person is not aware and that the security holder cannot direct a vote for those items on the soliciting person's proxy card provided at that time.

(ii) If a soliciting person other than the registrant sends a form of proxy not containing all matters intended to be acted upon, the Notice of Internet Availability of Proxy Materials must clearly state whether execution of the form of proxy will invalidate a security holder's prior vote on matters not presented on the form of proxy.

(m) This section shall not apply to a proxy solicitation in connection with a business combination transaction, as defined in Rule 165 under the Securities Act of 1933, as well as transactions for cash consideration requiring disclosure under Item 14 of Rule 14a-101.

(n) *Full Set Delivery Option.*

(1) For purposes of this paragraph (n), the term full set of proxy materials shall include all of the following documents:

- (i) A copy of the proxy statement;
- (ii) A copy of the annual report to security holders if required by Rule 14a-3(b); and
- (iii) A form of proxy.

(2) Notwithstanding paragraphs (e) and (f)(2) of this section, a registrant or other soliciting person may:

- (i) Accompany the Notice of Internet Availability of Proxy Materials with a full set of proxy materials; or
- (ii) Send a full set of proxy materials without a Notice of Internet Availability of Proxy Materials if all of the information required in a Notice of Internet Availability of Proxy Materials pursuant to paragraphs (d) and (n)(4) of this section is incorporated in the proxy statement and the form of proxy.

(3) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not comply with

- (i) The timing provisions of paragraphs (a) and (l)(2) of this section and
- (ii) The obligation to provide copies pursuant to paragraph (j) of this section.

(4) A registrant or other soliciting person that sends a full set of proxy materials to a security holder pursuant to this paragraph (n) need not include in its Notice of Internet Availability of Proxy Materials, proxy statement, or form of proxy the following disclosures:

- (i) Instructions regarding the nature of the communication pursuant to paragraph (d)(2) of this section;
- (ii) Instructions on how to request a copy of the proxy materials; and
- (iii) Instructions on how to access the form of proxy pursuant to paragraph (d)(10) of this section.

APPENDIX E

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds.

ANTI-MONEY LAUNDERING AND CUSTOMER IDENTIFICATION PROGRAMS FOR MUTUAL FUNDS [31 CFR PART 1024]

§ 1024.210 Anti-money laundering program requirements for mutual funds.

(a) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the U.S. Securities and Exchange Commission.

(b) The anti-money laundering program shall at a minimum:

- (1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;
- (2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;
- (3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program;
- (4) Provide ongoing training for appropriate persons; and
- (5) Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:
 - (i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
 - (ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in §1010.230 of this chapter).

§ 1010.100 General definitions.

When used in this chapter and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have

the meanings ascribed in this subpart. Terms applicable to a particular type of financial institution or specific part or subpart of this chapter are located in that part or subpart. Terms may have different meanings in different parts or subparts.

(a) Accept. A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) At one time. For purposes of § 1010.340 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day; or

(ii) If for the purpose of evading the reporting requirements of § 1010.340, on one or more days.

(c) Attorney General. The Attorney General of the United States.

(d) Bank. Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

- (7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;
- (8) A bank organized under foreign law;
- (9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).
- (e) Bank Secrecy Act. The Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto.
- (f) Beneficiary. The person to be paid by the beneficiary’s bank.
- (g) Beneficiary’s bank. The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
- (h) Broker or dealer in securities. A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.
- (i) Business day. As used in this chapter with respect to banks, business day means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer’s account.
- (j) Commodity. Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (“CEA”), 7 U.S.C. 1a(4).
- (k) Common carrier. Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.
- (l) Contract of sale. Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).
- (m) Currency. The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(n) Deposit account. Deposit accounts include transaction accounts described in paragraph (ccc) of this section, savings accounts, and other time deposits.

(o) Domestic. When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(p) Established customer. A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(q) Execution date. The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(r) Federal functional regulator.

- (1) The Board of Governors of the Federal Reserve System;
- (2) The Office of the Comptroller of the Currency;
- (3) The Board of Directors of the Federal Deposit Insurance Corporation;
- (4) The Office of Thrift Supervision;
- (5) The National Credit Union Administration;
- (6) The Securities and Exchange Commission; or
- (7) The Commodity Futures Trading Commission.

(s) FinCEN. FinCEN means the Financial Crimes Enforcement Network, a bureau of the Department of the Treasury.

(t) Financial institution. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

- (1) A bank (except bank credit card systems);
- (2) A broker or dealer in securities;
- (3) A money services business as defined in paragraph (ff) of this section;

(4) A telegraph company;

(5) (i) Casino. A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (t)(5), “gross annual gaming revenue” means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this chapter solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this chapter prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.

(iii) Any reference in this chapter, other than in this paragraph (t)(5) and in paragraph (t)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) Card club. A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of \$1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term “casino,” as used in this chapter shall include a reference to “card club” to the extent provided in paragraph (t)(5)(iii) of this section.

(ii) For purposes of this paragraph (t)(6), “gross annual gaming revenue” means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment’s previous business year or its current business year. A card club that is a financial institution for purposes of this chapter solely because its gross annual revenue exceeds \$1,000,000 during its current business year, shall not be considered a financial institution for purposes of this chapter prior to the time in its current business year when its gross annual revenue exceeds \$1,000,000;

- (7) A person subject to supervision by any state or Federal bank supervisory authority;
 - (8) A futures commission merchant;
 - (9) An introducing broker in commodities; or
 - (10) A mutual fund.
- (u) Foreign bank. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.
- (v) Foreign financial agency. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.
- (w) Funds transfer. The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Electronic funds transfers as defined in section 903(7) of the Electronic Fund Transfer Act of 1978 (Title XX, Pub.L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.
- (x) Futures commission merchant. Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission ("CFTC") under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).
- (y) Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-68.
- (z) Intermediary bank. A receiving bank other than the originator's bank or the beneficiary's bank.
- (aa) Intermediary financial institution. A receiving financial institution, other than the transmitter's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.
- (bb) Introducing broker-commodities. Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(cc) Investment security. An instrument which:

- (1) Is issued in bearer or registered form;
- (2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;
- (3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and
- (4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(dd) Monetary instruments.

(1) Monetary instruments include:

- (i) Currency;
- (ii) Traveler's checks in any form;
- (iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of § 1010.340), or otherwise in such form that title thereto passes upon delivery;
- (iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and
- (v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(ee) [Reserved]

(ff) Money services business. A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.

(1) Dealer in foreign exchange. A person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery.

(2) Check casher—

(i) In general. A person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions.

(ii) Facts and circumstances; Limitations. Whether a person is a check casher as described in this section is a matter of facts and circumstances. The term “check casher” shall not include:

(A) A person that sells prepaid access in exchange for a check (as defined in the Uniform Commercial Code), monetary instrument or other instrument;

(B) A person that solely accepts monetary instruments as payment for goods or services other than check cashing services;

(C) A person that engages in check cashing for the verified maker of the check who is a customer otherwise buying goods and services;

(D) A person that redeems its own checks; or

(E) A person that only holds a customer’s check as collateral for repayment by the customer of a loan.

(3) Issuer or seller of traveler’s checks or money orders. A person that

(i) Issues traveler’s checks or money orders that are sold in an amount greater than \$1,000 to any person on any day in one or more transactions; or

(ii) Sells traveler’s checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions.

(4) Provider of prepaid access—

(i) In general. A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access.

(ii) Considerations for provider determination. In the absence of registration as the provider of prepaid access for a prepaid program by one of the participants in a prepaid access program, the provider of prepaid access is the person with principal oversight and control over the prepaid program. Which person exercises “principal oversight and control” is a matter of facts and circumstances. Activities that indicate “principal oversight and control” include:

(A) Organizing the prepaid program;

- (B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded;
 - (C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;
 - (D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and
 - (E) Engaging in activity that demonstrates oversight and control of the prepaid program.
- (iii) Prepaid program. A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is not a prepaid program if:
- (A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;
 - (B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency;
 - (C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or
 - (D)(1) It provides prepaid access solely to:
 - (i) Employment benefits, incentives, wages or salaries; or
 - (ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and
 - (2) It does not permit:
 - (i) Funds or value to be transmitted internationally;
 - (ii) Transfers between or among users of prepaid access within a prepaid program; or
 - (iii) Loading additional funds or the value of funds from non-depository sources.
- (5) Money transmitter—
- (i) In general.
 - (A) A person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that sub-

stitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or

(B) Any other person engaged in the transfer of funds.

(ii) Facts and circumstances; Limitations. Whether a person is a money transmitter as described in this section is a matter of facts and circumstances. The term “money transmitter” shall not include a person that only:

(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;

(B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission (“SEC”), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;

(E) Provides prepaid access; or

(F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

(6) U.S. Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(7) Seller of prepaid access. Any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person:

(i) Sells prepaid access offered under a prepaid program that can be used before verification of customer identification under § 1022.210(d)(1)(iv); or

- (ii) Sells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.
- (8) Limitation. For the purposes of this section, the term “money services business” shall not include:
- (i) A bank or foreign bank;
 - (ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or
 - (iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.
- (gg) Mutual fund. An “investment company” (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).
- (hh) Option on a commodity. Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).
- (ii) Originator. The sender of the first payment order in a funds transfer.
- (jj) Originator’s bank. The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.
- (kk) Payment date. The day on which the amount of the transmittal order is payable to the recipient by the recipient’s financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient’s financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient’s financial institution.
- (ll) Payment order. An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:
- (1) The instruction does not state a condition to payment to the beneficiary other than time of payment;
 - (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

- (3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.
- (mm) Person. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.
- (nn) Receiving bank. The bank or foreign bank to which the sender's instruction is addressed.
- (oo) Receiving financial institution. The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.
- (pp) Recipient. The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.
- (qq) Recipient's financial institution. The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.
- (rr) Secretary. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.
- (ss) Security. Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).
- (tt) Self-regulatory organization:
- (1) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and
 - (2) Means a "registered entity" or a "registered futures association" as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).
- (uu) Sender. The person giving the instruction to the receiving financial institution.
- (vv) State. The States of the United States and, wherever necessary to carry out the provisions of this chapter, the District of Columbia.
- (ww) Prepaid access. Access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

(xx) Structure (structuring). For purposes of § 1010.314, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313 of this chapter. “In any manner” includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(yy) Taxpayer Identification Number. Taxpayer Identification Number (“TIN”) is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (e.g., social security number or employer identification number).

(zz) Territories and Insular Possessions. The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(aaa) [Reserved]

(bbb) Transaction.

(1) Except as provided in paragraph (bbb)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of §§ 1010.311, 1010.313, 1020.315, 1021.311, 1021.313, and other provisions of this chapter relating solely to the report required by those sections, the term “transaction in currency” shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(ccc) Transaction account. Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ddd) Transmittal of funds. A series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmitter's transmittal order. Electronic Fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act of 1978 (Title XX, Pub.L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, et seq.), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(eee) Transmittal order. The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

- (1) The instruction does not state a condition to payment to the recipient other than time of payment;
- (2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
- (3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(fff) Transmitter. The sender of the first transmittal order in a transmittal of funds. The term transmitter includes an originator, except where the transmitter's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(ggg) Transmitter's financial institution. The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial agency, or the transmitter if the transmitter is a financial institution or foreign financial agency. The term transmitter's financial institution includes an originator's bank, except where the originator is a transmitter's financial institution other than a bank or foreign bank.

(hhh) United States. The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(iii) U.S. person.

(1) A United States citizen; or

(2) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States. Non-U.S. person means a person that is not a U.S. person.

(jjj) U.S. Postal Service. The United States Postal Service, except with respect to the sale of postage or philatelic products.

(kkk) Closed loop prepaid access. Prepaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system.

(lll) Loan or finance company. A person engaged in activities that take place wholly or in substantial part within the United States in one or more of the capacities listed below, whether or not on a regular basis or as an organized business concern. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States. For the purposes of this paragraph (lll), the term “loan or finance company” shall include a sole proprietor acting as a loan or finance company, and shall not include: A bank, a person registered with and functionally regulated or examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission, any government sponsored enterprise regulated by the Federal Housing Finance Agency, any Federal or state agency or authority administering mortgage or housing assistance, fraud prevention or foreclosure prevention programs, or an individual employed by a loan or finance company or financial institution under this part. A loan or finance company is not a financial institution as defined in the regulations in this part at 1010.100(t).

(1) Residential mortgage lender or originator. A residential mortgage lender or originator includes:

(i) Residential mortgage lender. The person to whom the debt arising from a residential mortgage loan is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement, or to whom the obligation is initially assigned at or immediately after settlement. The term “residential mortgage lender” shall not include an individual who finances the sale of the individual’s own dwelling or real property.

(ii) Residential mortgage originator. A person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

(iii) Residential mortgage loan. A loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on:

(A) A residential structure that contains one to four units, including, if used as a residence, an individual condominium unit, cooperative unit, mobile home or trailer; or

(B) Residential real estate upon which such a structure is constructed or intended to be constructed.

(2) [Reserved]

(mmm) Housing government sponsored enterprise.

(1) A “housing government sponsored enterprise” is one of the following “Regulated Entities” under 12 U.S.C. 4502(20) subject to the general supervision and regulation of the Federal Housing Finance Agency (FHFA):

- (i) The Federal National Mortgage Association;
- (ii) The Federal Home Loan Mortgage Corporation; or
- (iii) Each Federal Home Loan Bank.

(2) The term “housing government sponsored enterprise” does not include any “Entity-Affiliated Party,” as defined in 12 U.S.C. 4502(11).

§ 1024.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1024. Unless otherwise indicated, for purposes of this Part:

(a) Account. For purposes of § 1024.220:

(1) Account means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(2) Account does not include:

- (i) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or
- (ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) Commission means the United States Securities and Exchange Commission.

(c) Customer. For purposes of § 1024.220:

(1) Customer means:

- (i) A person that opens a new account; and
- (ii) An individual who opens a new account for:
 - (A) An individual who lacks legal capacity, such as a minor; or

- (B) An entity that is not a legal person, such as a civic club.
- (2) Customer does not include:
 - (i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;
 - (ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or
 - (iii) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.
- (d) Financial institution is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

§ 1024.200 General.

Mutual funds are subject to the program requirements set forth and cross referenced in this subpart. Mutual funds should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to mutual funds.

§ 1024.220 Customer identification programs for mutual funds.

- (a) Customer identification program: minimum requirements—

- (1) In general. A mutual fund must implement a written Customer Identification Program (“CIP”) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the mutual fund’s anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

- (2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund’s assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund’s customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

- (i) Customer information required—

- (A) In general. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

- (1) Name;
 - (2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to Paragraph (a)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) Verification through documents. For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) Verification through non-documentary methods. For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (a) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. The mutual fund must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) Comparison with government lists. The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by the Department of the Treasury in consultation with the Federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on other financial institutions. The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(b) Exemptions. The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(c) Other requirements unaffected. Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

§ 1024.320 Reports by mutual funds of suspicious transactions.

(a) General.

(1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) ("Investment Company Act") that is an open-end company

(as defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a “mutual fund”), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least \$5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words “joint filing” in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) Filing and notification procedures.

(1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”) and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) Where to file. Form SAR shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR.

(3) When to file. A Form SAR shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) Mandatory notification to law enforcement. In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR.

(5) Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission. Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a Form SAR if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) Retention of records. A mutual fund shall maintain a copy of any Form SAR filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR. The mutual fund shall make all supporting documentation available to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act, upon request.

(d) Confidentiality of SARs. A SAR, and any information that would reveal the existence of a SAR, are confidential and shall not be disclosed except as authorized in this paragraph (d). For purposes of this paragraph (d) only, a SAR shall include any suspicious activity report filed with FinCEN pursuant to any regulation in this chapter.

(1) Prohibition on disclosures by mutual funds.

(i) General rule. No mutual fund, and no director, officer, employee, or agent of any mutual fund, shall disclose a SAR or any information that would reveal the existence of a SAR. Any mutual fund, and any director, officer, employee, or agent of any mutual fund that is subpoenaed or otherwise requested to disclose a SAR or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify FinCEN of any such request and the response thereto.

(ii) Rules of construction. Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (d)(1) shall not be construed as prohibiting:

(A) The disclosure by a mutual fund, or any director, officer, employee, or agent of a mutual fund, of:

(1) A SAR, or any information that would reveal the existence of a SAR, to FinCEN or any Federal, State, or local law enforcement agency, or any Federal regulatory authority that examines the mutual fund for compliance with the Bank Secrecy Act; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; or

(B) The sharing by a mutual fund, or any director, officer, employee, or agent of the mutual fund, of a SAR, or any information that would reveal the existence of a SAR, within the mutual fund's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) Prohibition on disclosures by government authorities. A Federal, State, local, territorial, or Tribal government authority, or any director, officer, employee, or agent of any of the foregoing, shall not disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, "official duties" shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for disclosure of non-public information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(e) Limitation on liability. A mutual fund, and any director, officer, employee, or agent of any mutual fund, that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) Compliance. Mutual funds shall be examined by FinCEN or its delegates for compliance with this section. Failure to satisfy the requirements of this section may be a violation of the Bank Secrecy Act and of this chapter.

(g) Applicability date. This section applies to transactions occurring after October 31, 2006.

APPENDIX F
REGULATION S-P: PRIVACY OF CONSUMER FINANCIAL
INFORMATION (17 CFR PART 248)

248.1 Purpose and scope.

248.2 Rule of construction.

248.3 Definitions.

Subpart A-Privacy and Opt Out Notices

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248.6 Information to be included in privacy notices.

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Subpart B-Limits on Disclosures

248.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

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Subpart C-Exceptions

248.13 Exception to opt out requirements for service providers and joint marketing.

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248.16 Protection of Fair Credit Reporting Act.

248.17 Relation to State laws.

248.18 Effective date; transition rule.

248.19—248.29 [Reserved]

248.30 Procedures to safeguard customer records and information; disposal of consumer report information.

248.31—248.100 [Reserved]

Appendix to Part 248- Sample Clauses

§ 248.1 Purpose and scope.

(a) *Purpose.* This subpart governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This subpart:

- (1) Requires a financial institution to provide notice to customers about its privacy policies and practices;
- (2) Describes the conditions under which a financial institution may disclose non-public personal information about consumers to nonaffiliated third parties; and
- (3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by “opting out” of that disclosure, subject to the exceptions in §§ 248.13, 248.14, and 248.15.

(b) *Scope.* Except with respect to §248.30(b), this subpart applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This subpart does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to brokers, dealers, and investment companies, as well as to investment advisers that are registered with the Commission. It also applies to foreign (non-resident) brokers, dealers, investment companies and investment advisers that are registered with the Commission. These entities are referred to in this part as “you.” This subpart does not apply to foreign (non-resident) brokers, dealers, investment companies and investment advisers that are not registered with the Commission. Nothing in this subpart modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d—1320d-8).

§ 248.2 Model Privacy Form: Rule of construction

(a) *Model privacy form.* Use of the model privacy form in Appendix A to Subpart A of this part, consistent with the instructions in Appendix A to Subpart A, constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part, although use of the model privacy form is not required.

(b) *Examples.* The examples in this part provide guidance concerning the rule’s application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example, to the extent practicable, constitutes compliance with this part.

(c) *Substituted compliance with CFTC financial privacy rules by futures commission merchants and introducing brokers.* Except with respect to § 248.30(b), any futures commission merchant or introducing broker (as those terms are defined in the Commodity Exchange Act (7 U.S.C. 1, et seq.)) registered by notice with the Commission for the purpose of conducting business in security futures products pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)(A)) that is subject to and in compliance with the financial privacy rules of the Commodity Futures Trading Commission (17 CFR part 160) will be deemed to be in compliance with this part.

§ 248.3 Definitions.

As used in this subpart, unless the context requires otherwise:

(a) *Affiliate* of a broker, dealer, or investment company, or an investment adviser registered with the Commission means any company that controls, is controlled by, or is under common control with the broker, dealer, or investment company, or investment adviser registered with the Commission. In addition, a broker, dealer, or investment company, or an investment adviser registered with the Commission will be deemed an affiliate of a company for purposes of this part if:

- (1) That company is regulated under Title V of the G-L-B Act by the Federal Trade Commission or by a Federal functional regulator other than the Commission; and
- (2) Rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the G-L-B Act treat the broker, dealer, or investment company, or investment adviser registered with the Commission as an affiliate of that company.

(b) *Broker* has the same meaning as in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(c) (1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.* (i) *Reasonably understandable.* You make your notice reasonably understandable if you:

- (A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;
- (B) Use short explanatory sentences or bullet lists whenever possible;
- (C) Use definite, concrete, everyday words and active voice whenever possible;

- (D) Avoid multiple negatives;
- (E) Avoid legal and highly technical business terminology whenever possible; and
- (F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

- (A) Use a plain-language heading to call attention to the notice;
- (B) Use a typeface and type size that are easy to read;
- (C) Provide wide margins and ample line spacing;
- (D) Use boldface or italics for key words; and
- (E) Use distinctive type size, style, and graphic devices, such as shading or sidebars when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

- (A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or
- (B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(d) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(e) *Commission* means the Securities and Exchange Commission.

(f) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(g) (1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples.* (i) An individual is your consumer if he or she provides nonpublic personal information to you in connection with obtaining or seeking to obtain

brokerage services or investment advisory services, whether or not you provide brokerage services to the individual or establish a continuing relationship with the individual.

(ii) An individual is not your consumer if he or she provides you only with his or her name, address, and general areas of investment interest in connection with a request for a prospectus, an investment adviser brochure, or other information about financial products or services.

(iii) An individual is not your consumer if he or she has an account with another broker or dealer (the introducing broker-dealer) that carries securities for the individual in a special omnibus account with you (the clearing broker-dealer) in the name of the introducing broker-dealer, and when you receive only the account numbers and transaction information of the introducing broker-dealer's consumers in order to clear transactions.

(iv) If you are an investment company, an individual is not your consumer when the individual purchases an interest in shares you have issued only through a broker or dealer or investment adviser who is the record owner of those shares.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(h) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(i) *Control* of a company means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(9)).

(j) *Customer* means a consumer who has a customer relationship with you.

(k) (1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) Examples. (i) *Continuing relationship*. A consumer has a continuing relationship with you if:

(A) The consumer has a brokerage account with you, or if a consumer's account is transferred to you from another broker-dealer;

(B) The consumer has an investment advisory contract with you (whether written or oral);

(C) The consumer is the record owner of securities you have issued if you are an investment company;

(D) The consumer holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) The consumer purchases a variable annuity from you;

(F) The consumer has an account with an introducing broker or dealer that clears transactions with and for its customers through you on a fully disclosed basis;

(G) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or

(H) You regularly effect or engage in securities transactions with or for a consumer even if you do not hold any assets of the consumer.

(ii) *No continuing relationship*. A consumer does not, however, have a continuing relationship with you if you open an account for the consumer solely for the purpose of liquidating or purchasing securities as an accommodation, i.e., on a one time basis, without the expectation of engaging in other transactions.

(l) *Dealer* has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

(m) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

- (3) The Board of Directors of the Federal Deposit Insurance Corporation;
- (4) The Director of the Office of Thrift Supervision;
- (5) The National Credit Union Administration Board;
- (6) The Securities and Exchange Commission; and
- (7) The Commodity Futures Trading Commission.

(n) (1) *Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial institution* does not include:

- (i) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or
- (ii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(o) (1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(p) *G-L-B-A* means the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)).

(q) *Investment adviser* has the same meaning as in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

(r) *Investment company* has the same meaning as in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), and includes a separate series of the investment company.

(s) (1) *Nonaffiliated third party* means any person except:

- (i) Your affiliate; or
 - (ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).
- (2) *Nonaffiliated third party* includes any company that is an affiliate solely by virtue of your or your affiliate's direct or indirect ownership or control of the company in

conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. §§ 1843(k)(4)(H) and (I)).

(t) (1) *Nonpublic personal information* means:

- (i) Personally identifiable financial information; and
- (ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available information.

(2) *Nonpublic personal information* does not include:

- (i) Publicly available information, except as included on a list described in paragraph (t)(1)(ii) of this section or when the publicly available information is disclosed in a manner that indicates the individual is or has been your consumer; or
- (ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available information.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available information, such as account numbers.

(ii) *Nonpublic personal information* does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available information, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(u) (1) *Personally identifiable financial information* means any information:

- (i) A consumer provides to you to obtain a financial product or service from you;
- (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or
- (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples.* (i) *Information included.* Personally identifiable financial information includes:

- (A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

- (B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;
- (C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;
- (D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;
- (E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;
- (F) Any information you collect through an Internet “cookie” (an information collecting device from a web server); and
- (G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

- (A) A list of names and addresses of customers of an entity that is not a financial institution; or
- (B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(v) (1) *Publicly available information* means any information that you reasonably believe is lawfully made available to the general public from:

- (i) Federal, State, or local government records;
- (ii) Widely distributed media; or
- (iii) Disclosures to the general public that are required to be made by federal, State, or local law.

(2) *Examples.* (i) *Reasonable belief* (A) You have a reasonable belief that information about your consumer is made available to the general public if you have confirmed, or your consumer has represented to you, that the information is publicly available from a source described in paragraphs (v)(1)(i)—(iii) of this section;

(B) You have a reasonable belief that information about your consumer is made available to the general public if you have taken steps to submit the information, in accordance with your internal procedures and policies and with applicable law, to a keeper of federal, State, or local government records that is required by law to make the information publicly available.

(C) You have a reasonable belief that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(D) You do not have a reasonable belief that information about a consumer is publicly available solely because that information would normally be recorded with a keeper of federal, State, or local government records that is required by law to make the information publicly available, if the consumer has the ability in accordance with applicable law to keep that information nonpublic, such as where a consumer may record a deed in the name of a blind trust.

(ii) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(iii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(w) *You* means:

- (1) Any broker or dealer;
- (2) Any investment company; and
- (3) Any investment adviser registered with the Commission under the Investment Advisers Act of 1940.

Subpart A-Privacy and Opt Out Notices

§ 248.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

- (1) *Customer.* An individual who becomes your customer, not later than when you establish a customer relationship, except as provided in paragraph (e) of this section; and
- (2) *Consumer.* A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§ 248.14 and 248.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

- (1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 248.14 and 248.15; and
- (2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship.* (1) *General rule.* You establish a customer relationship when you and the consumer enter into a continuing relationship.

- (2) *Special rule for loans.* You do not have a customer relationship with a consumer if you buy a loan made to the consumer but do not have the servicing rights for that loan.
- (3) *Examples of establishing customer relationship.* You establish a customer relationship when the consumer:
 - (i) Effects a securities transaction with you or opens a brokerage account with you under your procedures;
 - (ii) Opens a brokerage account with an introducing broker or dealer that clears transactions with and for its customers through you on a fully disclosed basis;
 - (iii) Enters into an advisory contract with you (whether in writing or orally); or
 - (iv) Purchases shares you have issued (and the consumer is the record owner of the shares), if you are an investment company.

(d) *Existing customers.* When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

- (1) You may provide a revised privacy notice, under § 248.8, that covers the customer's new financial product or service; or
- (2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

- (i) Establishing the customer relationship is not at the customer's election;
- (ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time; or

(iii) A nonaffiliated broker or dealer or investment adviser establishes a customer relationship between you and a consumer without your prior knowledge.

(2) *Examples of exceptions.* (i) *Not at customer's election.* Establishing a customer relationship is not at the customer's election if the customer's account is transferred to you by a trustee selected by the Securities Investor Protection Corporation ("SIPC") and appointed by a United States Court.

(ii) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(iii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as on a web site.

(f) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 248.9. If you use a short-form initial notice for non-customers according to § 248.6(d), you may deliver your privacy notice according to § 248.6(d)(3).

§ 248.5 Annual privacy notice to customers required.

(a) (1) *General rule.* You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b) (1) *Termination of customer relationship.* You are not required to provide an annual notice to a former customer.

(2) *Examples.* Your customer becomes a former customer when:

(i) The individual's brokerage account is closed;

- (ii) The individual's investment advisory contract is terminated;
- (iii) You are an investment company and the individual is no longer the record owner of securities you have issued; or
- (iv) You are an investment company and your customer has been determined to be a lost securityholder as defined in 17 CFR 240.17a-24(b).

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special provision for loans in § 248.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to § 248.9.

§ 248.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§ 248.4, 248.5, and 248.8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

- (1) The categories of nonpublic personal information that you collect;
- (2) The categories of nonpublic personal information that you disclose;
- (3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 248.14 and 248.15;
- (4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§ 248.14 and 248.15;
- (5) If you disclose nonpublic personal information to a nonaffiliated third party under § 248.13 (and no other exception applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;
- (6) An explanation of the consumer's right under § 248.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;
- (7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);
- (8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§ 248.14 and 248.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§ 248.4 and 248.5. When describing the categories with respect to those parties, it is sufficient to state that you make disclosures to other nonaffiliated companies:

- (1) For your everyday business purposes such as [*include all that apply*] to process transactions, maintain account(s), respond to court orders and legal investigations, or report to credit bureaus; or
- (2) As permitted by law.

(c) *Examples.* (1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

- (i) Information from the consumer;
 - (ii) Information about the consumer's transactions with you or your affiliates;
 - (iii) Information about the consumer's transactions with nonaffiliated third parties; and
 - (iv) Information from a consumer-reporting agency.
- (2) *Categories of nonpublic personal information you disclose.* (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.
- (ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.
- (3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category:
- (i) Financial service providers;
 - (ii) Non-financial companies; and
 - (iii) Others.
- (4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 248.13 to a non-

affiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with which you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information to affiliates or nonaffiliated third parties except as authorized under §§ 248.14 and 248.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers.* (1) You may satisfy the initial notice requirements in §§ 248.4(a)(2), 248.7(b), and 248.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 248.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain the privacy notice.

(3) You must deliver your short-form initial notice according to § 248.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy

notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 248.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Model privacy form.* Pursuant to § 248.2(a) and Appendix A to Subpart A of this part, Form S-P meets the notice content requirements of this section.

§ 248.7 Form of opt out notice to consumers; opt out methods.

(a) (1) *Form of opt out notice.* If you are required to provide an opt out notice under § 248.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of non-affiliated third parties to which you disclose the information, as described in § 248.6(a)(2) and (3) and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 248.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice after the initial notice in accordance with § 248.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer.

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

- (3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.
 - (4) You may not require *all* joint consumers to opt out before you implement any opt out direction.
 - (5) *Example.* If John and Mary have a joint brokerage account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:
 - (i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary;
 - (ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction; or
 - (iii) Permit John and Mary to make different opt out directions. If you do so:
 - (A) You must permit John and Mary to opt out for each other.
 - (B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call).
 - (C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.
- (e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.
- (f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.
- (g) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.
- (2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.
- (h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 248.9.
- (i) *Model privacy form.* Pursuant to § 248.2(a) and Appendix A to Subpart A of this part, Form S-P meets the notice content requirements of this section.

§ 248.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this subpart, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a non-affiliated third party other than as described in the initial notice that you provided to that consumer under § 248.4, unless:

- (1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;
- (2) You have provided to the consumer a new opt out notice;
- (3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and
- (4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 248.13, 248.14, and 248.15, you must provide a revised notice before you:

- (i) Disclose a new category of nonpublic personal information to any non-affiliated third party;
 - (ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or
 - (iii) Disclose nonpublic personal information about a former customer to a non-affiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.
- (2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 248.9.

§ 248.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices that this subpart requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

- (i) Hand-deliver a printed copy of the notice to the consumer;
- (ii) Mail a printed copy of the notice to the last known address of the consumer;
- (iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* (1) You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(i) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(ii) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(2) *Example of reasonable expectation of receipt of annual privacy notice.* You may reasonably expect that consumers who share an address will receive actual notice of your annual privacy notice if you deliver the notice with or in a stockholder or shareholder report under the conditions in 17 CFR 270.30d-1(f) or 17 CFR 270.30d-2(b), or with or in a prospectus under the conditions in 17 CFR 230.154.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this subpart solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, you must provide the initial notice required by § 248.4(a)(1), the annual notice required by § 248.5(a), and the revised notice required by § 248.8, so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of paragraph (a) of this section by providing one notice to those consumers jointly.

Subpart B-Limits on Disclosures

§ 248.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a) (1) *Conditions for disclosure.* Except as otherwise authorized in this subpart, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

- (i) You have provided to the consumer an initial notice as required under § 248.4;
- (ii) You have provided to the consumer an opt out notice as required in § 248.7;
- (iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and
- (iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 248.13, 248.14, and 248.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days after the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the provision of brokerage services to a consumer as an accommodation, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 248.11 Limits on redisclosure and reuse of information.

(a) (1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 248.14 or 248.15, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 248.14 or 248.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example.* If you receive a customer list from a nonaffiliated financial institution in order to provide account-processing services under the exception in § 248.14(a), you may disclose that information under any exception in § 248.14 or 248.15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena or in the ordinary course of business to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b) (1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 248.14 or 248.15, you may disclose the information only:

- (i) To the affiliates of the financial institution from which you received the information;
 - (ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and
 - (iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.
- (2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in §§ 248.14 and 248.15:
- (i) You may use that list for your own purposes;
 - (ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 248.14 or 248.15, such as in the ordinary course of business to your attorneys, accountants, or auditors.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 248.14 or 248.15, the third party may disclose and use that information only as follows:

- (1) The third party may disclose the information to your affiliates;
- (2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and
- (3) The third party may disclose and use the information pursuant to an exception in § 248.14 or 248.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 248.14 or 248.15, the third party may disclose the information only:

- (1) To your affiliates;
- (2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

- (3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 248.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

- (1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or
- (2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Example-Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

Subpart C-Exceptions

§ 248.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 248.7 and 248.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

- (i) Provide the initial notice in accordance with § 248.4; and
 - (ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 248.14 or 248.15 in the ordinary course of business to carry out those purposes.
- (2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 248.14 or 248.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 248.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing and servicing transactions at consumer's request.* The requirements for initial notice in § 248.4(a)(2), for the opt out in §§ 248.7 and 248.10, and for initial notice in § 248.13 in connection with service providers and joint marketing, do not apply if you disclose nonpublic *personal* information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

- (1) Processing or servicing a financial product or service that a consumer requests or authorizes;
- (2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or
- (3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

- (1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
- (2) Required, or is a usual, appropriate, or acceptable method:
 - (i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;
 - (ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - (iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;
 - (iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by federal or State law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 248.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to notice and opt out requirements.* The requirements for initial notice in § 248.4(a)(2), for the opt out in §§ 248.7 and 248.10, and for initial notice in § 248.13 in connection with service providers and joint marketing do not apply when you disclose nonpublic personal information:

- (1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
- (2) (i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;
(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
(iii) For required institutional risk control or for resolving consumer disputes or inquiries;
(iv) To persons holding a legal or beneficial interest relating to the consumer; or
(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;
- (3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;
- (4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the

Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

- (5) (i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or
- (ii) From a consumer report reported by a consumer reporting agency;
- (6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or
- (7) (i) To comply with federal, State, or local laws, rules and other applicable legal requirements;
- (ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, State, or local authorities; or
- (iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated mortgage lender of the value of the assets in the consumer's brokerage or investment advisory account so that the lender can evaluate the consumer's application for a mortgage loan.

- (2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 248.7(f).

Subpart D-Relation to Other Laws; Effective Date

§ 248.16 Protection of Fair Credit Reporting Act.

Nothing in this subpart shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this subpart regarding whether information is transaction or experience information under section 603 of that Act.

§ 248.17 Relation to State laws.

(a) *In general.* This subpart shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this subpart, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subpart if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this subpart, as determined by the Federal Trade Commission, after consultation with the Commission, on the Federal Trade Commission's own motion, or upon the petition of any interested party.

§ 248.18 Effective date; transition rule.

(a) *Effective date.* This subpart is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this subpart, the compliance date for this subpart is July 1, 2001.

(b) (1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 248.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 248.13(a)(2), even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the agreement on or before July 1, 2000.

§§ 248.19—248.29 [Reserved]

§ 248.30 Procedures to safeguard customer records and information; disposal of consumer report information.

(a) Every broker, dealer, and investment company, and every investment adviser registered with the Commission must adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. These written policies and procedures must be reasonably designed to:

- (1) Insure the security and confidentiality of customer records and information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
- (3) Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

(b) *Disposal of consumer report information and records*—(1) *Definitions*

- (i) *Consumer report* has the same meaning as in section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).
- (ii) *Consumer report information* means any record about an individual, whether in paper, electronic or other form, that is a consumer report or is derived from a consumer report. Consumer report information also means a compilation of such records. Consumer report information does not include information that does not identify individuals, such as aggregate information or blind data.
- (iii) *Disposal* means:
 - (A) The discarding or abandonment of consumer report information; or
 - (B) The sale, donation, or transfer of any medium, including computer equipment, on which consumer report information is stored.
- (iv) *Notice-registered broker-dealers* means a broker or dealer registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).
- (v) *Transfer agent* has the same meaning as in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25)).

(2) *Proper disposal requirements*—(i) *Standard*. Every broker and dealer other than notice-registered broker-dealers, every investment company, and every investment adviser and transfer agent registered with the Commission, that maintains or otherwise possesses consumer report information for a business purpose must properly dispose of the information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

- (ii) *Relation to other laws*. Nothing in this section shall be construed:
 - (A) To require any broker, dealer, or investment company, or any investment adviser or transfer agent registered with the Commission to maintain or destroy any record pertaining to an individual that is not imposed under other law; or
 - (B) To alter or affect any requirement imposed under any other provision of law to maintain or destroy any of those records.

Appendix A to Subpart A—Forms

A. Any person may view and print this form at: <http://www.sec.gov/about/forms/secforms.htm>.

B. Use of Form S-P by brokers, dealers, and investment companies, and investment advisers registered with the Commission constitutes compliance with the notice content requirements of §§ 248.6 and 248.7 of this part.

A. The model privacy form.

Version 1: Model Form With No Opt-Out.

Rev. [insert date]

FACTS		WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?	
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.		
What?	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>		
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.		
Reasons we can share your personal information		Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus			
For our marketing purposes—to offer our products and services to you			
For joint marketing with other financial companies			
For our affiliates' everyday business purposes—information about your transactions and experiences			
For our affiliates' everyday business purposes—information about your creditworthiness			
For our affiliates to market to you			
For nonaffiliates to market to you			
Questions?	Call [phone number] or go to [website]		

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [nonaffiliate information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> ■ [joint marketing information]
Other important information	
[insert other important information]	

FACTS		WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] 	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
	Reasons we can share your personal information	Does [name of financial institution] share? Can you limit this sharing?
	For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	
	For our marketing purposes—to offer our products and services to you	
	For joint marketing with other financial companies	
	For our affiliates' everyday business purposes—information about your transactions and experiences	
	For our affiliates' everyday business purposes—information about your creditworthiness	
	For our affiliates to market to you	
	For nonaffiliates to market to you	
To limit our sharing	<ul style="list-style-type: none"> ■ Call [phone number]—our menu will prompt you through your choice(s) or ■ Visit us online: [website] <p>Please note: If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.</p>	
Questions?	Call [phone number] or go to [website]	

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [nonaffiliate information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> ■ [joint marketing information]
Other important information	
[insert other important information]	

Version 3: Model Form with Mail-In Opt-Out Form.

Flex (insert date)

FACTS	WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?	
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] 	
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes—to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes—information about your transactions and experiences		
For our affiliates' everyday business purposes—information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		
To limit our sharing	<ul style="list-style-type: none"> ■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below <p>Please note: If you are a new customer, we can begin sharing your information [30] days from the date we sent this notice. When you are no longer our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.</p>	
Questions?	Call [phone number] or go to [website]	

Mail-in Form		
Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. <input type="checkbox"/> Apply my choices only to me]	Mark any/all you want to limit: <input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes. <input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me. <input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.	
Name		Mail to: [Name of Financial Institution] [Address1] [Address2] [City], [ST] [ZIP]
Address		
City, State, Zip		
[Account #]		

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. [insert]
How does [name of financial institution] collect my personal information?	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] [We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]
Why can't I limit all sharing?	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]
What happens when I limit sharing for an account I hold jointly with someone else?	[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]
Definitions	
Affiliates	Companies related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [affiliate information]
Nonaffiliates	Companies not related by common ownership or control. They can be financial and nonfinancial companies. <ul style="list-style-type: none"> ■ [nonaffiliate information]
Joint marketing	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. <ul style="list-style-type: none"> ■ [joint marketing information]
Other important information	
[insert other important information]	

Version 4. Optional Mail-in Form.

✍

Mail-in Form	
Leave Blank OR (If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.) <input type="checkbox"/> Apply my choices only to me]	Mark any/all you want to limit: <input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes. <input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me. <input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.
	Name
	Address
	City, State, Zip
	[Account #]

Mail To: [Name of Financial Institution], [Address1]
[Address2], [City], [ST] [ZIP]

B. General Instructions

1. How the model privacy form is used.

(a) The model form may be used, at the option of a financial institution, including a group of financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in §§ 248.6 and 248.7 of this part.

(b) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in these instructions.

(c) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C. 1681 - 1681x] (FCRA), such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(d) The word “customer” may be replaced by the word “member” whenever it appears in the model form, as appropriate.

2. The contents of the model privacy form.

The model form consists of two pages, which may be printed on both sides of a single sheet of paper, or may appear on two separate pages. Where an institution provides a long list of institutions at the end of the model form in accordance with Instruction C.3(a)(1), or provides

additional information in accordance with Instruction C.3(c), and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

- (a) Page One. The first page consists of the following components:
 - (1) Date last revised (upper right-hand corner).
 - (2) Title.
 - (3) Key frame (Why?, What?, How?).
 - (4) Disclosure table (“Reasons we can share your personal information”).
 - (5) “To limit our sharing” box, as needed, for the financial institution’s opt-out information.
 - (6) “Questions” box, for customer service contact information.
 - (7) Mail-in opt-out form, as needed.
- (b) Page Two. The second page consists of the following components:
 - (1) Heading (Page 2).
 - (2) Frequently Asked Questions (“Who we are” and “What we do”).
 - (3) Definitions.
 - (4) “Other important information” box, as needed.

3. The format of the model privacy form.

The format of the model form may be modified only as described below.

(a) *Easily readable type font.* Financial institutions that use the model form must use an easily readable type font. While a number of factors together produce easily readable type font, institutions are required to use a minimum of 10-point font (unless otherwise expressly permitted in these Instructions) and sufficient spacing between the lines of type.

(b) *Logo.* A financial institution may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(c) *Page size and orientation.* Each page of the model form must be printed on paper in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(d) *Color.* The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual interest, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(e) *Languages.* The model form may be translated into languages other than English.

C. *Information Required in the Model Privacy Form*

The information in the model form may be modified only as described below:

1. Name of the institution or group of affiliated institutions providing the notice.

Insert the name of the financial institution providing the notice or a common identity of affiliated institutions jointly providing the notice on the form wherever [name of financial institution] appears.

2. Page one.

(a) *Last revised date.* The financial institution must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum 8-point font as “rev. [month/year]” using either the name or number of the month, such as “rev. July 2009” or “rev. 7/09”.

(b) *General instructions for the “What?” box.*

(1) The bulleted list identifies the types of personal information that the institution collects and shares. All institutions must use the term “Social Security number” in the first bullet.

(2) Institutions must use five (5) of the following terms to complete the bulleted list: income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(c) *General instructions for the disclosure table.* The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in paragraph C.2(d) of this Instruction. In the middle column, each institution must provide a “Yes” or “No” response that accurately reflects its information sharing policies and practices with respect to the reason listed on the left. In the right column, each institution must provide in each box one of the following three (3) responses, as applicable, that reflects whether a consumer can limit such sharing: “Yes” if it is required to or voluntarily provides an opt-out; “No” if it does not provide an opt-out; or “We don’t share” if it answers “No” in the middle column. Only the sixth row (“For our affiliates to market to you”) may be omitted at the option of the institution. See paragraph C.2(d)(6) of this Instruction.

(d) *Specific disclosures and corresponding legal provisions.*

(1) For our everyday business purposes. This reason incorporates sharing information under §§ 248.14 and 248.15 and with service providers pursuant to § 248.13 of this part other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of these Instructions.

(2) For our marketing purposes. This reason incorporates sharing information with service providers by an institution for its own marketing pursuant to § 248.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(3) For joint marketing with other financial companies. This reason incorporates sharing information under joint marketing agreements between two or more financial institutions and with any service provider used in connection with such agreements pursuant to § 248.13 of this part. An institution that shares for this reason may choose to provide an opt-out.

(4) For our affiliates' everyday business purposes—information about transactions and experiences. This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. An institution that shares for this reason may choose to provide an opt-out.

(5) For our affiliates' everyday business purposes—information about creditworthiness. This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. An institution that shares for this reason must provide an opt-out.

(6) For our affiliates to market to you. This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: the institution does not have affiliates (or does not disclose personal information to its affiliates); the institution's affiliates do not use personal information in a manner that requires an opt-out; or the institution provides the affiliate marketing notice separately. Institutions that include this reason must provide an opt-out of indefinite duration. An institution that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 17 CFR Part 248, Subpart B, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. An institution not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(7) For nonaffiliates to market to you. This reason incorporates sharing described in §§ 248.7 and 248.10(a) of this part. An institution that shares personal information for this reason must provide an opt-out.

(e) *To limit our sharing:* A financial institution must include this section of the model form only if it provides an opt-out. The word “choice” may be written in either the singular or plural, as appropriate. Institutions must select one or more of the applicable opt-out methods described: telephone, such as by a toll-free number; a Website; or use of a mail-in opt-out form. Institutions may include the words “toll-free” before telephone, as appropriate. An institution that allows consumers to opt out online must provide either a specific Web address that takes consumers directly to the opt-out page or a general Web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the consumer who contacts the institution through these methods must correspond accurately to the “Yes”

responses in the third column of the disclosure table. In the part titled “Please note” institutions may insert a number that is 30 or greater in the space marked “[30].” Instructions on voluntary or state privacy law opt-out information are in paragraph C.2(g)(5) of these Instructions.

(f) *Questions box.* Customer service contact information must be inserted as appropriate, where [phone number] or [website] appear. Institutions may elect to provide either a phone number, such as a toll-free number, or a Web address, or both. Institutions may include the words “toll-free” before the telephone number, as appropriate.

(g) *Mail-in opt-out form.* Financial institutions must include this mail-in form only if they state in the “To limit our sharing” box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the “Yes” responses in the third column in the disclosure table. Institutions that require customers to provide only name and address may omit the section identified as “[account #].” Institutions that require additional or different information, such as a random opt-out number or a truncated account number, to implement an opt-out election should modify the “[account #]” reference accordingly. This includes institutions that require customers with multiple accounts to identify each account to which the opt-out should apply. An institution must enter its opt-out mailing address: in the far right of this form (see version 3); or below the form (see version 4). The reverse side of the mail-in opt-out form must not include any content of the model form.

(1) *Joint accountholder.* Only institutions that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with paragraph C.3(a)(5) of these Instructions, must include in the far left column of the mail-in form the following statement: “If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below. Apply my choice(s) only to me.” The word “choice” may be written in either the singular or plural, as appropriate. Financial institutions that provide insurance products or services, provide this option, and elect to use the model form may substitute the word “policy” for “account” in this statement. Institutions that do not provide this option may eliminate this left column from the mail-in form.

(2) *FCRA Section 603(d)(2)(A)(iii) opt-out.* If the institution shares personal information pursuant to section 603(d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement: “ Do not share information about my creditworthiness with your affiliates for their everyday business purposes.”

(3) *FCRA Section 624 opt-out.* If the institution incorporates section 624 of the FCRA in accord with paragraph C.2(d)(6) of these Instructions, it must include in the mail-in opt-out form the following statement: “ Do not allow your affiliates to use my personal information to market to me.”

(4) *Nonaffiliate opt-out.* If the financial institution shares personal information pursuant to § 248.10(a) of this part, it must include in the mail-in opt-out form the following statement: “ Do not share my personal information with nonaffiliates to market their products and services to me.”

(5) *Additional opt-outs.* Financial institutions that use the disclosure table to provide opt-out options beyond those required by Federal law must provide those opt-outs in this section of the model form. A financial institution that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements: “ Do not share my personal information to market to me.” or “ Do not use my personal information to market to me.” A financial institution that chooses to offer an opt-out for joint marketing must include the following statement: “ Do not share my personal information with other financial institutions to jointly market to me.”

(h) *Barcodes.* A financial institution may elect to include a barcode and/or “tagline” (an internal identifier) in 6-point font at the bottom of page one, as needed for information internal to the institution, so long as these do not interfere with the clarity or text of the form.

3. Page two.

(a) *General Instructions for the Questions.* Certain of the Questions may be customized as follows:

(1) “*Who is providing this notice?*” This question may be omitted where only one financial institution provides the model form and that institution is clearly identified in the title on page one. Two or more financial institutions that jointly provide the model form must use this question to identify themselves as required by § 248.9(f) of this part. Where the list of institutions exceeds four (4) lines, the institution must describe in the response to this question the general types of institutions jointly providing the notice and must separately identify those institutions, in minimum 8-point font, directly following the “Other important information” box, or, if that box is not included in the institution’s form, directly following the “Definitions.” The list may appear in a multi-column format.

(2) “*How does [name of financial institution] protect my personal information?*” The financial institution may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the institution’s use of cookies or other measures it uses to safeguard personal information. Institutions are limited to a maximum of 30 additional words.

(3) “*How does [name of financial institution] collect my personal information?*” Institutions must use five (5) of the following terms to complete the bulleted list for this question: open an account; deposit money; pay your bills; apply for a loan; use your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease;

provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Institutions that collect personal information from their affiliates and/or credit bureaus must include after the bulleted list the following statement: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Institutions that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only institutions that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(4) "*Why can't I limit all sharing?*" Institutions that describe state privacy law provisions in the "Other important information" box must use the bracketed sentence: "See below for more on your rights under state law." Other institutions must omit this sentence.

(5) "*What happens when I limit sharing for an account I hold jointly with someone else?*" Only financial institutions that provide opt-out options must use this question. Other institutions must omit this question. Institutions must choose one of the following two statements to respond to this question: "Your choices will apply to everyone on your account." or "Your choices will apply to everyone on your account-unless you tell us otherwise." Financial institutions that provide insurance products or services and elect to use the model form may substitute the word "policy" for "account" in these statements.

(b) *General Instructions for the Definitions.*

The financial institution must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(1) *Affiliates.* As required by § 248.6(a)(3) of this part, where [affiliate information] appears, the financial institution must:

- (i) If it has no affiliates, state: "[name of financial institution] has no affiliates";
- (ii) If it has affiliates but does not share personal information, state: "[name of financial institution] does not share with our affiliates"; or
- (iii) If it shares with its affiliates, state, as applicable: "Our affiliates include companies with a [common corporate identity of financial institution] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list]."

(2) *Nonaffiliates.* As required by § 248.6(c)(3) of this part, where [nonaffiliate information] appears, the financial institution must:

- (i) If it does not share with nonaffiliated third parties, state: “[name of financial institution] does not share with nonaffiliates so they can market to you”; or
- (ii) If it shares with nonaffiliated third parties, state, as applicable: “Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].”

(3) *Joint Marketing.* As required by § 248.13 of this part, where [joint marketing] appears, the financial institution must:

- (i) If it does not engage in joint marketing, state: “[name of financial institution] doesn’t jointly market”; or
- (ii) If it shares personal information for joint marketing, state, as applicable: “Our joint marketing partners include [list categories of companies such as credit card companies].”

(c) *General instructions for the “Other important information” box.* This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.

- (1) State and/or international privacy law information; and/or
- (2) Acknowledgment of receipt form.

Appendix B to Subpart A-Sample Clauses

(appendix reserved effective Jan. 1, 2012; see 74 FR 62994)

APPENDIX G
RULES OF PRACTICE
PART 205—STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS
APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE
REPRESENTATION OF AN ISSUER

§205.1 Purpose and scope.

This part sets forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in the representation of an issuer. These standards supplement applicable standards of any jurisdiction where an attorney is admitted or practices and are not intended to limit the ability of any jurisdiction to impose additional obligations on an attorney not inconsistent with the application of this part. Where the standards of a state or other United States jurisdiction where an attorney is admitted or practices conflict with this part, this part shall govern.

§205.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Appearing and practicing before the Commission:*

(1) Means:

- (i) Transacting any business with the Commission, including communications in any form;
- (ii) Representing an issuer in a Commission administrative proceeding or in connection with any Commission investigation, inquiry, information request, or subpoena;
- (iii) Providing advice in respect of the United States securities laws or the Commission's rules or regulations thereunder regarding any document that the attorney has notice will be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission, including the provision of such advice in the context of preparing, or participating in the preparation of, any such document; or
- (iv) Advising an issuer as to whether information or a statement, opinion, or other writing is required under the United States securities laws or the Commission's rules or regulations thereunder to be filed with or submitted to, or incorporated into any document that will be filed with or submitted to, the Commission; but

(2) Does not include an attorney who:

- (i) Conducts the activities in paragraphs (a)(1)(i) through (a)(1)(iv) of this section other than in the context of providing legal services to an issuer with whom the attorney has an attorney-client relationship; or

- (ii) Is a non-appearing foreign attorney.
- (b) *Appropriate response* means a response to an attorney regarding reported evidence of a material violation as a result of which the attorney reasonably believes:
- (1) That no material violation, as defined in paragraph (i) of this section, has occurred, is ongoing, or is about to occur;
 - (2) That the issuer has, as necessary, adopted appropriate remedial measures, including appropriate steps or sanctions to stop any material violations that are ongoing, to prevent any material violation that has yet to occur, and to remedy or otherwise appropriately address any material violation that has already occurred and to minimize the likelihood of its recurrence; or
 - (3) That the issuer, with the consent of the issuer's board of directors, a committee thereof to whom a report could be made pursuant to §205.3(b)(3), or a qualified legal compliance committee, has retained or directed an attorney to review the reported evidence of a material violation and either:
 - (i) Has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of the reported evidence; or
 - (ii) Has been advised that such attorney may, consistent with his or her professional obligations, assert a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to the reported evidence of a material violation.
- (c) *Attorney* means any person who is admitted, licensed, or otherwise qualified to practice law in any jurisdiction, domestic or foreign, or who holds himself or herself out as admitted, licensed, or otherwise qualified to practice law.
- (d) *Breach of fiduciary duty* refers to any breach of fiduciary or similar duty to the issuer recognized under an applicable Federal or State statute or at common law, including but not limited to misfeasance, nonfeasance, abdication of duty, abuse of trust, and approval of unlawful transactions.
- (e) *Evidence of a material violation* means credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.
- (f) *Foreign government issuer* means a foreign issuer as defined in 17 CFR 230.405 eligible to register securities on Schedule B of the Securities Act of 1933.
- (g) *In the representation of an issuer* means providing legal services as an attorney for an issuer, regardless of whether the attorney is employed or retained by the issuer.
- (h) *Issuer* means an issuer (as defined in section 3 of the Securities Exchange Act of 1934), the securities of which are registered under section 12 of that Act, or that is required to file

reports under section 15(d) of that Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn, but does not include a foreign government issuer. For purposes of paragraphs (a) and (g) of this section, the term “issuer” includes any person controlled by an issuer, where an attorney provides legal services to such person on behalf of, or at the behest, or for the benefit of the issuer, regardless of whether the attorney is employed or retained by the issuer.

(i) *Material violation* means a material violation of an applicable United States federal or state securities law, a material breach of fiduciary duty arising under United States federal or state law, or a similar material violation of any United States federal or state law.

(j) *Non-appearing foreign attorney* means an attorney:

(1) Who is admitted to practice law in a jurisdiction outside the United States;

(2) Who does not hold himself or herself out as practicing, and does not give legal advice regarding, United States federal or state securities or other laws (except as provided in paragraph (j)(3)(ii) of this section); and

(3) Who:

(i) Conducts activities that would constitute appearing and practicing before the Commission only incidentally to, and in the ordinary course of, the practice of law in a jurisdiction outside the United States; or

(ii) Is appearing and practicing before the Commission only in consultation with counsel, other than a non-appearing foreign attorney, admitted or licensed to practice in a state or other United States jurisdiction.

(k) *Qualified legal compliance committee* means a committee of an issuer (which also may be an audit or other committee of the issuer) that:

(1) Consists of at least one member of the issuer’s audit committee (or, if the issuer has no audit committee, one member from an equivalent committee of independent directors) and two or more members of the issuer’s board of directors who are not employed, directly or indirectly, by the issuer and who are not, in the case of a registered investment company, “interested persons” as defined in section 2(a)(19) of the Investment Company Act of 1940;

(2) Has adopted written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation under §205.3;

(3) Has been duly established by the issuer’s board of directors, with the authority and responsibility:

(i) To inform the issuer’s chief legal officer and chief executive officer (or the equivalents thereof) of any report of evidence of a material violation (except in the circumstances described in §205.3(b)(4));

- (ii) To determine whether an investigation is necessary regarding any report of evidence of a material violation by the issuer, its officers, directors, employees or agents and, if it determines an investigation is necessary or appropriate, to:
 - (A) Notify the audit committee or the full board of directors;
 - (B) Initiate an investigation, which may be conducted either by the chief legal officer (or the equivalent thereof) or by outside attorneys; and
 - (C) Retain such additional expert personnel as the committee deems necessary; and
 - (iii) At the conclusion of any such investigation, to:
 - (A) Recommend, by majority vote, that the issuer implement an appropriate response to evidence of a material violation; and
 - (B) Inform the chief legal officer and the chief executive officer (or the equivalents thereof) and the board of directors of the results of any such investigation under this section and the appropriate remedial measures to be adopted; and
 - (4) Has the authority and responsibility, acting by majority vote, to take all other appropriate action, including the authority to notify the Commission in the event that the issuer fails in any material respect to implement an appropriate response that the qualified legal compliance committee has recommended the issuer to take.
- (l) *Reasonable or reasonably* denotes, with respect to the actions of an attorney, conduct that would not be unreasonable for a prudent and competent attorney.
- (m) *Reasonably believes* means that an attorney believes the matter in question and that the circumstances are such that the belief is not unreasonable.
- (n) *Report* means to make known to directly, either in person, by telephone, by e-mail, electronically, or in writing.

§205.3 *Issuer as client.*

- (a) Representing an issuer. An attorney appearing and practicing before the Commission in the representation of an issuer owes his or her professional and ethical duties to the issuer as an organization. That the attorney may work with and advise the issuer's officers, directors, or employees in the course of representing the issuer does not make such individuals the attorney's clients.
- (b) Duty to report evidence of a material violation.
 - (1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney shall report such evidence to the issuer's chief legal officer (or the equivalent thereof) or to both the issuer's chief

legal officer and its chief executive officer (or the equivalents thereof) forthwith. By communicating such information to the issuer's officers or directors, an attorney does not reveal client confidences or secrets or privileged or otherwise protected information related to the attorney's representation of an issuer.

(2) The chief legal officer (or the equivalent thereof) shall cause such inquiry into the evidence of a material violation as he or she reasonably believes is appropriate to determine whether the material violation described in the report has occurred, is ongoing, or is about to occur. If the chief legal officer (or the equivalent thereof) determines no material violation has occurred, is ongoing, or is about to occur, he or she shall notify the reporting attorney and advise the reporting attorney of the basis for such determination. Unless the chief legal officer (or the equivalent thereof) reasonably believes that no material violation has occurred, is ongoing, or is about to occur, he or she shall take all reasonable steps to cause the issuer to adopt an appropriate response, and shall advise the reporting attorney thereof. In lieu of causing an inquiry under this paragraph (b), a chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a qualified legal compliance committee under paragraph (c)(2) of this section if the issuer has duly established a qualified legal compliance committee prior to the report of evidence of a material violation.

(3) Unless an attorney who has made a report under paragraph (b)(1) of this section reasonably believes that the chief legal officer or the chief executive officer of the issuer (or the equivalent thereof) has provided an appropriate response within a reasonable time, the attorney shall report the evidence of a material violation to:

(i) The audit committee of the issuer's board of directors;

(ii) Another committee of the issuer's board of directors consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940) (if the issuer's board of directors has no audit committee); or

(iii) The issuer's board of directors (if the issuer's board of directors has no committee consisting solely of directors who are not employed, directly or indirectly, by the issuer and are not, in the case of a registered investment company, "interested persons" as defined in section 2(a)(19) of the Investment Company Act of 1940).

(4) If an attorney reasonably believes that it would be futile to report evidence of a material violation to the issuer's chief legal officer and chief executive officer (or the equivalents thereof) under paragraph (b)(1) of this section, the attorney may report such evidence as provided under paragraph (b)(3) of this section.

(5) An attorney retained or directed by an issuer to investigate evidence of a material violation reported under paragraph (b)(1), (b)(3), or (b)(4) of this section shall be

deemed to be appearing and practicing before the Commission. Directing or retaining an attorney to investigate reported evidence of a material violation does not relieve an officer or director of the issuer to whom such evidence has been reported under paragraph (b)(1), (b)(3), or (b)(4) of this section from a duty to respond to the reporting attorney.

(6) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if:

(i) The attorney was retained or directed by the issuer's chief legal officer (or the equivalent thereof) to investigate such evidence of a material violation and:

(A) The attorney reports the results of such investigation to the chief legal officer (or the equivalent thereof); and

(B) Except where the attorney and the chief legal officer (or the equivalent thereof) each reasonably believes that no material violation has occurred, is ongoing, or is about to occur, the chief legal officer (or the equivalent thereof) reports the results of the investigation to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee; or

(ii) The attorney was retained or directed by the chief legal officer (or the equivalent thereof) to assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation, and the chief legal officer (or the equivalent thereof) provides reasonable and timely reports on the progress and outcome of such proceeding to the issuer's board of directors, a committee thereof to whom a report could be made pursuant to paragraph (b)(3) of this section, or a qualified legal compliance committee.

(7) An attorney shall not have any obligation to report evidence of a material violation under this paragraph (b) if such attorney was retained or directed by a qualified legal compliance committee:

(i) To investigate such evidence of a material violation; or

(ii) To assert, consistent with his or her professional obligations, a colorable defense on behalf of the issuer (or the issuer's officer, director, employee, or agent, as the case may be) in any investigation or judicial or administrative proceeding relating to such evidence of a material violation.

(8) An attorney who receives what he or she reasonably believes is an appropriate and timely response to a report he or she has made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section need do nothing more under this section with respect to his or her report.

(9) An attorney who does not reasonably believe that the issuer has made an appropriate response within a reasonable time to the report or reports made pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section shall explain his or her reasons therefor to the chief legal officer (or the equivalent thereof), the chief executive officer (or the equivalent thereof), and directors to whom the attorney reported the evidence of a material violation pursuant to paragraph (b)(1), (b)(3), or (b)(4) of this section.

(10) An attorney formerly employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing may notify the issuer's board of directors or any committee thereof that he or she believes that he or she has been discharged for reporting evidence of a material violation under this section.

(c) Alternative reporting procedures for attorneys retained or employed by an issuer that has established a qualified legal compliance committee.

(1) If an attorney, appearing and practicing before the Commission in the representation of an issuer, becomes aware of evidence of a material violation by the issuer or by any officer, director, employee, or agent of the issuer, the attorney may, as an alternative to the reporting requirements of paragraph (b) of this section, report such evidence to a qualified legal compliance committee, if the issuer has previously formed such a committee. An attorney who reports evidence of a material violation to such a qualified legal compliance committee has satisfied his or her obligation to report such evidence and is not required to assess the issuer's response to the reported evidence of a material violation.

(2) A chief legal officer (or the equivalent thereof) may refer a report of evidence of a material violation to a previously established qualified legal compliance committee in lieu of causing an inquiry to be conducted under paragraph (b)(2) of this section. The chief legal officer (or the equivalent thereof) shall inform the reporting attorney that the report has been referred to a qualified legal compliance committee. Thereafter, pursuant to the requirements under §205.2(k), the qualified legal compliance committee shall be responsible for responding to the evidence of a material violation reported to it under this paragraph (c).

(d) Issuer confidences. (1) Any report under this section (or the contemporaneous record thereof) or any response thereto (or the contemporaneous record thereof) may be used by an attorney in connection with any investigation, proceeding, or litigation in which the attorney's compliance with this part is in issue.

(2) An attorney appearing and practicing before the Commission in the representation of an issuer may reveal to the Commission, without the issuer's consent, confidential information related to the representation to the extent the attorney reasonably believes necessary:

(i) To prevent the issuer from committing a material violation that is likely to cause substantial injury to the financial interest or property of the issuer or investors;

(ii) To prevent the issuer, in a Commission investigation or administrative proceeding from committing perjury, proscribed in 18 U.S.C. 1621; suborning perjury, proscribed in 18 U.S.C. 1622; or committing any act proscribed in 18 U.S.C. 1001 that is likely to perpetrate a fraud upon the Commission; or

(iii) To rectify the consequences of a material violation by the issuer that caused, or may cause, substantial injury to the financial interest or property of the issuer or investors in the furtherance of which the attorney's services were used.

§205.4 *Responsibilities of supervisory attorneys.*

(a) An attorney supervising or directing another attorney who is appearing and practicing before the Commission in the representation of an issuer is a supervisory attorney. An issuer's chief legal officer (or the equivalent thereof) is a supervisory attorney under this section.

(b) A supervisory attorney shall make reasonable efforts to ensure that a subordinate attorney, as defined in §205.5(a), that he or she supervises or directs conforms to this part. To the extent a subordinate attorney appears and practices before the Commission in the representation of an issuer, that subordinate attorney's supervisory attorneys also appear and practice before the Commission.

(c) A supervisory attorney is responsible for complying with the reporting requirements in §205.3 when a subordinate attorney has reported to the supervisory attorney evidence of a material violation.

(d) A supervisory attorney who has received a report of evidence of a material violation from a subordinate attorney under §205.3 may report such evidence to the issuer's qualified legal compliance committee if the issuer has duly formed such a committee.

§205.5 *Responsibilities of a subordinate attorney.*

(a) An attorney who appears and practices before the Commission in the representation of an issuer on a matter under the supervision or direction of another attorney (other than under the direct supervision or direction of the issuer's chief legal officer (or the equivalent thereof)) is a subordinate attorney.

(b) A subordinate attorney shall comply with this part notwithstanding that the subordinate attorney acted at the direction of or under the supervision of another person.

(c) A subordinate attorney complies with §205.3 if the subordinate attorney reports to his or her supervising attorney under §205.3(b) evidence of a material violation of which the subordinate attorney has become aware in appearing and practicing before the Commission.

(d) A subordinate attorney may take the steps permitted or required by §205.3(b) or (c) if the subordinate attorney reasonably believes that a supervisory attorney to whom he or she has reported evidence of a material violation under §205.3(b) has failed to comply with §205.3.

§205.6 *Sanctions and discipline.*

(a) A violation of this part by any attorney appearing and practicing before the Commission in the representation of an issuer shall subject such attorney to the civil penalties and remedies for a violation of the federal securities laws available to the Commission in an action brought by the Commission thereunder.

(b) An attorney appearing and practicing before the Commission who violates any provision of this part is subject to the disciplinary authority of the Commission, regardless of whether the attorney may also be subject to discipline for the same conduct in a jurisdiction where the attorney is admitted or practices. An administrative disciplinary proceeding initiated by the Commission for violation of this part may result in an attorney being censured, or being temporarily or permanently denied the privilege of appearing or practicing before the Commission.

(c) An attorney who complies in good faith with the provisions of this part shall not be subject to discipline or otherwise liable under inconsistent standards imposed by any state or other United States jurisdiction where the attorney is admitted or practices.

(d) An attorney practicing outside the United States shall not be required to comply with the requirements of this part to the extent that such compliance is prohibited by applicable foreign law.

§205.7 *No private right of action.*

(a) Nothing in this part is intended to, or does, create a private right of action against any attorney, law firm, or issuer based upon compliance or noncompliance with its provisions.

(b) Authority to enforce compliance with this part is vested exclusively in the Commission.

APPENDIX H
CERTAIN INVESTMENT COMPANY FORMS

Form N-MFP (for use prior to June 11, 2024)	633
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OMB APPROVAL	
OMB Number:	3235-0657
Expires:	Dec. 31, 2026
Estimated average burden hours per response.	10.9

Form N-MFPs filed on or after June 11, 2024 will need to reflect amendments contained in the Release regarding Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A [Release Nos. 33-11211; 34-97876; IA-6344; IC-34959;] (July 12, 2023). See the Form N-MFP that follows on page 649.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM N-MFP

**MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS
OF MONEY MARKET FUNDS**

(See instructions following the required items)

Intentional misstatements or omissions of fact constitute federal and
criminal violations.
See 18 U.S.C. 1001.

General Information

Item 1. Report for: _____
mm/dd/yyyy

Item 2. CIK Number of Registrant: _____

Item 3. LEI of Registrant (if available) (See *General Instructions E.*) _____

Item 4. EDGAR Series Identifier: _____

Item 5. Total number of share classes in the series: _____

Item 6. Do you anticipate that this will be the fund's final filing on Form N-MFP? [] Yes [] No
(If Yes, answer Items 6.a – 6.c.)

a. Is the fund liquidating? [] Yes [] No

b. Is the fund merging with, or being acquired by, another fund? [] Yes [] No

c. If applicable, identify the successor fund by CIK, Securities Act file number, and EDGAR series identifier: _____

Item 7. Has the fund acquired or merged with another fund since the last filing? [] Yes [] No
(If Yes, answer Item 7.a.)

a. Identify the acquired or merged fund by CIK, Securities Act file number, and EDGAR series identifier: _____

SEC 2847 (5/16)

Item 8. Provide the name, e-mail address, and telephone number of the person authorized to receive information and respond to questions about this Form N-MFP:

Name _____

Email _____

Telephone _____

Part A. Series-Level Information about the Fund

Item A. 1. Securities Act File Number. _____

Item A. 2. Investment Adviser. _____

a. SEC file number of investment adviser. _____

Item A. 3. Sub-Adviser. If a fund has one or more sub-advisers, disclose the name of each sub-adviser.

a. SEC file number of each sub-adviser. _____

Item A. 4. Independent Public Accountant. _____

a. City and state of independent public accountant. _____

Item A. 5. Administrator. If a fund has one or more administrators, disclose the name of each administrator.

Item A. 6. Transfer Agent. _____

a. CIK Number. _____

b. SEC file number of transfer agent. _____

Item A. 7. Master-Feeder Funds. Is this a Feeder Fund? [] Yes [] No (If Yes, answer Items A.7.a – 7.c.)

a. Identify the Master Fund by CIK or, if the fund does not have a CIK, by name.

b. Securities Act file number of the Master Fund. _____

c. EDGAR series identifier of the Master Fund. _____

Item A. 8. Master-Feeder Funds. Is this a Master Fund? [] Yes [] No (If Yes, answer Items A.8.a – 8.c.)

a. Identify all Feeder Funds by CIK or, if the fund does not have a CIK, by name.

b. Securities Act file number of each Feeder Fund.

c. EDGAR series identifier of each Feeder Fund.

Item A. 9. Is this series primarily used to fund insurance company separate accounts? Yes No

Item A.10. Category. Indicate the category that identifies the money market fund from among the following:

Treasury Government/Agency Exempt Government
 Prime Single State Other Tax Exempt

a. Is this fund an exempt retail fund as defined in 270.2a-7(a)(25)? Yes No

Item A.11. Dollar-weighted average portfolio maturity (“WAM” as defined in rule 2a-7(d)(1)(ii)). _____

Item A.12. Dollar-weighted average life maturity (“WAL” as defined in rule 2a-7(d)(1)(iii)). Calculate WAL without reference to the exceptions in rule 2a-7(d) regarding interest rate readjustments. _____

Item A.13. Liquidity. Provide the following, as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the daily or weekly liquidity, provide the value as of the close of business on the date in that week last calculated):

a. Total Value of Daily Liquid Assets to the nearest cent:

- i. Friday, week 1: _____
- ii. Friday, week 2: _____
- iii. Friday, week 3: _____
- iv. Friday, week 4: _____
- v. Friday, week 5 (if applicable): _____

b. Total Value of Weekly Liquid Assets (including Daily Liquid Assets) to the nearest cent:

- i. Friday, week 1: _____

- ii. Friday, week 2: _____
- iii. Friday, week 3: _____
- iv. Friday, week 4: _____
- v. Friday, week 5 (if applicable): _____
- c. Percentage of Total Assets invested in Daily Liquid Assets:
 - i. Friday, week 1: _____
 - ii. Friday, week 2: _____
 - iii. Friday, week 3: _____
 - iv. Friday, week 4: _____
 - v. Friday, week 5 (if applicable): _____
- d. Percentage of Total Assets invested in Weekly Liquid Assets (including Daily Liquid Assets):
 - i. Friday, week 1: _____
 - ii. Friday, week 2: _____
 - iii. Friday, week 3: _____
 - iv. Friday, week 4: _____
 - v. Friday, week 5 (if applicable): _____

Item A.14. Provide the following, to the nearest cent:

- a. Cash. (*See General Instructions E.*) _____
- b. Total Value of portfolio securities. (*See General Instructions E.*) _____
 - i. If any portfolio securities are valued using amortized cost, the total value of the portfolio securities valued at amortized cost. _____
- c. Total Value of other assets (excluding amounts provided in A.14.a–b.) _____

Item A.15. Total value of liabilities, to the nearest cent. _____

Item A.16. Net assets of the series, to the nearest cent. _____

Item A.17. Number of shares outstanding, to the nearest hundredth. _____

Item A.18. If the fund seeks to maintain a stable price per share, state the price the fund seeks to maintain.

Item A.19. 7-day gross yield. Based on the 7 days ended on the last day of the prior month, calculate the fund's yield by determining the net change, exclusive of capital changes

and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by $(365/7)$ with the resulting yield figure carried to at least the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses. For master funds and feeder funds, report the 7-day gross yield at the master-fund level.

Item A.20. Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions) rounded to the fourth decimal place in the case of a fund with a \$1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated):

- a. Friday, week 1: _____
- b. Friday, week 2: _____
- c. Friday, week 3: _____
- d. Friday, week 4: _____
- e. Friday, week 5 (if applicable): _____

Part B: Class-Level Information about the Fund

For each Class of the Series (regardless of the number of shares outstanding in the Class), disclose the following:

Item B.1. EDGAR Class identifier. _____

Item B.2. Minimum initial investment. _____

Item B.3. Net assets of the Class, to the nearest cent. _____

Item B.4. Number of shares outstanding, to the nearest hundredth. _____

Item B.5. Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market

conditions), rounded to the fourth decimal place in the case of a fund with a \$1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated):

- a. Friday, week 1: _____
- b. Friday, week 2: _____
- c. Friday, week 3: _____
- d. Friday, week 4: _____
- e. Friday, week 5 (if applicable): _____

Item B.6. Net shareholder flow. Provide the aggregate weekly gross subscriptions (including dividend reinvestments) and gross redemptions, rounded to the nearest cent, as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the gross subscriptions or gross redemptions, provide the value as of the close of business on the date in that week last calculated):

- a. Friday, week 1:
 - i. Weekly gross subscriptions (including dividend reinvestments): _____
 - ii. Weekly gross redemptions: _____
- b. Friday, week 2:
 - i. Weekly gross subscriptions (including dividend reinvestments): _____
 - ii. Weekly gross redemptions: _____
- c. Friday, week 3:
 - i. Weekly gross subscriptions (including dividend reinvestments): _____
 - ii. Weekly gross redemptions: _____
- d. Friday, week 4:
 - i. Weekly gross subscriptions (including dividend reinvestments): _____
 - ii. Weekly gross redemptions: _____
- e. Friday, week 5 (if applicable):
 - i. Weekly gross subscriptions (including dividend reinvestments): _____
 - ii. Weekly gross redemptions: _____
- f. Total for the month reported:

i. Monthly gross subscriptions (including dividend reinvestments): _____

ii. Monthly gross redemptions: _____

Item B.7. 7-day net yield, as calculated under Item 26(a)(1) of Form N-1A (§ 274.11A of this chapter).

Item B.8. During the reporting period, did any Person pay for, or waive all or part of the fund's operating expenses or management fees? Yes No *If Yes, answer Item B.8.a.:*

a. Provide the name of the Person and describe the nature and amount of the expense payment or fee waiver, or both (reported in dollars).

Part C: Schedule of Portfolio Securities

For each security held by the money market fund, disclose the following:

Item C.1. The name of the issuer _____

Item C.2. The title of the issue (including coupon, if applicable) _____

Item C.3. The CUSIP. _____

Item C.4. The LEI (if available); (See General Instruction E.). _____

Item C.5. Other identifier. In addition to CUSIP and LEI, provide at least one of the following other identifiers, if available:

a. The ISIN; _____

b. The CIK; _____ or _____

c. Other unique identifier. _____

Item C.6. The category of investment. Indicate the category that most closely identifies the instrument from among the following:

U.S. Treasury Debt U.S. Government Agency Debt

Non-U.S. Sovereign, Sub-Sovereign Certificate of Deposit

and Supra-National debt

Non-Negotiable Time Deposit Variable Rate Demand Note

Other Municipal Security Asset Backed Commercial Paper

h. The category of investments that most closely represents the collateral, selected from among the following:

- | | |
|--|---|
| <input type="checkbox"/> Asset-Backed Securities | <input type="checkbox"/> Agency Collateralized Mortgage Obligations |
| <input type="checkbox"/> Agency Debentures and Agency Strips | <input type="checkbox"/> Agency Mortgage-Backed Securities |
| <input type="checkbox"/> Private Label Collateralized Mortgage Obligations | <input type="checkbox"/> Corporate Debt Securities |
| <input type="checkbox"/> Equities | <input type="checkbox"/> Money Market |
| <input type="checkbox"/> U.S. Treasuries (including strips) | |

Other Instrument. If *Other Instrument*, include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

If multiple securities of an issuer are subject to the repurchase agreement, the securities may be aggregated, in which case disclose:

- a. the total principal amount and value _____ and
b. the range of maturity dates and interest rates. _____

Item C.9. Is the security an Eligible Security? Yes No

Item C.10. Security rating(s) considered. Provide each rating assigned by any NRSRO that the fund's board of directors (or its delegate) considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO). If none, leave blank.

Item C.11. The maturity date determined by taking into account the maturity shortening provisions of rule 2a-7(i) (i.e., the maturity date used to calculate WAM under rule 2a-7(d)(1)(ii)).

mm/dd/yyyy

Item C.12. The maturity date determined without reference to the exceptions in rule 2a-7(i) regarding interest rate readjustments (i.e., the maturity date used to calculate WAL under rule 2a-7(d)(1)(iii)).

mm/dd/yyyy

Item C.13. The maturity date determined without reference to the maturity shortening provisions of rule 2a-7(i) (i.e., the ultimate legal maturity date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid).

mm/dd/yyyy

Item C.14 Does the security have a Demand Feature on which the fund is relying to determine the quality, maturity or liquidity of the security? Y N *If Yes, answer Items C.14.a – 14.e. Where applicable, provide the information required in Items C.14.b – 14.e in the order that each Demand Feature issuer was reported in Item C.14.a.*

a. The identity of the Demand Feature issuer(s). _____

b. The amount (i.e., percentage) of fractional support provided by each Demand Feature issuer.

c. The period remaining until the principal amount of the security may be recovered through the Demand Feature.

d. Is the demand feature conditional? Yes No

e. Rating(s) considered. Provide each rating assigned to the demand feature(s) or demand feature provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

Item C.15. Does the security have a Guarantee (other than an unconditional letter of credit disclosed in item

C.14 above) on which the fund is relying to determine the quality, maturity or liquidity of the security? Yes No *If Yes, answer Items C.15.a – 15.c. Where applicable, provide the information required in Item C.15.b – 15.c in the order that each Guarantor was reported in Item C.15.a.*

a. The identity of the Guarantor(s). _____

b. The amount (i.e., percentage) of fractional support provided by each Guarantor. _____

- c. Rating(s) considered. Provide each rating assigned to the guarantee(s) or guarantor(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO).

If none, leave blank.

Item C.16. Does the security have any enhancements, other than those identified in Items C.14 and C.15 above, on which the fund is relying to determine the quality, maturity or liquidity of the security?

Yes No *If Yes, answer Items C.16.a – 16.d. Where applicable, provide the information required in Items C.16.b – 16.d in the order that each enhancement provider was reported in Item C.16.a.*

a. The identity of the enhancement provider(s). _____

b. The type of enhancement(s). _____

c. The amount (i.e., percentage) of fractional support provided by each enhancement provider.

d. Rating(s) considered. Provide each rating assigned to the enhancement(s) or enhancement provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO).

If none, leave blank.

Item C.17. The yield of the security as of the reporting date. _____

Item C.18. The total Value of the fund's position in the security, to the nearest cent: (*See General Instruction E.*)

a. *Including* the value of any sponsor support: _____

b. *Excluding* the value of any sponsor support: _____

Item C.19. The percentage of the money market fund's net assets invested in the security, to the nearest hundredth of a percent. _____%

Item C.20. Is the security categorized at level 3 in the fair value hierarchy under U.S. Generally Accepted Accounting Principles (ASC 820, *Fair Value Measurement*)?
 Yes No

Item C.21. Is the security a Daily Liquid Asset? Yes No

Item C.22. Is the security a Weekly Liquid Asset? Yes No

Item C.23. Is the security an Illiquid Security? Yes No

Item C.24. Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security. If none, leave blank.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Registrant)

mm/dd/yy

(Signature)

Name Title

*Print name and title of the signing officer under his/her signature.

U.S. SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-MFP
MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS OF MONEY
MARKET FUNDS

Form N-MFP is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a-7 under the Investment Company Act of 1940 (“Act”) (17 CFR 270.2a-7) (“money market funds”), to file reports with the Commission pursuant to rule 30b1-7 under the Act (17 CFR 270.30b1-7). The Commission may use the information provided on Form N-MFP in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N-MFP

Form N-MFP is the public reporting form that is to be used for monthly reports of money market funds required by section 30(b) of the Act and rule 30b1-7 under the Act (17 CFR 270.30b1-7). A money market fund must report information about the fund and its portfolio holdings as of the last business day or any subsequent calendar day of the preceding month. The Form N-MFP must be filed with the Commission no later than the fifth business day of each month, but may be filed any time beginning on the first business day of the month.

Each money market fund, or series of a money market fund, is required to file a separate form. If the money market fund does not have any classes, the fund must provide the information required by Part B for the series.

A money market fund may file an amendment to a previously filed Form N-MFP at any time, including an amendment to correct a mistake or error in a previously filed form. A fund that files an amendment to a previously filed form must provide information in response to all items of Form N-MFP, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Form N-MFP

A money market fund must file Form N-MFP in accordance with rule 232.13 of Regulation S-T. Form N-MFP must be filed electronically using the Commission's EDGAR system.

D. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-MFP unless the Form displays a currently valid Office of Management and Budget ("OMB") control number.

Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N-MFP are to the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N-MFP have the same meaning as in the Investment Company Act or related rules, unless otherwise indicated.

As used in this Form N-MFP, the terms set out below have the following meanings:

"Cash" means demand deposits in depository institutions and cash holdings in custodial accounts.

"Class" means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f-3 [17 CFR 270.18f-3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a-18(f), 18(g), and 18(i)].

"Fund" means the Registrant or a separate Series of the Registrant. When an item of Form N-MFP specifically applies to a Registrant or a Series, those terms will be used.

"LEI" means, with respect to any company, the "legal entity identifier" assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. In the case of a financial institution,

if a "legal entity identifier" has not been assigned, then LEI means the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

“Master-Feeder Fund” means a two-tiered arrangement in which one or more Funds (or registered or unregistered pooled investment vehicles) (each a “Feeder Fund”) holds shares of a single Fund (the “Master Fund”) in accordance with section 12(d)(1)(E) [15 U.S.C. 80a-12(d)(1)(E)].

“Money Market Fund” means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a-7 (17 CFR 270.2a-7) under the Investment Company Act of 1940.

“Securities Act” means the Securities Act of 1933 [15 U.S.C. 77a-aa].

“Series” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) [17 CFR 270.18f-2(a)].

“Value” has the meaning defined in section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)).

For Use After June 11, 2024
FORM N-MFP

MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS
OF MONEY MARKET FUNDS

(See instructions following the required items)

Intentional misstatements or omissions of fact constitute Federal and
criminal violations.
See 18 U.S.C. 1001.

General Information

Item 1. Report for: _____
mm/dd/yyyy

Item 2. Name of Registrant: _____

Item 3. CIK Number of Registrant: _____

Item 4. LEI of Registrant: _____

Item 5. Name of Series: _____

Item 6. LEI of Series: _____

Item 7. EDGAR Series Identifier: _____

Item 8. Total number of share classes in the series: _____

Item 9. Do you anticipate that this will be the fund's final filing on Form N-MFP? [] Yes [] No
If Yes, answer Items 9.a – 9.c.

a. Is the fund liquidating? [] Yes [] No

b. Is the fund merging with, or being acquired by, another fund? [] Yes [] No

c. If applicable, identify the successor fund by CIK, Securities Act file number, and
EDGAR series identifier: _____

Item 10. Has the fund acquired or merged with another fund since the last filing? [] Yes [] No
If Yes, answer Item 10.a.

a. Identify the acquired or merged fund by CIK, Securities Act file number, and EDGAR
series identifier: _____

Item 11. Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N-MFP:

Name _____

Email _____

Telephone _____

Part A. Series-Level Information about the Fund

Item A.1. Securities Act File Number. _____

Item A.2. Investment Adviser. _____

a. SEC file number of investment adviser. _____

Item A.3. Sub-Adviser. If a fund has one or more sub-advisers, disclose the name of each sub-adviser. _____

a. SEC file number of each sub-adviser. _____

Item A.4. Independent Public Accountant. _____

a. City and state of independent public accountant. _____

Item A.5. Administrator. If a fund has one or more administrators, disclose the name of each administrator. _____

Item A.6. Transfer Agent. _____

a. CIK Number. _____

b. SEC file number of transfer agent. _____

Item A.7. Master-Feeder Funds. Is this a Feeder Fund? Yes No

If Yes, answer Items A.7.a – 7.c.

a. Identify the Master Fund by CIK or, if the fund does not have a CIK, by name.

b. Securities Act file number of the Master Fund. _____

c. EDGAR series identifier of the Master Fund. _____

Item A.8. Master-Feeder Funds. Is this a Master Fund? Yes No

If Yes, answer Items A.8.a – 8.c.

a. Identify all Feeder Funds by CIK or, if the fund does not have a CIK, by name.

b. Securities Act file number of each Feeder Fund. _____

c. EDGAR series identifier of each Feeder Fund. _____

Item A.9. Is this series primarily used to fund insurance company separate accounts?

Yes No

Item A.10. Category. Indicate the category that identifies the money market fund from among the following:

Government

Prime

Single State

Other Tax Exempt

a. Is this fund a Retail Money Market Fund? Yes No

b. If this is a Government Money Market Fund, does the fund typically invest at least 80% of the value of its assets in U.S. Treasury obligations or repurchase agreements collateralized by U.S. Treasury obligations? Yes No

Item A.11. Dollar-weighted average portfolio maturity ("WAM" as defined in rule 2a-7(d)(1)(ii)). _____

Item A.12. Dollar-weighted average life maturity ("WAL" as defined in rule 2a-7(d)(1)(iii)). Calculate WAL without reference to the exceptions in rule 2a-7(i) regarding interest rate readjustments. _____

Item A.13. Liquidity. Provide the following, as of the close of business on each business day of the month reported: _____

a. Total Value of Daily Liquid Assets to the nearest cent. _____

b. Total Value of Weekly Liquid Assets (including Daily Liquid Assets) to the nearest cent. _____

c. Percentage of Total Assets invested in Daily Liquid Assets. _____

d. Percentage of Total Assets invested in Weekly Liquid Assets (including Daily Liquid Assets). _____

e. Date. _____

Item A.14. Provide the following, to the nearest cent:

a. Cash. (See *General Instructions E.*) _____

b. Total Value of portfolio securities. (See *General Instructions E.*) _____

i. If any portfolio securities are valued using amortized cost, the total value of the portfolio securities valued at amortized cost. _____

c. Total Value of other assets (excluding amounts provided in A.14.a–b.) _____

Item A.15. Total value of liabilities, to the nearest cent. _____

Item A.16. Net assets of the series, to the nearest cent. _____

Item A.17. Number of shares outstanding, to the nearest hundredth. _____

Item A.18. Does the fund seek to maintain a stable price per share? [] Yes [] No

a. If yes, state the price the fund seeks to maintain. _____

Item A.19. 7-day gross yield. For each business day, based on the immediately preceding 7 business days, calculate the fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses. For master funds and feeder funds, report the 7-day gross yield at the master-fund level.

a. 7-day gross yield _____

b. Date _____

Item A.20. Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions) rounded to the fourth decimal place in the case of a fund with a \$1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each business day of the month reported.

a. Net asset value per share _____

b. Date _____

Item A.21. Is the fund established as a cash management vehicle for affiliated funds or other accounts managed by related entities or their affiliates and not available to other investors? [] Yes [] No

Item A.22. Liquidity Fee. During the reporting period, did the fund apply any liquidity fees under rule 2a-7(c)(2)? [] Yes [] No

If Yes, answer Item A.22.a.

a. For each business day the fund applied a liquidity fee during the reporting period, provide:

i. The date on which the liquidity fee was applied: _____

ii. The type of liquidity fee:

Mandatory liquidity fee, with the amount of the fee based on good faith estimates of liquidity costs under rule 2a-7(c)(2)(iii)(A)

Mandatory liquidity fee, using the default amount under rule 2a-7(c)(2)(iii)(C)

Discretionary liquidity fee under rule 2a-7(c)(2)(ii)

iii. The total dollar amount of the liquidity fee applied to redemptions: _____

iv. The amount of the liquidity fee as a percentage of the value of shares redeemed: _____

Part B: Class-Level Information about the Fund

For each Class of the Series (regardless of the number of shares outstanding in the Class), disclose the following:

Item B.1. Full name of the Class. _____

Item B.2. EDGAR Class identifier. _____

Item B.3. Minimum initial investment. _____

Item B.4. Net assets of the Class, to the nearest cent. _____

Item B.5. Number of shares outstanding, to the nearest hundredth. _____

Item B.6. Net asset value per share. Provide the net asset value per share, calculated using available market quotations (or an appropriate substitute that reflects current market conditions) rounded to the fourth decimal place in the case of a fund with a \$1.0000 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each business day of the month reported.

a. Net asset value per share _____

b. Date _____

Item B.7. Shareholder flow. Provide (a) the daily gross subscriptions (including dividend reinvestments) and gross redemptions, rounded to the nearest cent, as of the close of business on each business day of the month reported; and (b) the total gross subscriptions (including dividend reinvestments) and total gross redemptions for the month reported. For purposes of this Item, report gross subscriptions (including dividend reinvestments) and gross redemptions as of the trade date, and for Master-Feeder Funds, only report the required shareholder flow data at the Feeder Fund level.

a. Daily shareholder flows:

i. Gross subscriptions (including dividend reinvestments) _____

ii. Gross redemptions _____

iii. Date _____

b. Monthly shareholder flows:

i. Total gross subscriptions (including dividend reinvestments) _____

ii. Total gross redemptions _____

Item B.8. 7-day net yield for each business day of the month reported, as calculated under Item 26(a)(1) of Form N-1A (§ 274.11A of this chapter) except based on the 7 business days immediately preceding a given business day.

a. 7-day net yield _____

b. Date _____

Item B.9. During the reporting period, did any person pay for or waive all or part of the fund's operating expenses or management fees? [] Yes [] No *If Yes, answer Item B.9.a.*

a. Total amount of the expense payment or fee waiver, or both (reported in dollars).

Item B.10. For each person who owns of record or is known by the fund to own beneficially 5% or more of the shares outstanding in the Class, provide the following information. For purposes of this question, if the fund knows that two or more beneficial owners of the Class are affiliated with each other, treat them as a single beneficial owner when calculating the percentage ownership and identify separately each affiliated beneficial owner by type and the percentage interest of each affiliated beneficial owner. An affiliated beneficial owner is one that directly or indirectly controls or is controlled by another beneficial owner or is under common control with any other beneficial owner.

a. Type of beneficial owner or record owner:

Retail investor

Non-financial corporation

- Pension plan
- Non-profit
- State or municipal government entity (excluding governmental pension plans)
- Registered investment company
- Private fund
- Depository institution or other banking institution
- Sovereign wealth fund
- Broker-dealer
- Insurance company
- Other

If *Other*, provide a brief description of the type of investor included in this category. _____

b. Percent of shares outstanding in the Class owned of record _____

c. Percent of shares outstanding in the Class owned beneficially _____

Item B.11. Shareholder Composition. If the fund is not a Government Money Market Fund or Retail Money Market Fund, identify the percentage of investors within the following categories:

a. Non-financial corporations: _____

b. Pension plans: _____

c. Non-profits: _____

d. State or municipal government entities (excluding governmental pension plans):

e. Registered investment companies: _____

f. Private funds: _____

g. Depository institutions and other banking institutions: _____

h. Sovereign wealth funds: _____

i. Broker-dealers: _____

j. Insurance companies: _____

k. Other: _____

If *Other*, provide a brief description of the types of investors included in this category. _____

Item B.12. Share Cancellation. During the reporting period, were any shares cancelled under rule 2a-7(c)(3)? Yes No *If Yes, answer Item B.12.a.*

a. For each business day shares were cancelled under rule 2a-7(c)(3) during the reporting period, provide:

i. Dollar value of shares cancelled _____

ii. Number of shares cancelled _____

iii. Date _____

Part C: Schedule of Portfolio Securities

For each security held by the money market fund, disclose the following information.

Item C.1. The name of the issuer or the name of the counterparty in a repurchase agreement.

Item C.2. The title of the issue (including coupon, if applicable) _____

Item C.3. The CUSIP. _____

Item C.4. The LEI. _____

Item C.5. Other identifier. In addition to CUSIP and LEI, provide at least one of the following other identifiers, if available:

a. The ISIN; _____

b. The CIK; _____

c. The RSSD ID; _____ or

d. Other unique identifier. _____

Item C.6. The category of investment. Indicate the category that most closely identifies the instrument from among the following:

U.S. Treasury Debt

U.S. Government Agency Debt
(if categorized as coupon-paying notes)

U.S. Government Agency Debt
(if categorized as no-coupon discount notes)

Non-U.S. Sovereign, Sub- Sovereign and
Supra-National Debt

Certificate of Deposit

Non-Negotiable Time Deposit

Variable Rate Demand Note

Other Municipal Security

- | | |
|--|---|
| <input type="checkbox"/> Asset Backed Commercial Paper | <input type="checkbox"/> Other Asset Backed Securities |
| <input type="checkbox"/> U.S. Treasury Repurchase Agreement
<i>if collateralized only by U.S. Treasuries (including Strips) and cash and cash</i> | <input type="checkbox"/> U.S. Government Agency Repurchase Agreement
<i>collateralized only by U.S. Government Agency securities, U.S. Treasuries,</i> |
| <input type="checkbox"/> Other Repurchase Agreement
<i>if collateral falls outside Treasury, Government Agency, and cash</i> | <input type="checkbox"/> Insurance Company Funding Agreement |
| <input type="checkbox"/> Investment Company | <input type="checkbox"/> Financial Company Commercial Paper |
| <input type="checkbox"/> Non-Financial Company Commercial Paper | <input type="checkbox"/> Tender Option Bond |
| <input type="checkbox"/> Other Instrument | |

If *Other Instrument*, include a brief description.

Item C.7. If the security is a repurchase agreement, is the fund treating the acquisition of the repurchase agreement as the acquisition of the underlying securities (i.e., collateral) for purposes of portfolio diversification under rule 2a-7? Yes No

Item C.8. For all repurchase agreements, specify whether the repurchase agreement is “open” (i.e., the repurchase agreement has no specified end date and, by its terms, will be extended or “rolled” each business day (or at another specified period) unless the investor chooses to terminate it), and describe the securities subject to the repurchase agreement (i.e., collateral).

a. Is the repurchase agreement “open”? Yes No

b. Is the repurchase agreement centrally cleared? Yes No

If *Yes*, provide the name of the central clearing counterparty (CCP).

c. Is the repurchase agreement settled on the triparty platform Yes No

d. The name of the collateral issuer. _____

e. LEI. _____

f. The CUSIP. _____

g. Maturity date. _____

h. Coupon or yield. _____

i. The principal amount, to the nearest cent. _____

j. Value of collateral, to the nearest cent. _____

k. The category of investment that most closely represents the collateral, selected from among the following:

- | | |
|--|---|
| <input type="checkbox"/> Asset-Backed Securities | <input type="checkbox"/> Agency Collateralized Mortgage Obligations |
| <input type="checkbox"/> Agency Debentures and Agency Strips | <input type="checkbox"/> Agency Mortgage-Backed Securities |
| <input type="checkbox"/> Private Label Collateralized Mortgage Obligations | <input type="checkbox"/> Corporate Debt Securities |
| <input type="checkbox"/> Equities | <input type="checkbox"/> Money Market |
| <input type="checkbox"/> U.S. Treasuries (including strips) | <input type="checkbox"/> Cash |
- Other Instrument. If *Other Instrument*, include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

If multiple securities of an issuer are subject to the repurchase agreement, the securities may be aggregated, in which case disclose:

- a. the total principal amount and value _____ and
b. the range of maturity dates and interest rates. _____

Item C.9. Is the security an Eligible Security? Yes No

Item C.10. Security rating(s) considered. Provide each rating assigned by any NRSRO that the fund's board of directors (or its delegate) considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO). If none, leave blank.

Item C.11. The maturity date determined by taking into account the maturity shortening provisions of rule 2a-7(i) (i.e., the maturity date used to calculate WAM under rule 2a-7(d)(1)(ii)).

mm/dd/yyyy

Item C.12. The maturity date determined without reference to the exceptions in rule 2a-7(i) regarding interest rate readjustments (i.e., the maturity date used to calculate WAL under rule 2a-7(d)(1)(iii)).

mm/dd/yyyy

Item C.13. The maturity date determined without reference to the maturity shortening provisions of rule 2a-7(i) (i.e., the ultimate legal maturity date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid).

mm/dd/yyyy

Item C.14. Does the security have a Demand Feature on which the fund is relying to determine the quality, maturity or liquidity of the security? Y N *If Yes, answer Items C.14.a – 14.e. Where applicable, provide the information required in Items C.14.b-14.e in the order that each Demand Feature issuer was reported in Item C.14.a.*

a. The identity of the Demand Feature issuer(s). _____

b. The amount (i.e., percentage) of fractional support provided by each Demand Feature issuer.

c. The period remaining until the principal amount of the security may be recovered through the Demand Feature.

d. Is the demand feature conditional? Yes No

e. Rating(s) considered. Provide each rating assigned to the demand feature(s) or demand feature provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

Item C.15. Does the security have a Guarantee (other than an unconditional letter of credit disclosed in item C.14 above) on which the fund is relying to determine the quality, maturity or liquidity of the security? Yes No *If Yes, answer Items C.15.a – 15.c. Where applicable, provide the information required in Item C.15.b – 15.c in the order that each Guarantor was reported in Item C.15.a.*

a. The identity of the Guarantor(s). _____

b. The amount (i.e., percentage) of fractional support provided by each Guarantor.

c. Rating(s) considered. Provide each rating assigned to the guarantee(s) or guarantor(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO).

If none, leave blank.

Item C.16. Does the security have any enhancements, other than those identified in Items C.14 and C.15 above, on which the fund is relying to determine the quality, maturity or liquidity of the security?

Yes No *If Yes, answer Items C.16.a – 16.d. Where applicable, provide the information required in Items C.16.b – 16.d in the order that each enhancement provider was reported in Item C.16.a.*

a. The identity of the enhancement provider(s). _____

b. The type of enhancement(s). _____

c. The amount (i.e., percentage) of fractional support provided by each enhancement provider. _____

d. Rating(s) considered. Provide each rating assigned to the enhancement(s) or enhancement provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank. _____

Item C.17. The yield of the security as of the reporting date. _____

Item C.18. The total Value of the fund's position in the security, to the nearest cent: (*See General Instruction E.*) _____

a. *Including* the value of any sponsor support: _____

b. *Excluding* the value of any sponsor support: _____

Item C.19. The percentage of the money market fund's net assets invested in the security, to the nearest hundredth of a percent. _____%

Item C.20. Is the security categorized at level 3 in the fair value hierarchy under U.S. Generally Accepted Accounting Principles (ASC 820, *Fair Value Measurement*)?
 Yes No

Item C.21. Is the security a Daily Liquid Asset? Yes No

Item C.22. Is the security a Weekly Liquid Asset? Yes No

Item C.23. Is the security an Illiquid Security? Yes No

Item C.24. Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security. If none, leave blank.

Part D. Disposition of Portfolio Securities

Item D.1. Disclose the gross market value of portfolio securities the money market fund sold or disposed of during the reporting period by category of investment. Do not include portfolio securities that the fund held until maturity. A money market fund that is a Government Money Market Fund or a tax exempt fund, as defined in rule 2a-7(a)(23) [17 CFR 270.2a-7(a)(23)], is not required to respond to Part D.

- a. U.S. Treasury Debt, to the nearest cent. _____
- b. U.S. Government Agency Debt (if categorized as coupon-paying notes), to the nearest cent. _____
- c. U.S. Government Agency Debt (if categorized as no-coupon discount notes), to the nearest cent. _____
- d. Non-U.S. Sovereign, Sub-Sovereign and Supra-National Debt, to the nearest cent. _____
- e. Certificate of Deposit, to the nearest cent. _____
- f. Non-Negotiable Time Deposit, to the nearest cent. _____
- g. Variable Rate Demand Note, to the nearest cent. _____
- h. Other Municipal Security, to the nearest cent. _____
- i. Asset Backed Commercial Paper, to the nearest cent. _____
- j. Other Asset Backed Securities, to the nearest cent. _____
- k. U.S. Treasury Repurchase Agreement (if collateralized only by U.S. Treasuries (including Strips) and cash), to the nearest cent. _____
- l. U.S. Government Agency Repurchase Agreement (collateralized only by U.S. Government Agency securities, U.S. Treasuries, and cash), to the nearest cent. _____

- m. Other Repurchase Agreement (if collateral falls outside Treasury, Government Agency, and cash), to the nearest cent. _____
- n. Insurance Company Funding Agreement, to the nearest cent. _____
- o. Investment Company, to the nearest cent. _____
- p. Financial Company Commercial Paper, to the nearest cent. _____
- q. Non-Financial Company Commercial Paper, to the nearest cent. _____

- r. Tender Option Bond, to the nearest cent. _____
 - s. Other Instrument, to the nearest cent. _____
- If *Other Instrument*, include a brief description _____

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Registrant)

mm/dd/yy

(Signature)

Name Title

*Print name and title of the signing officer under his/her signature.

FORM N-MFP MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS OF MONEY MARKET FUNDS

Form N-MFP is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a-7 under the Investment Company Act of 1940 (“Act”) (17 CFR 270.2a-7) (“money market funds”), to file reports with the Commission pursuant to rule 30b1-7 under the Act (17 CFR 270.30b1-7). The Commission may use the information provided on Form N-MFP in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N-MFP

Form N-MFP is the public reporting form that is to be used for monthly reports of money market funds required by section 30(b) of the Act and rule 30b1-7 under the Act (17 CFR 270.30b1-7). A money market fund must report information about the fund and its portfolio holdings as of the last business day or any subsequent calendar day of the preceding month. The Form N-MFP must be filed with the Commission no later than the fifth business day of each month, but may be filed any time beginning on the first business day of the month. Each money market fund, or series of a money market fund, is required to file a separate form. If the money market fund does not have any classes, the fund must provide the information required by Part B for the series. A money market fund is not required to respond to an item that is wholly inapplicable. If an item requests information that is not applicable (for example, a company does not have an LEI), respond N/A.

A money market fund may file an amendment to a previously filed Form N-MFP at any time, including an amendment to correct a mistake or error in a previously filed form. A fund that files an amendment to a previously filed form must provide information in response to all items of Form N-MFP, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Form N-MFP

A money market fund must file Form N-MFP in accordance with rule 232.13 of Regulation S-T. Form N-MFP must be filed electronically using the Commission’s EDGAR system.

D. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-MFP unless the Form displays a currently valid Office of Management and Budget (“OMB”) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N-MFP are to the Investment Company Act of 1940 [15 U.S.C. 80a] (the “Investment Company Act”), unless otherwise indicated. Terms used in this Form N-MFP have the same meaning as in the Investment Company Act or related rules, unless otherwise indicated.

As used in this Form N-MFP, the terms set out below have the following meanings:

“Cash” means demand deposits in depository institutions and cash holdings in custodial accounts.

“Class” means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f-3 [17 CFR 270.18f-3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a- 18(f), 18(g), and 18(i)].

“Fund” means the Registrant or a separate Series of the Registrant. When an item of Form N-MFP specifically applies to a Registrant or a Series, those terms will be used.

“Government Money Market Fund” means a money market fund as defined in 17 CFR 270.2a-7(a)(14).

“LEI” means, with respect to any company, the “legal entity identifier” assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury’s Office of Financial Research or a financial regulator.

“Master-Feeder Fund” means a two-tiered arrangement in which one or more Funds (or registered or unregistered pooled investment vehicles) (each a “Feeder Fund”) holds shares of a single Fund (the “Master Fund”) in accordance with section 12(d)(1)(E) [15 U.S.C. 80a-12(d)(1)(E)].

“Money Market Fund” means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a-7 (17 CFR 270.2a-7) under the Investment Company Act of 1940.

“Retail Money Market Fund” means a money market fund as defined in 17 CFR 270.2a-7(a)(21).

“RSSD ID” means the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

“Securities Act” means the Securities Act of 1933 [15 U.S.C. 77a - aa].

“Series” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) [17 CFR 270.18f-2(a)].

“Value” has the meaning defined in section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)).

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-PORT

This is a reference copy of Form N-PORT. You may not send a completed printout of this form to the SEC to satisfy a filing obligation. You can only satisfy an SEC filing obligation by submitting the information required by this form to the SEC in electronic format online at <https://www.edgarfiling.sec.gov>.

This version of Form N-PORT is effective December 11, 2023 and includes amendments pursuant to Investment Company Names, Investment Company Act Release No. 35000 [88 FR 70436 (Oct. 11, 2023)]. More information about compliance dates and the amendments the Commission adopted may be found in this release.

OMB APPROVAL
OMB Number: 3235-0730 Expires: December 31, 2026 Estimated average burden hours per response 13

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM N-PORT
MONTHLY PORTFOLIO INVESTMENTS REPORT**

Form N-PORT is to be used by a registered management investment company, or an exchange-traded fund organized as a unit investment trust, or series thereof (“Fund”), other than a Fund that is regulated as a money market fund (“money market fund”) under rule 2a-7 under the Investment Company Act of 1940 [15 U.S.C. 80a] (“Act”) (17 CFR 270.2a-7) or a small business investment company (“SBIC”) registered on Form N-5 (17 CFR 239.24 and 274.5), to file reports of monthly portfolio holdings pursuant to rule 30b1-9 under the Act (17 CFR 270.30b1-9). The Commission may use the information provided on Form N-PORT in its regulatory, enforcement, examination, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-PORT

Form N-PORT is the reporting form that is to be used for monthly reports of Funds other than money market funds and SBICs under section 30(b) of the Act, as required by rule 30b1-9 under the Act (17 CFR 270.30b1-9). Funds must report information quarterly about their portfolios and each of their portfolio holdings as of the last business day, or last calendar day, of each month other than the information reported in Items B.11 and C.2.e, which Funds must report quarterly about their portfolios and each of their portfolio holdings as of the last business day, or calendar day, of the third month of the quarter. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

Reports on Form N-PORT must disclose portfolio information as calculated by the fund for the reporting period’s ending net asset value (commonly, and as permitted by rule 2a-4, the first business day following the trade date). A Fund must maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month other than the information reported in Items B.11 and C.2.e which is required to be maintained

no later than 30 days after the end of each quarter. Such information shall be treated as a record under section 31(a)(1) of the Act and rule 31a-1(b) thereunder subject to the requirements of rule 31a-2(a)(2). Reports on Form N-PORT for each month in each fiscal quarter of a fund must be filed with the Commission no later than 60 days after the end of such fiscal quarter. If the due date falls on a weekend or holiday, the filing deadline will be the next business day.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 2940 (12/23)

A Fund may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A Fund that files an amendment to a previously filed report must provide information in response to all items of Form N-PORT, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements shall be carefully read and observed in the preparation and filing of reports on this Form, except that any provision in the Form or in these instructions shall be controlling.

C. Filing of Reports

Reports must be filed electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system in accordance with Regulation S-T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

D. Paperwork Reduction Act Information

A Fund is not required to respond to the collection of information contained in Form N-PORT unless the form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, Washington, DC 20549. OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N-PORT are to the Act, unless otherwise indicated. Terms used in this Form N-PORT have the same meanings as in the Act or related rules (including rule 18f-4 solely for Items B.9 and 10 of the Form), unless otherwise indicated.

As used in this Form N-PORT, the terms set out below have the following meanings:

“Absolute VaR Test” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Class” means a class of shares issued by a Fund that has more than one class that represents interests in the same portfolio of securities under rule 18f-3 [17 CFR 270.18f-3] or under an order exempting the Fund from provisions of section 18 of the Act [15 U.S.C. 80a-18].

“Controlled Foreign Corporation” has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

“Derivatives Exposure” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Designated Index” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Designated Reference Portfolio” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Exchange-Traded Fund” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

“Fund” means the Registrant or a separate Series of the Registrant. When an item of Form N-PORT specifically applies to a Registrant or a Series, those terms will be used.

“Highly Liquid Investment Minimum” has the meaning defined in rule 22e-4(a)(7) [17 CFR 270.22e-4(a)(7)].

“Illiquid Investment” has the meaning defined in rule 22e-4(a)(8) [17 CFR 270.22e-4(a)(8)].

“ISIN” means, with respect to any security, the “international securities identification number” assigned by a national numbering agency, partner, or substitute agency that is coordinated by the Association of National Numbering Agencies.

“LEI” means, with respect to any company, the “legal entity identifier” as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation. In the case of a financial institution, if a “legal entity identifier” has not been assigned, then provide the RSSD ID, if any, assigned by the National Information Center of the Board of Governors of the Federal Reserve System.

“Multiple Class Fund” means a Fund that has more than one Class.

“Registrant” means a management investment company, or an Exchange-Traded Fund organized as a unit investment trust, registered under the Act.

“Relative VaR Test” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Restricted Security” has the meaning defined in rule 144(a)(3) under the Securities Act of 1933 [17 CFR 230.144(a)(3)].

“Securities Portfolio” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Series” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) [17 CFR 270.18f-2(a)].

“Swap” means either a “security-based swap” or a “swap” as defined in sections 3(a)(68) and (69) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68) and (69)] and any rules, regulations, or interpretations of the Commission with respect to such instruments.

“Value-at-Risk” or VaR has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“VaR Ratio” means the value of the Fund’s portfolio VaR divided by the VaR of the Designated Reference Portfolio.]

F. Public Availability

Information reported on Form N-PORT for the third month of each Fund’s fiscal quarter will be made publicly available upon filing.

The SEC does not intend to make public the information reported on Form N-PORT for the first and second months of each Fund’s fiscal quarter that is identifiable to any particular fund or adviser, or any information reported with respect to a Fund’s Highly Liquid Investment Minimum (Item B.7), derivatives transactions (Item B.8), Derivatives Exposure for limited derivatives users (Item B.9), median daily VaR (Item B.10.a), median VaR Ratio (Item B.10.b.iii), VaR backtesting results (Item B.10.c), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for portfolio investments (Item C.7), or miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) that is identifiable to any particular fund or adviser. However, the SEC may use information reported on this Form in its regulatory programs, including examinations, investigations, and enforcement actions.

G. Responses to Questions

In responding to the items on this Form, the following guidelines apply unless otherwise specifically indicated:

- Funds may respond to this Form using their own internal methodologies and the conventions of their service providers, provided the information is consistent with information that they report internally and to current and prospective investors. However,

the methodologies and conventions must be consistently applied and the Fund's responses must be consistent with any instructions or other guidance relating to this Form. A Fund may explain any of its methodologies, including related assumptions, in Part E.

- A Fund is not required to respond to an item that is wholly inapplicable (for example, no response would be required for Item C.11 when reporting information about an investment that is not a derivative). If a sub-item requests information that is not applicable (for example, an LEI for a counterparty that does not have an LEI), respond N/A;
- If an item requests the name of an entity, provide the full name to the extent known, and do not use abbreviations (other than abbreviations that are part of the full name);
- If an item requests information expressed as a percentage, enter the response as a percentage (not a decimal), (*e.g.*, 5.27%);
- For currencies other than U.S. dollars, also report the applicable three-letter alphabetic currency code pursuant to the International Organization for Standardization ("ISO") 4217 standard;
- If an item requests a unique identifier, such an identifier may be internally generated by the Fund or provided by a third party, but should be consistently used across the Fund's filings for reporting that investment so that the Commission, investors, and other users of the information can track the investment from report to report;
- If an item requests a date, provide information in yyyy/mm/dd format; and
- If an item requests information regarding a "holding" or "investment," separately report information as to each holding or investment that is recorded in the Fund's books as part of a larger transaction. For example, two or more partially offsetting legs of a transaction entered into with the same counterparty under a common master agreement shall each be separately reported.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM N-PORT
MONTHLY SCHEDULE OF PORTFOLIO INVESTMENTS

Part A: General Information

Item A.1. Information about the Registrant.

- a. Name of Registrant.
- b. Investment Company Act file number for Registrant: (e.g., 811-_____).
- c. CIK number of Registrant.
- d. LEI of Registrant.
- e. Address and telephone number of Registrant.

Item A.2. Information about the Series.

- a. Name of Series.
- b. EDGAR series identifier (if any).
- c. LEI of Series.

Item A.3. Reporting period.

- a. Date of fiscal year-end.
- b. Date as of which information is reported.

Item A.4. Does the Fund anticipate that this will be its final filing on Form N-PORT? [Y/N]

Part B: Information About the Fund

Report the following information for the Fund and its consolidated subsidiaries.

Item B.1. Assets and liabilities. Report amounts in U.S. dollars.

- a. Total assets, including assets attributable to miscellaneous securities reported in Part D.
- b. Total liabilities.
- c. Net assets.

Item B.2. Certain assets and liabilities. Report amounts in U.S. dollars.

- a. Assets attributable to miscellaneous securities reported in Part D.
- b. Assets invested in a Controlled Foreign Corporation for the purpose of investing in certain types of instruments such as, but not limited to, commodities.
- c. Borrowings attributable to amounts payable for notes payable, bonds, and similar debt, as reported pursuant to rule 6-04(13)(a) of Regulation S-X [17 CFR 210.6-04(13)(a)].
- d. Payables for investments purchased either (i) on a delayed delivery, when-issued, or other firm commitment basis, or (ii) on a standby commitment basis.
- e. Liquidation preference of outstanding preferred stock issued by the Fund.
- f. Cash and cash equivalents not reported in Parts C and D.

Item B.3. Portfolio level risk metrics. If the average value of the Fund's debt securities positions for the previous three months, in the aggregate, exceeds 25% or more of the Fund's net asset value, provide:

- a. Interest Rate Risk (DV01). For each currency for which the Fund had a value of 1% or more of the Fund's net asset value, provide the change in value of the portfolio resulting from a 1 basis point change in interest rates, for each of the following maturities: 3 month, 1 year, 5 years, 10 years, and 30 years.
- b. Interest Rate Risk (DV100). For each currency for which the Fund had a value of 1% or more of the Fund's net asset value, provide the change in value of the portfolio resulting from a 100 basis point change in interest rates, for each of the following maturities: 3 month, 1 year, 5 years, 10 years, and 30 years.
- c. Credit Spread Risk (SDV01, CR01 or CS01). Provide the change in value of the portfolio resulting from a 1 basis point change in credit spreads where the shift is applied to the option adjusted spread, aggregated by investment grade and non-investment grade exposures, for each of the following maturities: 3 month, 1 year, 5 years, 10 years, and 30 years.

For purposes of Item B.3., calculate value as the sum of the absolute values of: (i) the value of each debt security, (ii) the notional value of each swap, including, but not limited to, total return swaps, interest rate swaps, and credit default swaps, for which the underlying reference asset or assets are debt securities or an interest rate; (iii) the notional value of each futures contract for which the underlying reference asset or assets are debt securities or an interest rate; and (iv) the delta-adjusted notional value of any option for which the underlying reference asset is an asset described in clause (i),(ii), or (iii). Report zero for maturities to which the Fund has no exposure. For exposures that fall between any of the listed maturities in (a) and (b), use linear interpolation to approximate exposure to each maturity listed above. For exposures outside of the range of maturities listed above, include those exposures in the nearest maturity.

Item B.4. Securities lending.

a. For each borrower in any securities lending transaction, provide the following information:

- i. Name of borrower.
- ii. LEI (if any) of borrower.
- iii. Aggregate value of all securities on loan to the borrower.

b. Did any securities lending counterparty provide any non-cash collateral? [Y/N] If yes, unless the non-cash collateral is included in the Schedule of Portfolio Investments in Part C, provide the following information for each category of non-cash collateral received for loaned securities:

- i. Aggregate principal amount.
- ii. Aggregate value of collateral.
- iii. Category of investments that most closely represents the collateral, selected from among the following (asset-backed securities; agency collateralized mortgage obligations; agency debentures and agency strips; agency mortgage-backed securities; U.S. Treasuries (including strips); other instrument). If “other instrument,” include a brief description, including, if applicable, whether it is an irrevocable letter of credit.

Item B.5. Return information.

a. Monthly total returns of the Fund for each of the preceding three months. If the Fund is a Multiple Class Fund, report returns for each Class. Such returns shall be calculated in accordance with the methodologies outlined in Item 26(b)(1) of Form N-1A, Instruction 13 to sub-Item 1 of Item 4 of Form N-2, or Item 26(b)(i) of Form N-3, as applicable.

b. Class identification number(s) (if any) of the Class(es) for which returns are reported.

c. For each of the preceding three months, monthly net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to derivatives for each of the following asset categories: commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other contracts. Within each such asset category, further report the same information for each of the following types of derivatives instrument: forward, future, option, swaption, swap, warrant, and other. Report in U.S. dollars. Losses and depreciation shall be reported as negative numbers.

d. For each of the preceding three months, monthly net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to investments other than derivatives. Report in U.S. dollars. Losses and depreciation shall be reported as negative numbers.

Item B.6. Flow information. Provide the aggregate dollar amounts for sales and redemptions/repurchases of Fund shares during each of the preceding three months. If shares of the Fund are held in omnibus accounts, for purposes of calculating the Fund's sales, redemptions, and repurchases, use net sales or redemptions/repurchases from such omnibus accounts. The amounts to be reported under this Item should be after any front-end sales load has been deducted and before any deferred or contingent deferred sales load or charge has been deducted. Shares sold shall include shares sold by the Fund to a registered unit investment trust. For mergers and other acquisitions, include in the value of shares sold any transaction in which the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares. For liquidations, include in the value of shares redeemed any transaction in which the Fund liquidated all or part of its assets. Exchanges are defined as the redemption or repurchase of shares of one Fund or series and the investment of all or part of the proceeds in shares of another Fund or series in the same family of investment companies.

- a. Total net asset value of shares sold (including exchanges but excluding reinvestment of dividends and distributions).
- b. Total net asset value of shares sold in connection with reinvestments of dividends and distributions.
- c. Total net asset value of shares redeemed or repurchased, including exchanges.

Item B.7. Highly Liquid Investment Minimum information.

- a. If applicable, provide the Fund's current Highly Liquid Investment Minimum.
- b. If applicable, provide the number of days that the Fund's holdings in Highly Liquid Investments fell below the Fund's Highly Liquid Investment Minimum during the reporting period.
- c. Did the Fund's Highly Liquid Investment Minimum change during the reporting period? [Y/N]
 - i. If yes, provide any Highly Liquid Investment Minimums set by the Fund during the reporting period.

Item B.8. Derivatives Transactions. For portfolio investments of open-end management investment companies, provide the percentage of the Fund's Highly Liquid Investments that it has pledged as margin or collateral in connection with derivatives transactions that are classified among the following categories as specified in rule 22e-4 [17 CFR 270.22e-4]:

1. Moderately Liquid Investments

2. Less Liquid Investments

3. Illiquid Investments

For purposes of Item B.8, when computing the required percentage, the denominator should only include assets (and exclude liabilities) that are categorized by the Fund as Highly Liquid Investments.”

Item B.9. Derivatives Exposure for limited derivatives users. If the Fund is excepted from the rule 18f-4 [17 CFR 270.18f-4] program requirement and limit on fund leverage risk under rule 18f-4(c)(4) [17 CFR 270.18f-4(c)(4)], provide the following information:

- a. Derivatives exposure (as defined in rule 18f-4(a) [17 CFR 270.18f-4(a)]), reported as a percentage of the Fund’s net asset value.
- b. Exposure from currency derivatives that hedge currency risks, as provided in rule 18f-4(c)(4)(i)(B) [17 CFR 270.18f-4(c)(4)(i)(B)], reported as a percentage of the Fund’s net asset value.
- c. Exposure from interest rate derivatives that hedge interest rate risks, as provided in rule 18f-4(c)(4)(i)(B) [17 CFR 270.18f-4(c)(4)(i)(B)], reported as a percentage of the Fund’s net asset value.
- d. The number of business days, if any, in excess of the five-business-day period described in rule 18f-4(c)(4)(ii) [17 CFR 270.18f-4(c)(4)(ii)], that the Fund’s derivatives exposure exceeded 10 percent of its net assets during the reporting period.

Item B.10. VaR information. For Funds subject to the limit on fund leverage risk described in rule 18f-4(c)(2) [17 CFR 270.18f-4(c)(2)], provide the following information, as determined in accordance with the requirement under rule 18f-4(c)(2)(ii) to determine the fund’s compliance with the applicable VaR test at least once each business day:

- a. Median daily VaR during the reporting period, reported as a percentage of the Fund’s net asset value.
- b. For Funds that were subject to the Relative VaR Test during the reporting period, provide:
 - i. As applicable, the name of the Fund’s Designated Index, or a statement that the Fund’s Designated Reference Portfolio is the Fund’s Securities Portfolio.
 - ii. As applicable, the index identifier for the Fund’s Designated Index.
 - iii. Median VaR Ratio during the reporting period, reported as a percentage of the VaR of the Fund’s Designated Reference Portfolio.

c. Backtesting Results. Number of exceptions that the Fund identified as a result of its backtesting of its VaR calculation model (as described in rule 18f-4(c)(1)(iv) [17 CFR 270.18f-4(c)(1)(iv)] during the reporting period.”

Item B.11 Investment Company Act Names Rule Investment Policy. If the Fund is required to adopt a policy as described in rule 35d-1(a)(2)(i) or (a)(3)(i) [17 CFR 270.35d1(a)(2)(i) or (3)(i)], provide the following:

- a. The definitions of the terms used in the Fund’s name, including the specific criteria the Fund uses to select the investments the term describes, if any; and
- b. The value of the Fund’s 80% basket, as defined in rule 35d-1(g)(1), as a percentage of the value of the Fund’s assets.

Instruction to Item B.11:

Consistent with rule 35d-1(g)(2), if the Fund uses a derivatives instrument’s notional amount (which must be converted to 10-year bond equivalents for interest rate derivatives and delta adjusted for options contracts) and/or values a physical short position using the value of the asset sold short, for purposes of determining the fund’s compliance with an investment policy adopted under rule 35d-1(a)(2)(i) or (a)(3)(i)(A), the percentage that the Fund reports in response to Item B.11.b must reflect the use of notional amounts with certain adjustments (and/or the value of the asset sold short) as set forth above. This percentage also must reflect any reduction of the value of the Fund’s assets resulting from, as applicable, the fund’s exclusion of cash and cash equivalents and U.S. Treasury securities with remaining maturities of one year or less, closed-out derivatives positions, and currency derivatives instruments, each as provided in rule 35d-1(g)(2).

Part C: Schedule of Portfolio Investments

For each investment held by the Fund and its consolidated subsidiaries, disclose the information requested in Part C. A Fund may report information for securities in an aggregate amount not exceeding five percent of its total assets as miscellaneous securities in Part D in lieu of reporting those securities in Part C, provided that the securities so listed are not restricted, have been held for not more than one year prior to the end of the reporting period covered by this report, and have not been previously reported by name to the shareholders of the Fund or to any exchange, or set forth in any registration statement, application, or report to shareholders or otherwise made available to the public.

Item C.1. Identification of investment.

- a. Name of issuer (if any).

- b. LEI (if any) of issuer. In the case of a holding in a fund that is a series of a series trust, report the LEI of the series.
- c. Title of the issue or description of the investment.
- d. CUSIP (if any).
- e. At least one of the following other identifiers:
 - i. ISIN.
 - ii. Ticker (if ISIN is not available).
 - iii. Other unique identifier (if ticker and ISIN are not available). Indicate the type of identifier used.

Item C.2. Amount of each investment.

- a. Balance. Indicate whether amount is expressed in number of shares, principal amount, or other units. For derivatives contracts, as applicable, provide the number of contracts.
- b. Currency. Indicate the currency in which the investment is denominated.
- c. Value. Report values in U.S. dollars. If currency of investment is not denominated in U.S. dollars, provide the exchange rate used to calculate value.
- d. Percentage value compared to net assets of the Fund.
- e. If the Fund is required to adopt a policy as described in rule 35d-1(a)(2)(i) or (a)(3)(i) [17 CFR 270.35d-1(a)(2)(i) or (3)(i)], is the investment included in the Fund's 80% basket, as defined in rule 35d-1(g), as applicable? [Y/N]

Item C.3. Indicate payoff profile among the following categories (long, short, N/A). For derivatives, respond N/A to this Item and respond to the relevant payoff profile question in Item C.11.

Item C.4. Asset and issuer type. Select the category that most closely identifies the instrument among each of the following:

- a. Asset type (short-term investment vehicle (*e.g.*, money market fund, liquidity pool, or other cash management vehicle), repurchase agreement, equity-common, equity- preferred, debt, derivative-commodity, derivative-credit, derivative-equity, derivative- foreign exchange, derivative-interest rate, derivatives-other, structured note, loan, ABS- mortgage backed security, ABS-asset backed commercial paper, ABS-collateralized bond/debt obligation, ABS-other, commodity, real estate, other). If "other," provide a brief description.
- b. Issuer type (corporate, U.S. Treasury, U.S. government agency, U.S. government sponsored entity, municipal, non-U.S. sovereign, private fund, registered fund, other). If "other," provide a brief description.

Item C.5. Country of investment or issuer.

- a. Report the ISO country code that corresponds to the country where the issuer is organized.
- b. If different from the country where the issuer is organized, also report the ISO country code that corresponds to the country of investment or issuer based on the concentrations of the risk and economic exposure of the investments.

Item C.6. Is the investment a Restricted Security? [Y/N]

Item C.7.

a. Liquidity classification information. For portfolio investments of open-end management investment companies, provide the liquidity classification(s) for each portfolio investment among the following categories as specified in rule 22e-4 [17 CFR 270.22e-4]. For portfolio investments with multiple liquidity classifications, indicate the percentage amount attributable to each classification.

- i. Highly Liquid Investments
- ii. Moderately Liquid Investments
- iii. Less Liquid Investments
- iv. Illiquid Investments

b. If attributing multiple classification categories to the holding, indicate which of the three circumstances listed in the Instructions to Item C.7 is applicable.

Instructions to Item C. 7 Funds may choose to indicate the percentage amount of a holding attributable to multiple classification categories only in the following circumstances: (1) if portions of the position have differing liquidity features that justify treating the portions separately; (2) if a fund has multiple sub-advisers with differing liquidity views; or (3) if the fund chooses to classify the position through evaluation of how long it would take to liquidate the entire position (rather than basing it on the sizes it would reasonably anticipated trading). In (1) and (2), a fund would classify using the reasonably anticipated trade size for each portion of the position.

Item C.8. Indicate the level within the fair value hierarchy in which the fair value measurements fall pursuant to U.S. Generally Accepted Accounting Principles (ASC 820, Fair Value Measurement). [1/2/3] Report “N/A” if the investment does not have a level associated with it (i.e., net asset value used as the practical expedient).

Item C.9. For debt securities, also provide:

- a. Maturity date.
- b. Coupon.

- i. Select the category that most closely reflects the coupon type among the following (fixed, floating, variable, none).
- ii. Annualized rate.
- c. Currently in default? [Y/N]
- d. Are there any interest payments in arrears or have any coupon payments been legally deferred by the issuer? [Y/N]
- e. Is any portion of the interest paid in kind? [Y/N] Enter “N” if the interest may be paid in kind but is not actually paid in kind or if the Fund has the option of electing in-kind payment and has elected to be paid in-kind.
- f. For convertible securities, also provide:
 - i. Mandatory convertible? [Y/N]
 - ii. Contingent convertible? [Y/N]
 - iii. Description of the reference instrument, including the name of issuer, title of issue, and currency in which denominated, as well as CUSIP of reference instrument, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are not available). If other identifier provided, indicate the type of identifier used.
 - iv. Conversion ratio per US\$1000 notional, or, if bond currency is not in U.S. dollars, per 1000 units of the relevant currency, indicating the relevant currency. If there is more than one conversion ratio, provide each conversion ratio.
 - v. Delta (if applicable).

Item C.10. For repurchase and reverse repurchase agreements, also provide:

- a. Select the category that reflects the transaction (repurchase, reverse repurchase). Select “repurchase agreement” if the Fund is the cash lender and receives collateral. Select “reverse repurchase agreement” if the Fund is the cash borrower and posts collateral.
- b. Counterparty.
 - i. Cleared by central counterparty? [Y/N] If Y, provide the name of the central counterparty.
 - ii. If N, provide the name and LEI (if any) of counterparty.
- c. Tri-party? [Y/N]
- d. Repurchase rate.
- e. Maturity date.

f. Provide the following information concerning the securities subject to the repurchase agreement (*i.e.*, collateral). If multiple securities of an issuer are subject to the repurchase agreement, those securities may be aggregated in responding to Items C.10.f.i-iii.

i. Principal amount.

ii. Value of collateral.

iii. Category of investments that most closely represents the collateral, selected from among the following (asset-backed securities; agency collateralized mortgage obligations; agency debentures and agency strips; agency mortgage-backed securities; private label collateralized mortgage obligations; corporate debt securities; equities; money market; U.S. Treasuries (including strips); other instrument). If “other instrument,” include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

Item C.11. For derivatives, also provide:

a. Type of derivative instrument that most closely represents the investment, selected from among the following (forward, future, option, swaption, swap (including but not limited to total return swaps, credit default swaps, and interest rate swaps), warrant, other). If “other,” provide a brief description.

b. Counterparty.

i. Provide the name and LEI (if any) of counterparty (including a central counterparty).

c. For options and warrants, including options on a derivative (*e.g.*, swaptions) provide:

i. Type, selected from among the following (put, call). Respond call for warrants.

ii. Payoff profile, selected from among the following (written, purchased). Respond purchased for warrants.

iii. Description of reference instrument.

1. If the reference instrument is a derivative, indicate the category of derivative from among the categories listed in sub-Item C.11.a. and provide all information required to be reported on this Form for that category.

2. If the reference instrument is an index or custom basket, and if the index’s or custom basket’s components are publicly available on a website and are updated on that website no less frequently than quarterly, identify the index and provide the index identifier, if any. If the index’s or custom basket’s components are not publicly available in that manner, and the notional amount of the derivative represents 1% or less of the net asset value of the Fund, provide a narrative description of the index. If the index’s or custom basket’s components are not publicly available in that manner, and the notional amount of the derivative represents more than 5% of the net asset value

of the Fund, provide the (i) name, (ii) identifier, (iii) number of shares or notional amount or contract value as of the trade date (all of which would be reported as negative for short positions), and (iv) value of every component in the index or custom basket. The identifier shall include CUSIP of the index's or custom basket's components, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are not available). If other identifier provided, indicate the type of identifier used.

If the index's or custom basket's components are not publicly available in that manner, and the notional amount of the derivative represents greater than 1%, but 5% or less, of the net asset value of the Fund, Funds shall report the required component information described above, but may limit reporting to the (i) 50 largest components in the index and (ii) any other components where the notional value for that components is over 1% of the notional value of the index or custom basket.

3. If the reference instrument is neither a derivative, an index, or a custom basket, the description of the reference instrument shall include the name of issuer and title of issue, as well as CUSIP of reference instrument, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are not available). If other identifier provided, indicate the type of identifier used.

- iv. Number of shares or principal amount of underlying reference instrument per contract.
 - v. Exercise price or rate.
 - vi. Expiration date.
 - vii. Delta.
 - viii. Unrealized appreciation or depreciation. Depreciation shall be reported as a negative number.
- d. For futures and forwards (other than forward foreign currency contracts), provide:
- i. Payoff profile, selected from among the following (long, short).
 - ii. Description of reference instrument, as required by sub-Item C.11.c.iii.
 - iii. Expiration date.
 - iv. Aggregate notional amount or contract value on trade date.
 - v. Unrealized appreciation or depreciation. Depreciation shall be reported as a negative number.
- e. For forward foreign currency contracts and foreign currency swaps, provide:
- i. Amount and description of currency sold.
 - ii. Amount and description of currency purchased.

- iii. Settlement date.
- iv. Unrealized appreciation or depreciation. Depreciation shall be reported as a negative number.
- f. For swaps (other than foreign exchange swaps), provide:
 - i. Description and terms of payments necessary for a user of financial information to understand the terms of payments to be paid and received, including, as applicable, description of the reference instrument, obligation, or index (including the information required by sub-Item C.11.c.iii), financing rate, floating coupon rate, fixed coupon rate, and payment frequency.
 - 1. Description and terms of payments to be received from another party.
 - 2. Description and terms of payments to be paid to another party.
 - ii. Termination or maturity date.
 - iii. Upfront payments or receipts.
 - iv. Notional amount.
 - v. Unrealized appreciation or depreciation. Depreciation shall be reported as a negative number.
- g. For other derivatives, provide:
 - i. Description of information sufficient for a user of financial information to understand the nature and terms of the investment, including as applicable, among other things, currency, payment terms, payment rates, call or put feature, exercise price, and information required by sub-Item C.11.c.iii.
 - ii. Termination or maturity (if any).
 - iii. Notional amount(s).
 - iv. Delta (if applicable).
 - v. Unrealized appreciation or depreciation. Depreciation shall be reported as a negative number.

Item C.12. Securities lending.

- a. Does any amount of this investment represent reinvestment of cash collateral received for loaned securities? [Y/N] If Yes, provide the value of the investment representing cash collateral.
- b. Does any portion of this investment represent non-cash collateral that is treated as a Fund asset and received for loaned securities? [Y/N] If yes, provide the value of the securities representing non-cash collateral.

c. Is any portion of this investment on loan by the Fund? [Y/N] If Yes, provide the value of the securities on loan.

Part D: Miscellaneous Securities

For reports filed for the last month of each fiscal quarter, report miscellaneous securities, if any, using the same Item numbers and reporting the same information that would be reported for each investment in Part C if it were not a miscellaneous security. Information reported in this Item will be nonpublic.

Part E: Explanatory Notes (if any)

The Fund may provide any information it believes would be helpful in understanding the information reported in response to any Item of this Form. The Fund may also explain any assumptions that it made in responding to any Item of this Form. To the extent responses relate to a particular Item, provide the Item number(s), as applicable.

Part F: Exhibits

For reports filed for the end of the first and third quarters of the Fund's fiscal year, attach no later than 60 days after the end of the reporting period the Fund's complete portfolio holdings as of the close of the period covered by the report. These portfolio holdings must be presented in accordance with the schedules set forth in §§210.12-12 – 210.12-14 of Regulation S-X [17 CFR 210.12-12 – 210.12-14].

SIGNATURES

The Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Registrant: _____ By (Signature): _____
Name: _____
Title: _____
Date: _____

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-CEN

This is a reference copy of Form N-CEN. You may not send a completed printout of this form to the SEC to satisfy a filing obligation. You can only satisfy an SEC filing obligation by submitting the information required by this form to the SEC in electronic format online at <https://www.edgarfiling.sec.gov>.

OMB APPROVAL	
OMB Number:	3235-0729
Expires:	July 31, 2024
Estimated average burden hours per response	19.36

FORM N-CEN

ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

Form N-CEN is to be used by all registered investment companies, other than face-amount certificate companies, to file annual reports with the Commission. Such reports should be filed not later than 75 days after the close of the fiscal year for which the report is being prepared, except that unit investment trusts shall file such reports not later than 75 days after the close of the calendar year for which the report is being prepared, pursuant to rule 30a-1 under the Investment Company Act of 1940 (“Act”) (17 CFR 270.30a-1). Face-amount certificate companies should continue to file periodic reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (“Exchange Act”). The Commission may use the information provided on Form N-CEN in its regulatory, enforcement, examination, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-CEN

Form N-CEN is the reporting form that is to be used for annual reports filed pursuant to rule 30a-1 under the Act (17 CFR 270.30a-1) by registered investment companies, other than face-amount certificate companies, under section 30(a) of the Act and, in the case of small business investment companies and registered unit investment trusts, under section 13 or 15(d) of the Exchange Act, if applicable.

Registrants must respond to all items in the relevant Parts of Form N-CEN, as listed below in this General Instruction A. If an item within a required Part is inapplicable, the Registrant should respond “N/A” to that item. Registrants are not, however, required to respond to items in Parts of Form N-CEN that they are not required by this General Instruction A to respond to.

Management investment companies: Management investment companies other than small business investment companies must complete Parts A, B, C, and G of this Form. Management investment companies that offer multiple series must complete Part C as to each series separately, even if some information is the same for two or more series. Closed-end management investment companies also must complete Part D of this Form. Small business investment companies must complete Parts A, B, D, and G of this Form. Management investment companies that are registered on Form N-3 also must complete certain items in Part F of this Form as directed by Item B.6.c.i.

Exchange-traded funds or exchange-traded managed funds: Funds that are exchange-traded funds or exchange-traded managed funds, as defined by this Form, must complete Part E of this Form in addition to any other required Parts.

Unit investment trusts: Unit investment trusts must complete Parts A, B, F, and G of this Form.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 2846 (8/22)

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form, except that any provision in the Form or in these instructions shall be controlling.

C. Filing of Report

1. All registered investment companies with shares outstanding (other than shares issued in connection with an initial investment to satisfy section 14(a) of the Act) must file a report on Form N-CEN at least annually. Management investment companies offering multiple series with different fiscal year ends must file a report as of each fiscal year end that responds to (i) Parts A, B, and G, and (ii) Part C and, if applicable, Part E as to only those series with the fiscal year end covered by the report.

If a Registrant changes its fiscal year, a report filed on Form N-CEN may cover a period shorter than 12 months, but in no event may a report filed on Form N-CEN cover a period longer than 12 months or a period that overlaps with a period covered by a previously filed report. For example, if in 2017 a Registrant with a September 30 fiscal year end changes its fiscal year end to December 31, the Registrant could file a report on this Form for the fiscal period ending September 30, 2017 and a report for the period ending December 31, 2017. A Registrant could not, however, only file a report for the fiscal period ending December 31, 2017 if its last report was filed for the fiscal period ending September 30, 2016.

An extension of time of up to 15 days for filing the form may be obtained by following the procedures specified in rule 12b-25 under the Exchange Act (17 CFR 240.12b-25).

2. A registrant may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A registrant that files an amendment to a previously filed report must provide information in response to all required items of Form N-CEN, regardless of why the amendment is filed.

3. Reports must be filed electronically using the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system in accordance with Regulation S-T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

D. Paperwork Reduction Act Information

A registrant is required to disclose the information specified by Form N-CEN, and the Commission will make this information public, except for information reported in response to Item B.9.h. A registrant is not required to respond to the collection of information contained in Form N-CEN unless the form displays a currently valid Office of Management and Budget (“OMB”) control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

Except as defined below or where the context clearly indicates the contrary, terms used in Form N-CEN have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

“**Class**” means a class of shares issued by a Fund that has more than one class that represents interest in the same portfolio of securities under rule 18f-3 under the Act (17 CFR 270.18f-3) or under an order exempting the Fund from provisions of section 18 of the Act (15 U.S.C. 80a-18).

“**CRD number**” means a central licensing and registration system number issued by the Financial Industry Regulatory Authority.

“**Exchange-Traded Fund**” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

“**Exchange-Traded Managed Fund**” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at net asset value-based prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

“**Fund**” means the Registrant or a separate Series of the Registrant. When an item of Form N-CEN specifically applies to a Registrant or Series, those terms will be used.

“**LEI**” means, with respect to any company, the “legal entity identifier” as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation. In the case of a financial institution, if a “legal entity identifier” has not been assigned, then provide the RSSD ID, if any, assigned by the National Information Center of the Board of Governors of the Federal Reserve System.

“**Money Market Fund**” means an open-end management investment company registered under the Act, or Series thereof, that is regulated as a money market fund pursuant to rule 2a-7 under the Act (17 CFR 270.2a-7).

“**PCAOB number**” means the registration number issued to an independent public accountant registered with the Public Company Accounting Oversight Board.

“**Registrant**” means the investment company filing this report or on whose behalf the report is filed.

“**SEC File number**” means the number assigned to an entity by the Commission when that entity registered with the Commission in the capacity in which it is named in Form N-CEN.

“**Series**” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other Series of shares for assets specifically allocated to that Series in accordance with rule 18f-2(a) (17 CFR 270.18f-2(a)).

FORM N-CEN

ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

Part A: General Information

Item A.1. Reporting period covered.

- a. Report for period ending: [yyyy/mm/dd]
- b. Does this report cover a period of less than 12 months? [Y/N]

Part B: Information About the Registrant

Item B.1. Background information.

- a. Full name of Registrant: _____
- b. Investment Company Act file number (*e.g.*, 811-): _____
- c. CIK: _____
- d. LEI: _____

Item B.2. Address and telephone number of Registrant.

- a. Street: _____
- b. City: _____
- c. State, if applicable: _____
- d. Foreign country, if applicable: _____
- e. Zip code and zip code extension, or foreign postal code: _____
- f. Telephone number (including country code if foreign): _____
- g. Public website, if any: _____

Item B.3. Location of books and records.

- a. Name of person (*e.g.*, a custodian of records): _____

- b. Street: _____
- c. City: _____
- d. State, if applicable: _____
- e. Foreign country, if applicable: _____
- f. Zip code and zip code extension, or foreign postal code: _____
- g. Telephone number (including country code if foreign): _____
- h. Briefly describe the books and records kept at this location: _____

Instruction. Provide the requested information for each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) of the Act (15 U.S.C. 80a-30(a)) and the rules under that section.

Item B.4. Initial or final filings.

- a. Is this the first filing on this form by the Registrant? [Y/N]
- b. Is this the last filing on this form by the Registrant? [Y/N]

Instruction. Respond “yes” to Item B.4.b only if the Registrant has filed an application to deregister or will file an application to deregister before its next required filing on this form

Item B.5. Family of investment companies.

- a. Is the Registrant part of a family of investment companies? [Y/N]
 - i. Full name of family of investment companies: _____

Instruction. “Family of investment companies” means, except for insurance company separate accounts, 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. In responding to this item, all Registrants in the family of investment companies should report the name of the family of investment companies identically.

Insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar.

Item B.6. Organization. Indicate the classification of the Registrant by checking the applicable item below.

a. Open end management investment company registered under the Act on Form N-1A: _____

i. Total number of Series of the Registrant: _____

ii. If a Series of the Registrant with a fiscal year end covered by the report was terminated during the reporting period, provide the following information:

1. Name of the Series: _____

2. Series identification number: _____

3. Date of termination (month/year): _____

b. Closed-end management investment company registered under the Act on Form N-2: _____

c. Separate account offering variable annuity contracts which is registered under the Act as a management investment company on Form N-3: _____

i. Registrants that indicate they are a management investment company registered under the Act on Form N-3, should respond to Item F.13 through Item F.16 of this Form in addition to the Parts required by General Instruction A of this Form.

d. Separate account offering variable annuity contracts which is registered under the Act as a unit investment trust on Form N-4: _____

e. Small business investment company registered under the Act on Form N-5: _____

f. Separate account offering variable life insurance contracts which is registered under the Act as a unit investment trust on Form N-6: _____

g. Unit investment trust registered under the Act on Form N-8B-2: _____

Instruction. For Item B.6.a.i, the Registrant should include all Series that have been established by the Registrant and have shares outstanding (other than shares issued in connection with an initial investment to satisfy section 14(a) of the Act).

Item B.7. Securities Act registration. Is the Registrant the issuer of a class of securities registered under the Securities Act of 1933 (“Securities Act”)? [Y/N]

Item B.8. Directors: Provide the information requested below about each person serving as director of the Registrant (management investment companies only):

a. Full name: _____

b. CRD number, if any: _____

c. Is the person an “interested person” of the Registrant as that term is defined in section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19))? [Y/N]

d. Investment Company Act file number of any other registered investment company for which the person also serves as a director (*e.g.*, 811-): _____

Item B.9. Chief compliance officer. Provide the information requested below about each person serving as chief compliance officer of the Registrant for purposes of rule 38a-1 (17 CFR 270.38a-1):

a. Full name: _____

b. CRD number, if any: _____

c. Street: _____

d. City: _____

e. State, if applicable: _____

f. Foreign country, if applicable: _____

g. Zip code and zip code extension, or foreign postal code: _____

h. Telephone number (including country code if foreign): _____

i. Has the chief compliance officer changed since the last filing? [Y/N]

j. If the chief compliance officer is compensated or employed by any person other than the Registrant, or an affiliated person of the Registrant, for providing chief compliance officer services, provide:

i. Name of the person: _____

ii. Person’s IRS Employer Identification Number: _____

Item B.10. Matters for security holder vote. Were any matters submitted by the Registrant for its security holders’ vote during the reporting period? [Y/N]

a. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

i. Series name: _____

ii. Series identification number: _____

Instruction. Registrants registered on Forms N-3, N-4 or N-6, should respond “yes” to this Item only if security holder votes were solicited on contract-level matters.

Item B.11. Legal proceedings.

a. Have there been any material legal proceedings, other than routine litigation incidental to the business, to which the Registrant or any of its subsidiaries was a party or of which any of their property was the subject during the reporting period? [Y/N] If yes, include the attachment required by Item G.1.a.i.

i. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

1. Series name: _____

2. Series identification number: _____

b. Has any proceeding previously reported been terminated? [Y/N] If yes, include the attachment required by Item G.1.a.i.

i. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

1. Series name: _____

2. Series identification number: _____

Instruction. For purposes of this Item, the following proceedings should be described: (1) any bankruptcy, receivership or similar proceeding with respect to the Registrant or any of its significant subsidiaries; (2) any proceeding to which any director, officer or other affiliated person of the Registrant is a party adverse to the Registrant or any of its subsidiaries; and (3) any proceeding involving the revocation or suspension of the right of the Registrant to sell securities.

Item B.12. Fidelity bond and insurance (management investment companies only).

a. Were any claims with respect to the Registrant filed under a fidelity bond (including, but not limited to, the fidelity insuring agreement of the bond) during the reporting period? [Y/N]

i. If yes, enter the aggregate dollar amount of claims filed: _____

Item B.13. Directors and officers/errors and omissions insurance (management investment companies only).

a. Are the Registrant's officers or directors covered in their capacities as officers or directors under any directors and officers/errors and omissions insurance policy owned by the Registrant or anyone else? [Y/N]

i. If yes, were any claims filed under the policy during the reporting period with respect to the Registrant? [Y/N]

Item B.14. Provision of financial support. Did an affiliated person, promoter, or principal underwriter of the Registrant, or an affiliated person of such a person, provide any form of financial support to the Registrant during the reporting period? [Y/N] If yes, include the attachment required by Item G.1.a.ii, unless the Registrant is a Money Market Fund.

a. If yes and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

i. Series name: _____

ii. Series identification number: _____

Instruction. For purposes of this Item, a provision of financial support includes any (1) capital contribution, (2) purchase of a security from a Money Market Fund in reliance on rule 17a-9 under the Act (17 CFR 270.17a-9), (3) purchase of any defaulted or devalued security at fair value reasonably intended to increase or stabilize the value or liquidity of the Registrant's portfolio, (4) execution of letter of credit or letter of indemnity, (5) capital support agreement (whether or not the Registrant ultimately received support), (6) performance guarantee, or (7) other similar action reasonably intended to increase or stabilize the value or liquidity of the Registrant's portfolio. Provision of financial support does not include any (1) routine waiver of fees or reimbursement of Registrant's expenses, (2) routine inter-fund lending, (3) routine inter-fund purchases of Registrant's shares, or (4) action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Registrant's portfolio.

Item B.15. Exemptive orders.

a. During the reporting period, did the Registrant rely on any orders from the Commission granting an exemption from one or more provisions of the Act, Securities Act or Exchange Act? [Y/N]

i. If yes, provide below the release number for each order: _____

Item B.16. Principal underwriters.

a. Provide the information requested below about each principal underwriter:

i. Full name: _____

ii. SEC file number (e.g., 8-): _____

iii. CRD number: _____

iv. LEI, if any: _____

- v. State, if applicable: _____
 - vi. Foreign country, if applicable:
 - vii. Is the principal underwriter an affiliated person of the Registrant, or its investment adviser(s) or depositor? [Y/N]
- b. Have any principal underwriters been hired or terminated during the reporting period? [Y/N]

Item B.17. Independent public accountant. Provide the following information about each independent public accountant:

- a. Full name: _____
- b. PCAOB number: _____
- c. LEI, if any: _____
- d. State, if applicable: _____
- e. Foreign country, if applicable: _____
- f. Has the independent public accountant changed since the last filing? [Y/N]

Item B.18. Report on internal control (management investment companies only). For the reporting period, did an independent public accountant's report on internal control note any material weaknesses? [Y/N]

Instruction. Small business investment companies are not required to respond to this item.

Item B.19. Audit opinion. For the reporting period, did an independent public accountant issue an opinion other than an unqualified opinion with respect to its audit of the Registrant's financial statements? [Y/N]

- a. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:
 - i. Series name: _____
 - ii. Series identification number: _____

Item B.20. Change in valuation methods. Have there been material changes in the method of valuation (e.g., change from use of bid price to mid price for fixed income securities or change in trigger threshold for use of fair value factors on international equity securities) of the Registrant's assets during the reporting period? [Y/N] If yes, provide the following:

- a. Date of change: _____.
- b. Explanation of the change: _____.
- c. Asset type involved: _____.
- d. Type of investments involved: _____.
- e. Statutory or regulatory basis, if any: _____.
- f. To the extent the response relates only to certain series of the Registrant, indicate the series involved:
 - i. Series name: _____.
 - ii. Series identification number: _____.

Instruction. Responses to this item need not include changes to valuation techniques used for individual securities (e.g., changing from market approach to income approach for a private equity security). In responding to Item B.20.c., provide the applicable “asset type” category specified in Item C.4.a. of Form N-PORT. In responding to Item B.20.d., provide a brief description of the type of investments involved. If the change in valuation methods applies only to certain sub-asset types included in the response to Item B.20.c., please provide the sub-asset types in the response to Item B.20.d. The responses to Item B.20.c. and Item B.20.d. should be identical only if the change in valuation methods applies to all assets within that category.

Item B.21. Change in accounting principles and practices. Have there been any changes in accounting principles or practices, or any change in the method of applying any such accounting principles or practices, which will materially affect the financial statements filed or to be filed for the current year with the Commission and which has not been previously reported? [Y/N] If yes, include the attachment required by Item G.1.a.iv.

Item B.22. Net asset value error corrections (open-end management investment companies only).

- a. During the reporting period, were any payments made to shareholders or shareholder accounts reprocessed as a result of an error in calculating the Registrant’s net asset value (or net asset value per share)? [Y/N]
 - i. If yes, and to the extent the response relates only to certain Series of the Registrant, indicate the Series involved:
 - 1. Series name: _____.
 - 2. Series identification number: _____.

Item B.23. Rule 19a-1 notice (management investment companies only). During the reporting period, did the Registrant pay any dividend or make any distribution in the nature of a dividend payment, required to be accompanied by a written statement pursuant to section 19(a) of the Act (15 U.S.C. 80a-19(a)) and rule 19a- 1 thereunder (17 CFR 270.19a-1)? [Y/N]

a. If yes, and to the extent the response relates only to certain Series of the Registrant, indicate the Series involved:

i. Series name: _____

ii. Series identification number: _____

Part C: Additional Questions for Management Investment Companies

Item C.1. Background information.

a. Full name of the Fund: _____

b. Series identification number, if any: _____

c. LEI: _____

d. Is this the first filing on this form by the Fund? [Y/N]

Item C.2. Classes of open-end management investment companies.

a. How many Classes of shares of the Fund (if any) are authorized? _____

b. How many new Classes of shares of the Fund were added during the reporting period? _____

c. How many Classes of shares of the Fund were terminated during the reporting period? _____

d. For each Class with shares outstanding, provide the information requested below:

i. Full name of Class: _____

ii. Class identification number, if any: _____

iii. Ticker symbol, if any: _____

Item C.3. Type of fund. Indicate if the Fund is any one of the types listed below. Check all that apply.

a. Exchange-Traded Fund or Exchange-Traded Managed Fund or offers a Class that itself is an Exchange-Traded Fund or Exchange-Traded Managed Fund:

- i. Exchange-Traded Fund: _____.
- ii. Exchange-Traded Managed Fund: _____.
- b. Index Fund: _____.

 - i. Is the index whose performance the Fund tracks, constructed:
 - 1. By an affiliated person of the fund? [Y/N]
 - 2. Exclusively for the fund? [Y/N]
 - ii. Provide the annualized difference between the Fund's total return during the reporting period and the index's return during the reporting period (*i.e.*, the Fund's total return less the index's return):
 - 1. Before Fund fees and expenses: _____.
 - 2. After Fund fees and expenses (*i.e.*, net asset value): _____.
 - iii. Provide the annualized standard deviation of the daily difference between the Fund's total return and the index's return during the reporting period:
 - 1. Before Fund fees and expenses: _____.
 - 2. After Fund fees and expenses (*i.e.*, net asset value): _____.

- c. Seeks to achieve performance results that are a multiple of an index or other benchmark, the inverse of an index or other benchmark, or a multiple of the inverse of an index or other benchmark:
- d. Interval Fund: _____.
- e. Fund of Funds: _____.
- f. Master-Feeder Fund: _____.

 - i. If the Registrant is a master fund, then provide the information requested below with respect to each feeder fund:
 - 1. Full name: _____.
 - 2. For registered feeder funds: _____
 - A. Investment Company Act file number (*e.g.*, 811-): _____.
 - B. Series identification number, if any: _____.
 - C. LEI of feeder fund: _____.
 - 3. For unregistered feeder funds:

- A. SEC file number of the feeder fund's investment adviser (*e.g.*, 801-): _____
- B. LEI of feeder fund, if any: _____
- ii. If the Registrant is a feeder fund, then provide the information requested below with respect to a master fund registered under the Act:
1. Full name: _____
 2. Investment Company Act file number (*e.g.*, 811-): _____
 3. SEC file number of the master fund's investment adviser (*e.g.*, 801-): _____
 4. LEI: _____
- g. Money Market Fund: _____
- h. Target Date Fund: _____
- i. Underlying fund to a variable annuity or variable life insurance contract: _____

Instructions.

1. "Fund of Funds" means a fund that acquires securities issued by any other investment company in excess of the amounts permitted under paragraph (A) of section 12(d)(1) of the Act (15 U.S.C. 80a-12(d)(1)(A)), but, for purposes of this Item, does not include a fund that acquires securities issued by another investment company solely in reliance on rule 12d1-1 under the Act (CFR 270.12d1-1).
2. "Index Fund" means an investment company, including an Exchange-Traded Fund, that seeks to track the performance of a specified index.
3. "Interval Fund" means a closed-end management investment company that makes periodic repurchases of its shares pursuant to rule 23c-3 under the Act (17 CFR 270.23c-3).
4. "Master-Feeder Fund" means a two-tiered arrangement in which one or more funds (each a feeder fund) holds shares of a single Fund (the master fund) in accordance with section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)) or pursuant to exemptive relief granted by the Commission.
5. "Target Date Fund" means an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.

Item C.4. Diversification. Does the Fund seek to operate as a “non-diversified company” as such term is defined in section 5(b)(2) of the Act (15 U.S.C. 80a-5(b)(2))? [Y/N]

Item C.5. Investments in certain foreign corporations.

a. Does the fund invest in a controlled foreign corporation for the purpose of investing in certain types of instruments such as, but not limited to, commodities? [Y/N]

b. If yes, provide the following information:

i. Full name of subsidiary: _____.

ii. LEI of subsidiary, if any: _____.

Instruction. “Controlled foreign corporation” has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

Item C.6. Securities lending.

a. Is the Fund authorized to engage in securities lending transactions? [Y/N]

b. Did the Fund lend any of its securities during the reporting period? [Y/N]

i. If yes, during the reporting period, did any borrower fail to return the loaned securities by the contractual deadline with the result that:

1. The Fund (or its securities lending agent) liquidated collateral pledged to secure the loaned securities? [Y/N]

2. The Fund was otherwise adversely impacted? [Y/N]

Instruction. For purposes of this Item, other adverse impacts would include, for example, (1) a loss to the Fund if collateral and indemnification were not sufficient to replace the loaned securities or their value, (2) the Fund’s ineligibility to vote shares in a proxy, or (3) the Fund’s ineligibility to receive a direct distribution from the issuer.

c. Provide the information requested below about each securities lending agent, if any, retained by the Fund:

i. Full name of securities lending agent: _____.

ii. LEI, if any: _____.

iii. Is the securities lending agent an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

iv. Does the securities lending agent or any other entity indemnify the fund against borrower default on loans administered by this agent? [Y/N]

v. If the entity providing the indemnification is not the securities lending agent, provide the following information:

1. Name of person providing indemnification: _____

2. LEI, if any, of person providing indemnification: _____

vi. Did the Fund exercise its indemnification rights during the reporting period? [Y/N]

d. If a person managing any pooled investment vehicle in which cash collateral is invested in connection with the Fund's securities lending activities (*i.e.*, a cash collateral manager) does not also serve as securities lending agent, provide the following information about each person:

i. Full name of cash collateral manager: _____

ii. LEI, if any: _____

iii. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of a securities lending agent retained by the Fund? [Y/N]

iv. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

e. Types of payments made to one or more securities lending agents and cash collateral managers (check all that apply):

i. Revenue sharing split: _____

ii. Non-revenue sharing split (other than administrative fee): _____

iii. Administrative fee: _____

iv. Cash collateral reinvestment fee: _____

v. Indemnification fee: _____

vi. Other: _____. If other, describe: _____

f. Provide the monthly average of the value of portfolio securities on loan during the reporting period.

g. Provide the net income from securities lending activities. _____

Item C.7. Reliance on certain statutory exemption and rules. Did the Fund rely on the following statutory exemption or any of the rules under the Act during the reporting period? (check all that apply)

a. Rule 10f-3 (17 CFR 270.10f-3): _____

b. Rule 12d1-1 (17 CFR 270.12d1-1): _____

- c. Rule 15a-4 (17 CFR 270.15a-4): _____
- d. Rule 17a-6 (17 CFR 270.17a-6): _____
- e. Rule 17a-7 (17 CFR 270.17a-7): _____
- f. Rule 17a-8 (17 CFR 270.17a-8): _____
- g. Rule 17e-1 (17 CFR 270.17e-1): _____
- h. Rule 22d-1 (17 CFR 270.22d-1): _____
- i. Rule 23c-1 (17 CFR 270.23c-1): _____
- j. Rule 32a-4 (17 CFR 270.32a-4): _____
- k. Rule 6(c)-11 (17 CFR 270.6c-11): _____
- l. Rule 12d1-4 (17 CFR 270.12d1-4): _____
- m. Section 12(d)(1)(G) of the Act (15 USC 80a-12(d)(1)(G)): _____
- n. Rule 18f-4 (17 CFR 270.18f-4): _____
 - i. Is the Fund excepted from the rule 18f-4 (17 CFR 270.18f-4) program requirement and limit on fund leverage risk under rule 18f-4(c)(4) (17 CFR 270.18f-4(c)(4))? _____
 - ii. Is the Fund a leveraged/inverse fund that, under rule 18f-4(c)(5) (17 CFR 270.18f-4(c)(5)), is excepted from the requirement to comply with the limit on fund leverage risk described in rule 18f-4(c)(2) (17 CFR 270.18f-4(c)(2))? _____
 - iii. Did the Fund enter into any reverse repurchase agreements or similar financing transactions under rule 18f-4(d)(i) (17 CFR 270.18f-4(d)(i))? _____
 - iv. Did the Fund enter into any reverse repurchase agreements or similar financing transactions under rule 18f-4(d)(ii) (17 CFR 270.18f-4(d)(ii))? _____
 - v. Did the Fund enter into any unfunded commitment agreements under rule 18f-4(e) (17 CFR 270.18f-4(e))? _____
 - vi. Did the Fund invest in a security on a when-issued or forward-settling basis, or with a non-standard settlement cycle, in reliance on rule 18f-4(f) (17 CFR 270.18f-4(f))? _____

Item C.8. Expense limitations.

- a. Did the Fund have an expense limitation arrangement in place during the reporting period? [Y/N]
- b. Were any expenses of the Fund reduced or waived pursuant to an expense limitation arrangement during the reporting period? [Y/N]

- c. Are the fees waived subject to recoupment? [Y/N]
- d. Were any expenses previously waived recouped during the period? [Y/N]

Instruction. Provide information concerning any direct or indirect limitations, waivers or reductions, on the level of expenses incurred by the fund during the reporting period. A limitation, for example, may be applied indirectly (such as when an adviser agrees to accept a reduced fee pursuant to a voluntary fee waiver) or it may apply only for a temporary period such as for a new fund in its start-up phase.

Item C.9. Investment advisers.

a. Provide the following information about each investment adviser (other than a sub-adviser) of the Fund:

- i. Full name: _____
- ii. SEC file number (e.g., 801-): _____
- iii. CRD number: _____
- iv. LEI, if any: _____
- v. State, if applicable: _____
- vi. Foreign country, if applicable: _____
- vii. Was the investment adviser hired during the reporting period? [Y/N]

1. If the investment adviser was hired during the reporting period, indicate the investment adviser's start date: _____

b. If an investment adviser (other than a sub-adviser) to the Fund was terminated during the reporting period, provide the following with respect to each investment adviser:

- i. Full name: _____
- ii. SEC file number (e.g., 801-): _____
- iii. CRD number: _____
- iv. LEI, if any: _____
- v. State, if applicable: _____
- vi. Foreign country, if applicable: _____
- vii. Termination date: _____

c. For each sub-adviser to the Fund, provide the information requested:

- i. Full name: _____

- ii. SEC file number (e.g., 801-): _____
- iii. CRD number: _____
- iv. LEI, if any: _____
- v. State, if applicable: _____
- vi. Foreign country, if applicable: _____
- vii. Is the sub-adviser an affiliated person of the Fund's investment adviser(s)? [Y/N]
- viii. Was the sub-adviser hired during the reporting period? [Y/N]

1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date: _____

d. If a sub-adviser was terminated during the reporting period, provide the following with respect to each such sub-adviser:

- i. Full name: _____
- ii. SEC file number (e.g., 801-): _____
- iii. CRD number: _____
- iv. LEI, if any: _____
- v. State, if applicable: _____
- vi. Foreign country, if applicable: _____
- vii. Termination date: _____

Item C.10. Transfer agents.

a. Provide the following information about each person providing transfer agency services to the Fund:

- i. Full name: _____
- ii. SEC file number (e.g., 84- or 85-): _____
- iii. LEI, if any: _____
- iv. State, if applicable: _____
- v. Foreign country, if applicable: _____
- vi. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]
- vii. Is the transfer agent a sub-transfer agent? [Y/N]

b. Has a transfer agent been hired or terminated during the reporting period? [Y/N]

Item C.11. Pricing services.

a. Provide the following information about each person that provided pricing services to the Fund during the reporting period:

i. Full name: _____

ii. LEI, if any, or provide and describe other identifying number: _____

iii. State, if applicable: _____

iv. Foreign country, if applicable: _____

v. Is the pricing service an affiliated person of the Fund or its investment adviser(s)? [Y/N]

b. Was a pricing service hired or terminated during the reporting period? [Y/N]

Item C.12. Custodians.

a. Provide the following information about each person that provided custodial services to the Fund during the reporting period:

i. Full name: _____

ii. LEI, if any: _____

iii. State, if applicable: _____

iv. Foreign country, if applicable: _____

v. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vi. Is the custodian a sub-custodian? [Y/N]

vii. With respect to the custodian, check below to indicate the type of custody:

1. Bank—section 17(f)(1) (15 U.S.C. 80a-17(f)(1)): _____

2. Member national securities exchange—rule 17f-1 (17 CFR 270.17f-1): _____

3. Self—rule 17f-2 (17 CFR 270.17f-2): _____

4. Securities depository—rule 17f-4 (17 CFR 270.17f-4): _____

5. Foreign custodian—rule 17f-5 (17 CFR 270.17f-5): _____

6. Futures commission merchants and commodity clearing organizations—rule 17f-6 (17 CFR 270.17f-6): _____

7. Foreign securities depository—rule 17f-7 (17 CFR 270.17f-7): _____

8. Insurance company sponsor—rule 26a-2 (17 CFR 270.26a-2): _____

9. Other: _____. If other, describe: _____.
- b. Has a custodian been hired or terminated during the reporting period? [Y/N]

Item C.13. Shareholder servicing agents.

- a. Provide the following information about each shareholder servicing agent of the Fund:
- i. Full name: _____
 - ii. LEI, if any, or provide and describe other identifying number: _____
 - iii. State, if applicable: _____
 - iv. Foreign country, if applicable: _____
 - v. Is the shareholder servicing agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]
 - vi. Is the shareholder servicing agent a sub-shareholder servicing agent? [Y/N]
- b. Has a shareholder servicing agent been hired or terminated during the reporting period? [Y/N]

Item C.14. Administrators.

- a. Provide the following information about each administrator of the Fund:
- i. Full name: _____
 - ii. LEI, if any, or provide and describe other identifying number: _____
 - iii. State, if applicable: _____
 - iv. Foreign country, if applicable: _____
 - v. Is the administrator an affiliated person of the Fund or its investment adviser(s)? [Y/N]
 - vi. Is the administrator a sub-administrator? [Y/N]
- b. Has an administrator been hired or terminated during the reporting period? [Y/N]

Item C.15. Affiliated broker-dealers. Provide the following information about each affiliated broker-dealer:

- a. Full name: _____
- b. SEC file number: _____
- c. CRD number: _____
- d. LEI, if any: _____

- e. State, if applicable: _____
- f. Foreign country, if applicable: _____
- g. Total commissions paid to the affiliated broker-dealer for the reporting period: _____

Item C.16. Brokers.

- a. For each of the ten brokers that received the largest dollar amount of brokerage commissions (excluding dealer concessions in underwritings) by virtue of direct or indirect participation in the Fund's portfolio transactions, provide the information below:
 - i. Full name of broker: _____
 - ii. SEC file number: _____
 - iii. CRD number: _____
 - iv. LEI, if any: _____
 - v. State, if applicable: _____
 - vi. Foreign country, if applicable: _____
 - vii. Gross commissions paid by the Fund for the reporting period: _____
- b. Aggregate brokerage commissions paid by Fund during the reporting period: _____

Item C.17. Principal transactions.

- a. For each of the ten entities acting as principals with which the Fund did the largest dollar amount of principal transactions (include all short-term obligations, and U.S. government and tax-free securities) in both the secondary market and in underwritten offerings, provide the information below:
 - i. Full name of dealer: _____
 - ii. SEC file number: _____
 - iii. CRD number: _____
 - iv. LEI, if any: _____
 - v. State, if applicable: _____
 - vi. Foreign country, if applicable: _____
 - vii. Total value of purchases and sales (excluding maturing securities) with Fund: _____

b. Aggregate value of principal purchase/sale transactions of Fund during the reporting period:

Instructions to Item C.16 and Item C.17.

To help Registrants distinguish between agency and principal transactions, and to promote consistent reporting of the information required by these items, the following criteria should be used:

1. If a security is purchased or sold in a transaction for which the confirmation specifies the amount of the commission to be paid by the Registrant, the transaction should be considered an agency transaction and included in determining the answers to Item C.16.
2. If a security is purchased or sold in a transaction for which the confirmation specifies only the net amount to be paid or received by the Registrant and such net amount is equal to the market value of the security at the time of the transaction, the transaction should be considered a principal transaction and included in determining the amounts in Item C.17.
3. If a security is purchased by the Registrant in an underwritten offering, the acquisition should be considered a principal transaction and included in answering Item C.17 even though the Registrant has knowledge of the amount the underwriters are receiving from the issuer.
4. If a security is sold by the Registrant in a tender offer, the sale should be considered a principal transaction and included in answering Item C.17 even though the Registrant has knowledge of the amount the offeror is paying to soliciting brokers or dealers.
5. If a security is purchased directly from the issuer (such as a bank CD), the purchase should be considered a principal transaction and included in answering Item C.17.
6. The value of called or maturing securities should not be counted in either agency or principal transactions and should not be included in determining the amounts shown in Item C.16 and Item C.17. This means that the acquisition of a security may be included, but it is possible that its disposition may not be included. Disposition of a repurchase agreement at its expiration date should not be included.
7. The purchase or sales of securities in transactions not described in paragraphs (1) through (6) above should be evaluated by the Fund based upon the guidelines established in those paragraphs and classified accordingly. The agents considered in Item C.16 may be persons or companies not registered under the Exchange Act as securities brokers. The persons or companies from whom the investment company purchased or to whom it sold portfolio instruments on a principal basis may be persons or entities not registered under the Exchange Act as securities dealers.

Item C.18. Payments for brokerage and research. During the reporting period, did the Fund pay commissions to broker-dealers for “brokerage and research services” within the meaning of section 28(e) of the Exchange Act (15 U.S.C. 78bb)? [Y/N]

Item C.19. Average net assets.

- a. Provide the Fund’s (other than a money market fund’s) monthly average net assets during the reporting period: _____.
- b. Provide the money market fund’s daily average net assets during the reporting period: _____

Item C.20. Lines of credit, interfund lending, and interfund borrowing. For open-end management investment companies, respond to the following:

- a. Does the Fund have available a line of credit? [Y/N] If yes, for each line of credit, provide the information requested below:
 - i. Is the line of credit a committed or uncommitted line of credit? [committed/uncommitted]
 - ii. What size is the line of credit? [insert dollar amount]
 - iii. With which institution(s) is the line of credit? [list name(s)]
 - iv. Is the line of credit just for the Fund, or is it shared among multiple funds? [sole/shared]
 1. If shared, list the names of other funds that may use the line of credit. [list names and SEC File numbers]
 - v. Did the Fund draw on the line of credit this period? [Y/N]
 - vi. If the Fund drew on the line of credit during this period, what was the average amount outstanding when the line of credit was in use? [insert dollar amount]
 - vii. If the Fund drew on the line of credit during this period, what was the number of days that the line of credit was in use? [insert amount]
- b. Did the Fund engage in interfund lending? [Y/N] If yes, for each loan provide the information requested below:
 - i. What was the average amount of the interfund loan when the loan was outstanding? [insert dollar amount]
 - ii. What was the number of days that the interfund loan was outstanding? [insert amount]
- c. Did the Fund engage in interfund borrowing? [Y/N] If yes, for each loan provide the information requested below:

- i. What was the average amount of the interfund loan when the loan was outstanding? [insert dollar amount]
- ii. What was the number of days that the interfund loan was outstanding? [insert amount]

Item C.21. Swing pricing. For open-end management investment companies, respond to the following:

- a. Did the Fund (if not a Money Market Fund, Exchange-Traded Fund, or Exchange-Traded Managed Fund) engage in swing pricing? [Y/N]
 - i. If so, what was the swing factor upper limit?

Part D: Additional Questions for Closed-End Management Investment Companies and Small Business Investment Companies

Item D.1. Securities issued by Registrant. Indicate by checking below which of the following securities have been issued by the Registrant. Indicate all that apply.

- a. Common stock:
 - i. Title of class: _____
 - ii. Exchange where listed: _____
 - iii. Ticker symbol: _____
- b. Preferred stock: _____
 - i. Title of class: _____
 - ii. Exchange where listed: _____
 - iii. Ticker symbol: _____
- c. Warrants: _____
 - i. Title of class: _____
 - ii. Exchange where listed: _____
 - iii. Ticker symbol: _____
- d. Convertible securities: _____
 - i. Title of class: _____

- ii. Exchange where listed: _____
- iii. Ticker symbol: _____
- e. Bonds: _____
 - i. Title of class: _____
 - ii. Exchange where listed: _____
 - iii. Ticker symbol: _____
- f. Other: _____. If other, describe: _____.
 - i. Title of class: _____
 - ii. Exchange where listed: _____
 - iii. Ticker symbol: _____

Instruction. For any security issued by the Fund that is not listed on a securities exchange but that has a ticker symbol, provide that ticker symbol.

Item D.2. Rights offerings.

- a. Did the Fund make a rights offering with respect to any type of security during the reporting period? [Y/N] If yes, answer the following as to each rights offering made by the Fund:
- b. Type of security.
 - i. Common stock: _____
 - ii. Preferred stock: _____
 - iii. Warrants: _____
 - iv. Convertible securities: _____
 - v. Bonds: _____
 - vi. Other: _____. If other, describe: _____.
- c. Percentage of participation in primary rights offering:

Instruction. For Item D.2.c., the “percentage of participation in primary rights offering” is calculated as the percentage of subscriptions exercised during the primary rights offering relative to the amount of securities available for primary subscription.

Item D.3. Secondary offerings.

- a. Did the Fund make a secondary offering during the reporting period? [Y/N]

b. If yes, indicate by checking below the type(s) of security. Indicate all that apply.

i. Common stock: _____

ii. Preferred stock: _____

iii. Warrants: _____

iv. Convertible securities: _____

v. Bonds: _____

vi. Other: _____. If other, describe: _____.

Item D.4. Repurchases.

a. Did the Fund repurchase any outstanding securities issued by the Fund during the reporting period? [Y/N]

b. If yes, indicate by checking below the type(s) of security. Indicate all that apply:

i. Common stock: _____

ii. Preferred stock: _____

iii. Warrants: _____

iv. Convertible securities: _____

v. Bonds: _____

vi. Other: _____. If other, describe: _____.

Item D.5. Default on long-term debt.

a. Were any issues of the Fund's long-term debt in default at the close of the reporting period with respect to the payment of principal, interest, or amortization? [Y/N] If yes, provide the following:

i. Nature of default: _____

ii. Date of default: _____

iii. Amount of default per \$1,000 face amount: _____

iv. Total amount of default: _____

Instruction. The term "long-term debt" means debt with a period of time from date of initial issuance to maturity of one year or greater.

Item D.6. Dividends in arrears.

a. Were any accumulated dividends in arrears on securities issued by the Fund at the close of the reporting period? [Y/N] If yes, provide the following:

- i. Title of issue: _____
- ii. Amount per share in arrears: _____

Instruction. The term “dividends in arrears” means dividends that have not been declared by the board of directors or other governing body of the Fund at the end of each relevant dividend period set forth in the constituent instruments establishing the rights of the stockholders.

Item D.7. Modification of securities. Have the terms of any constituent instruments defining the rights of the holders of any class of the Registrant’s securities been materially modified? [Y/N] If yes, provide the attachment required by Item G.1.b.ii.

Item D.8. Management fee (closed-end companies only). Provide the Fund’s advisory fee as of the end of the reporting period as a percentage of net assets: _____

Instruction. Base the percentage on amounts incurred during the reporting period.

Item D.9. Net annual operating expenses. Provide the Fund’s net annual operating expenses as of the end of the reporting period (net of any waivers or reimbursements) as a percentage of net assets: _____

Item D.10. Market price. Market price per share at end of reporting period: _____

Instruction. Respond to this item with respect to common stock issued by the Registrant only.

Item D.11. Net asset value. Net asset value per share at end of reporting period:

Instruction. Respond to this item with respect to common stock issued by the Registrant only.

Item D.12. Investment advisers (small business investment companies only).

a. Provide the following information about each investment adviser (other than a sub-adviser) of the Fund:

- i. Full name: _____
- ii. SEC file number (e.g., 801-): _____
- iii. CRD number: _____
- iv. LEI, if any: _____

- v. State, if applicable: _____
- vi. Foreign country, if applicable: _____
- vii. Was the investment adviser hired during the reporting period? [Y/N]
 - 1. If the investment adviser was hired during the reporting period, indicate the investment adviser's start date: _____
- b. If an investment adviser (other than a sub-adviser) to the Fund was terminated during the reporting period, provide the following with respect to each investment adviser:
 - i. Full name: _____
 - ii. SEC file number (*e.g.*, 801-): _____
 - iii. CRD number: _____
 - iv. LEI, if any: _____
 - v. State, if applicable: _____
 - vi. Foreign country, if applicable: _____
 - vii. Termination date: _____
- c. For each sub-adviser to the Fund, provide the information requested:
 - i. Full name: _____
 - ii. SEC file number (*e.g.*, 801-): _____
 - iii. CRD number: _____
 - iv. LEI, if any: _____
 - v. State, if applicable: _____
 - vi. Foreign country, if applicable: _____
 - vii. Is the sub-adviser an affiliated person of the Fund's investment adviser(s)? [Y/N]
 - viii. Was the sub-adviser hired during the reporting period? [Y/N]
 - 1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date: _____
- d. If a sub-adviser was terminated during the reporting period, provide the following with respect to each such sub-adviser:
 - i. Full name: _____
 - ii. SEC file number (*e.g.*, 801-): _____
 - iii. CRD number: _____

- iv. LEI, if any: _____
- v. State, if applicable: _____
- vi. Foreign country, if applicable: _____
- vii. Termination date: _____

Item D.13. Transfer agents (small business investment companies only).

a. Provide the following information about each person providing transfer agency services to the Fund:

- i. Full name: _____
- ii. SEC file number (e.g., 84- or 85-): _____
- iii. LEI, if any: _____
- iv. State, if applicable: _____
- v. Foreign country, if applicable: _____
- vi. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]
- vii. Is the transfer agent a sub-transfer agent? [Y/N]

b. Has a transfer agent been hired or terminated during the reporting period? [Y/N]

Item D.14. Custodians (small business investment companies only).

a. Provide the following information about each person that provided custodial services to the Fund during the reporting period:

- i. Full name: _____
- ii. LEI, if any: _____
- iii. State, if applicable: _____
- iv. Foreign country, if applicable: _____
- v. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]
- vi. Is the custodian a sub-custodian? [Y/N]
- vii. With respect to the custodian, check below to indicate the type of custody:

1. Bank—section 17(f)(1) (15 U.S.C. 80a-17(f)(1)): _____

1. Member national securities exchange—rule 17f-1 (17 CFR 270.17f-1): _____

2. Self—rule 17f-2 (17 CFR 270.17f-2): _____
 4. Securities depository—rule 17f-4 (17 CFR 270.17f-4): _____
 5. Foreign custodian—rule 17f-5 (17 CFR 270.17f-5): _____
 6. Futures commission merchants and commodity clearing organizations—rule 17f-6 (17 CFR 270.17f-6): _____
 7. Foreign securities depository—rule 17f-7 (17 CFR 270.17f-7): _____
 8. Insurance company sponsor—rule 26a-2 (17 CFR 270.26a-2): _____
 9. Other: _____. If other, describe: _____.
- b. Has a custodian been hired or terminated during the reporting period? [Y/N]

**Part E: Additional Questions for Exchange-Traded Funds and
Exchange-Traded Managed Funds**

Item E.1. Exchange.

- a. Exchange where listed. Provide the name of the national securities exchange on which the Fund's shares are listed: _____
- b. Ticker. Provide the Fund's ticker symbol: _____

Item E.2. Authorized participants. For each authorized participant of the Fund, provide the following information:

- a. Full name: _____
- b. SEC file number: _____
- c. CRD number: _____
- d. LEI, if any: _____
- e. The dollar value of the Fund shares the authorized participant purchased from the Fund during the reporting period: _____
- f. The dollar value of the Fund shares the authorized participant redeemed during the reporting period: _____
- g. Did the Fund require that an authorized participant post collateral to the Fund or any of its designated service providers in connection with the purchase or redemption of Fund shares during the reporting period? [Y/N]

Instruction. The term “authorized participant” means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

Item E.3. Creation units.

- a. Number of Fund shares required to form a creation unit as of the last business day of the reporting period: _____
- b. Based on the dollar value paid for each creation unit purchased by authorized participants during the reporting period, provide: _____
 - i. The average percentage of that value composed of cash: ____%
 - ii. The standard deviation of the percentage of that value composed of cash: ____%
 - iii. The average percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: ____%
 - iv. The standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: ____%
- c. Based on the dollar value paid for creation units redeemed by authorized participants during the reporting period, provide: _____
 - i. The average percentage of that value composed of cash: ____%
 - ii. The standard deviation of the percentage of that value composed of cash: ____%
 - iii. The average percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: ____%
 - iv. The standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: ____%
- d. For creation units purchased by authorized participants during the reporting period, provide:
 - i. The average transaction fee charged to an authorized participant for transacting in the creation units, expressed as: _____
 1. Dollars per creation unit, if charged on that basis: \$ _____
 2. Dollars for one or more creation units purchased on the same day, if charged on that basis: \$ _____
 3. A percentage of the value of each creation unit, if charged on that basis: ____%

- ii. The average transaction fee charged to an authorized participant for transacting in those creation units the consideration for which was fully or partially composed of cash, expressed as:
 - 1. Dollars per creation unit, if charged on that basis: \$ ____
 - 2. Dollars for one or more creation units purchased on the same day, if charged on that basis: \$ ____
 - 3. A percentage of the cash in each creation unit, if charged on that basis: ____ %
- e. For creation units redeemed by authorized participants during the reporting period, provide:
 - i. The average transaction fee charged to an authorized participant for transacting in the creation units, expressed as:
 - 1. Dollars per creation unit, if charged on that basis: \$ ____
 - 2. Dollars for one or more creation units redeemed on the same day, if charged on that basis: \$ ____
 - 3. A percentage of the value of each creation unit, if charged on that basis: ____ %
 - ii. The average transaction fee charged to an authorized participant for transacting in those creation units the consideration for which was fully or partially composed of cash, expressed as:
 - 1. Dollars per creation unit, if charged on that basis: \$ ____
 - 2. Dollars for one or more creation units redeemed on the same day, if charged on that basis: \$ ____
 - 3. A percentage of the cash in each creation unit, if charged on that basis: ____ %

Instruction. The term “creation unit” means a specified number of Exchange-Traded Fund or Exchange-Traded Managed Fund shares that the fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of specified securities, cash, and other assets or positions.

Item E.4. Benchmark return difference (unit investment trusts only).

- a. If the Fund is an Index Fund as defined in Item C.3 of this Form, provide the following information:
 - i. Is the index whose performance the Fund tracks, constructed:
 - 1. By an affiliated person of the fund? [Y/N]
 - 2. Exclusively for the fund? [Y/N]

ii. The annualized difference between the Fund's total return during the reporting period and the index's return during the reporting period (i.e., the Fund's total return less the index's return): _____

1. Before Fund fees and expenses: _____

2. After Fund fees and expenses (i.e., net asset value): _____

iii. The annualized standard deviation of the daily difference between the Fund's total return and the index's return during the reporting period: _____

1. Before Fund fees and expenses: _____

2. After Fund fees and expenses (i.e., net asset value): _____

Item E.5. In-Kind ETF. Is the Fund an "In-Kind Exchange-Traded Fund" as defined in rule 22e-4 under the Act (17 CFR 270.22e-4)? [Y/N]

Part F: Additional Questions for Unit Investment Trusts

Item F.1. Depositor. Provide the following information about each depositor:

a. Full name: _____

b. CRD number, if any: _____

c. LEI, if any: _____

d. State, if applicable: _____

e. Foreign country, if applicable: _____

f. Full name of ultimate parent of depositor: _____

Item F.2. Administrators.

a. Provide the following information about each administrator of the Fund:

i. Full name: _____

ii. LEI, if any, or provide and describe other identifying number: _____

iii. State, if applicable: _____

iv. Foreign country, if applicable: _____

v. Is the administrator an affiliated person of the Fund or depositor? [Y/N]

vi. Is the administrator a sub-administrator? [Y/N]

b. Has an administrator been hired or terminated during the reporting period? [Y/N]

Item F.3. Insurance company separate accounts. Is the Registrant a separate account of an insurance company? [Y/N]

Instruction. If the answer to Item F.3 is yes, respond to Item F.12 through Item F.19. If the answer to Item F.3 is no, respond to Item F.4 through Item F.11, and Item F.17 through Item F.19.

Item F.4. Sponsor. Provide the following information about each sponsor:

- a. Full name: _____
- b. CRD number, if any: _____
- c. LEI, if any: _____
- d. State, if applicable: _____
- e. Foreign country, if applicable: _____

Item F.5. Trustees. Provide the following information about each trustee:

- a. Full name: _____
- b. State, if applicable: _____
- c. Foreign country, if applicable: _____

Item F.6. Securities Act registration.

- a. Provide the number of series existing at the end of the reporting period that had outstanding securities registered under the Securities Act: _____
- b. Provide the CIK for each of these existing series: _____

Item F.7. New series.

- a. Number of new series for which registration statements under the Securities Act became effective during the reporting period: _____
- b. Total aggregate value of the portfolio securities on the date of deposit for the new series: _____

- Item F.8.** Series with a current prospectus. Number of series for which a current prospectus was in existence at the end of the reporting period: _____
- Item F.9.** Number of existing series for which additional units were registered under the Securities Act.
- a. Number of existing series for which additional units were registered under the Securities Act during the reporting period: _____
- b. Total value of additional units: _____
- Item F.10.** Value of units placed in portfolios of subsequent series. Total value of units of prior series that were placed in the portfolios of subsequent series during the reporting period (the value of these units is to be measured on the date they were placed in the subsequent series): _____
- Item F.11.** Assets. Provide the total assets of all series of the Registrant combined as of the end of the reporting period: _____
- Item F.12.** Series ID of separate account. Series identification number: _____
- Item F.13.** Number of contracts. For each security that has a contract identification number assigned pursuant to rule 313 of Regulation S-T (17 CFR 232.313), provide the number of individual contracts that are in force at the end of the reporting period: _____

Instruction. In the case of group contracts, each participant certificate should be counted as an individual contract.

- Item F.14.** Information on the security issued through the separate account. For each security that has a contract identification number assigned pursuant to rule 313 of Regulation S-T (17 CFR 232.313), provide the following information as of the end of the reporting period:
- a. Full name of the security: _____
- b. Contract identification number: _____
- c. Total assets attributable to the security: _____
- d. Number of contracts sold during the reporting period: _____
- e. Gross premiums received during the reporting period: _____
- f. Gross premiums received pursuant to section 1035 exchanges: _____

- g. Number of contracts affected in connection with premiums paid in pursuant to section 1035 exchanges: _____
- h. Amount of contract value redeemed during the reporting period: _____
- i. Amount of contract value redeemed pursuant to section 1035 exchanges: _____
- j. Number of contracts affected in connection with contract value redeemed pursuant to section 1035 exchanges: _____

Instruction. In the case of group contracts, each participant certificate should be counted as an individual contract.

Item F.15. Reliance on rule 6c-7. Did the Registrant rely on rule 6c-7 under the Act (17 CFR 270.6c-7) during the reporting period? [Y/N]

Item F.16. Reliance on rule 11a-2. Did the Registrant rely on rule 11a-2 under the Act (17 CFR 270.11a-2) during the reporting period? [Y/N]

Item F.17. Divestments under section 13(c) of the Act.

a. If the Registrant has divested itself of securities in accordance with section 13(c) of the Act (15 U.S.C. 80a-13(c)) since the end of the reporting period immediately prior to the current reporting period and before filing of the current report, disclose the information requested below for each such divested security:

- i. Full name of the issuer: _____
- ii. Ticker symbol: _____
- iii. CUSIP number: _____
- iv. Total number of shares or, for debt securities, principal amount divested: _____
- v. Date that the securities were divested: _____
- vi. Name of the statute that added the provision of section 13(c) in accordance with which the securities were divested: _____

b. If the Registrant holds any securities of the issuer on the date of the filing, provide the information requested below:

- i. Ticker symbol: _____
- ii. CUSIP number: _____
- iii. Total number of shares or, for debt securities, principal amount held on the date of the filing: _____

Item F.18. Reliance on rule 12d1-4. Did the registrant rely on rule 12d1-4 under the Act (17 CFR 270.12d1-4) during the reporting period? [Y/N]

Item F.19. Reliance on section 12(d)(1)(G). Did the Registrant rely on the statutory exception in section 12(d)(1)(G) of the Act (15 USC 80a-12(d)(1)(G)) during the reporting period? [Y/N]]

Instructions.

This item may be used by a unit investment trust that divested itself of securities in accordance with section 13(c). A unit investment trust is not required to include disclosure under this item; however, the limitation on civil, criminal, and administrative actions under section 13(c) does not apply with respect to a divestment that is not disclosed under this item.

If a unit investment trust divests itself of securities in accordance with section 13(c) during the period that begins on the fifth business day before the date of filing a report on Form N-CEN and ends on the date of filing, the unit investment trust may disclose the divestment in either the report or an amendment thereto that is filed not later than five business days after the date of filing the report.

For purposes of determining when a divestment should be reported under this item, if a unit investment trust divests its holdings in a particular security in a related series of transactions, the unit investment trust may deem the divestment to occur at the time of the final transaction in the series. In that case, the unit investment trust should report each transaction in the series on a single report on Form N-CEN, but should separately state each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date.

Item F.17 shall terminate one year after the first date on which all statutory provisions that underlie section 13(c) have terminated.

Part G: Attachments

Item G.1. Attachments.

a. Attachments applicable to all Registrants. All Registrants shall file the following attachments, as applicable, with the current report. Indicate the attachments filed with the current report by checking the applicable items below:

i. Legal proceedings: _____

- ii. Provision of financial support: _____
- iii. Independent public accountant’s report on internal control (management investment companies other than small business investment companies only): _____
- iv. Change in accounting principles and practices: _____
- v. Information required to be filed pursuant to exemptive orders: _____
- vi. Other information required to be included as an attachment pursuant to Commission rules and regulations: _____

Instructions.

1. Item G.1.a.i. Legal proceedings.
 - (a) If the Registrant responded “YES” to Item B.11.a., provide a brief description of the proceedings. As part of the description, provide the case or docket number (if any), and the full names of the principal parties to the proceeding.
 - (b) If the Registrant responded “YES” to Item B.11.b., identify the proceeding and give its date of termination.
2. Item G.1.a.ii. Provision of financial support. If the Registrant responded “YES” to Item B.14., provide the following information (unless the Registrant is a Money Market Fund):
 - (a) Description of nature of support.
 - (b) Person providing support.
 - (c) Brief description of relationship between the person providing support and the Registrant.
 - (d) Date support provided.
 - (e) Amount of support.
 - (f) Security supported (if applicable). Disclose the full name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CIK, CUSIP, ISIN, LEI).
 - (g) Value of security supported on date support was initiated (if applicable).
 - (h) Brief description of reason for support.
 - (i) Term of support.
 - (j) Brief description of any contractual restrictions relating to support.
3. Item G.1.a.iii. Independent public accountant’s report on internal control (management investment companies other than small business investment companies only). Each management investment company shall furnish a report of its independent public accountant on the

company's system of internal accounting controls. The accountant's report shall be based on the review, study and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements for the reporting period. The report should disclose any material weaknesses in: (a) the accounting system; (b) system of internal accounting control; or (c) procedures for safeguarding securities which exist as of the end of the Registrant's fiscal year.

The accountant's report shall be furnished as an exhibit to the form and shall: (1) be addressed to the Registrant's shareholders and board of directors; (2) be dated; (3) be signed manually; and (4) indicate the city and state where issued.

Attachments that include a report that discloses a material weakness should include an indication by the Registrant of any corrective action taken or proposed.

The fact that an accountant's report is attached to this form shall not be regarded as acknowledging any review of this form by the independent public accountant.

4. Item G.1.a.iv. Change in accounting principles and practices. If the Registrant responded "YES" to Item B.21, provide an attachment that describes the change in accounting principles or practices, or the change in the method of applying any such accounting principles or practices. State the date of the change and the reasons therefor. A letter from the Registrant's independent accountants, approving or otherwise commenting on the change, shall accompany the description.
5. Item G.1.a.v. Information required to be filed pursuant to exemptive orders. File as an attachment any information required to be reported on Form N-CEN or any predecessor form to Form N-CEN (e.g., Form N-SAR) pursuant to exemptive orders issued by the Commission and relied on by the Registrant.
6. Item G.1.a.vi. Other information required to be included as an attachment pursuant to Commission rules and regulations. File as an attachment any other information required to be included as an attachment pursuant to Commission rules and regulations.

b. Attachments to be filed by closed-end management investment companies and small business investment companies. Registrants shall file the following attachments, as applicable, with the current report. Indicate the attachments filed with the current report by checking the applicable items below.

- i. Material amendments to organizational documents: _____
- ii. Instruments defining the rights of the holders of any new or amended class of securities: _____
- iii. New or amended investment advisory contracts: _____
- iv. Information called for by Item 405 of Regulation S-K: _____
- v. Code of ethics (small business investment companies only): _____

Instructions.

7. Item G.1.b.i. Material amendments to organizational documents. Provide copies of all material amendments to the Registrant's charters, by-laws, or other similar organizational documents that occurred during the reporting period.
8. Item G.1.b.ii. Instruments defining the rights of the holders of any new or amended class of securities. Provide copies of all constituent instruments defining the rights of the holders of any new or amended class of securities for the current reporting period. If the Registrant has issued a new class of securities other than short-term paper, furnish a description of the class called for by the applicable item of Form N-2. If the constituent instruments defining the rights of the holders of any class of the Registrant's securities have been materially modified during the reporting period, give the title of the class involved and state briefly the general effect of the modification upon the rights of the holders of such securities.
9. Item G.1.b.iii. New or amended investment advisory contracts. Provide copies of any new or amended investment advisory contracts that became effective during the reporting period.
10. Item G.1.b.iv. Information called for by Item 405 of Regulation S-K. Provide the information called for by Item 405 of Regulation S-K concerning failure of certain closed-end management investment company and small business investment company shareholders to file certain ownership reports.
11. Item G.1.b.v. Code of ethics (small business investment companies only).
 - (a) (1) Disclose whether, as of the end of the period covered by the report, the Registrant has adopted a code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party. If the Registrant has not adopted such a code of ethics, explain why it has not done so.
 - (2) For purposes of this instruction, the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote: (i) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (ii) full, fair, accurate, timely, and understandable disclosure in reports and documents that a Registrant files with, or submits to, the Commission and in other public communications made by the Registrant; (iii) compliance with applicable governmental laws, rules, and regulations; (iv) the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and (v) accountability for adherence to the code.
 - (3) The Registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed

by the Registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this instruction. The Registrant must file a copy of any such amendment as an exhibit to this report on Form N-CEN, unless the Registrant has elected to satisfy paragraph (a)(6) of this instruction by posting its code of ethics on its website pursuant to paragraph (a)(6)(ii) of this Instruction, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (a)(6)(iii) of this instruction.

- (4) If the Registrant has, during the period covered by the report, granted a waiver, including an implicit waiver, from a provision of the code of ethics to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, that relates to one or more of the items set forth in paragraph (a)(2) of this instruction, the Registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.
- (5) If the Registrant intends to satisfy the disclosure requirement under paragraph (a)(3) or (4) of this instruction regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this instruction by posting such information on its Internet website, disclose the Registrant's Internet address and such intention.
- (6) The Registrant must: (i) file with the Commission a copy of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its report on this Form N-CEN; (ii) post the text of such code of ethics on its Internet website and disclose, in its most recent report on this Form N-CEN, its Internet address and the fact that it has posted such code of ethics on its Internet website; or (iii) undertake in its most recent report on this Form N-CEN to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.
- (7) A Registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (a)(2) of this instruction may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a)(1) of this instruction. In satisfying the requirements of paragraph (a)(6) of this instruction, a Registrant need only file, post, or provide the portions of a broader document that constitutes a "code of ethics" as defined in paragraph (a)(2) of this instruction and that apply to the persons specified in paragraph (a)(1) of this instruction.
- (8) If a Registrant elects to satisfy paragraph (a)(6) of this instruction by posting its code of ethics on its Internet website pursuant to paragraph (a)(6)(ii), the code of ethics must remain

accessible on its website for as long as the Registrant remains subject to the requirements of this instruction and chooses to comply with this instruction by posting its code on its Internet website pursuant to paragraph (a)(6)(ii).

- (9) The Registrant does not need to provide any information pursuant to paragraphs (a)(3) and (4) of this instruction if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the Registrant has disclosed in its most recently filed report on this Form N-CEN its Internet website address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the Registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The Registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the Registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.
- (10) The Registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.
- (11) For purposes of this instruction: (i) the term “waiver” means the approval by the Registrant of a material departure from a provision of the code of ethics; and (ii) the term “implicit waiver” means the Registrant’s failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in rule 3b-7 under the Exchange Act (17 CFR 240.3b-7), of the Registrant.
- (b) (1) Disclose that the Registrant’s board of directors has determined that the Registrant either: (i) has at least one audit committee financial expert serving on its audit committee; or (ii) does not have an audit committee financial expert serving on its audit committee.
- (2) If the Registrant provides the disclosure required by paragraph (b)(1)(i) of this instruction, it must disclose the name of the audit committee financial expert and whether that person is “independent.” In order to be considered “independent” for purposes of this instruction, a member of an audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (i) accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or (ii) be an “interested person” of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)).
- (3) If the Registrant provides the disclosure required by paragraph (b)(1)(ii) of this instruction, it must explain why it does not have an audit committee financial expert.
- (4) If the Registrant’s board of directors has determined that the Registrant has more than one audit committee financial expert serving on its audit committee, the Registrant may, but is

not required to, disclose the names of those additional persons. A Registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (b)(2) of this instruction.

- (5) For purposes of this instruction, an “audit committee financial expert” means a person who has the following attributes: (i) an understanding of generally accepted accounting principles and financial statements; (ii) the ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves; (iii) experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Registrant’s financial statements, or experience actively supervising one or more persons engaged in such activities; (iv) an understanding of internal controls and procedures for financial reporting; and (v) an understanding of audit committee functions.
- (6) A person shall have acquired such attributes through: (i) education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions; (ii) experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions; (iii) experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or (iv) other relevant experience.
- (7) (i) A person who is determined to be an audit committee financial expert will not be deemed an “expert” for any purpose, including without limitation for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this instruction; (ii) the designation or identification of a person as an audit committee financial expert pursuant to this instruction does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification; (iii) the designation or identification of a person as an audit committee financial expert pursuant to this instruction does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.
- (8) If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (b)(6)(iv) of this Instruction, the Registrant shall provide a brief listing of that person’s relevant experience.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Registrant)

Date

(Signature)*

* Print full name and title of the signing officer under his/her signature.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM N-CSR

NOTE: This version of Form N-CSR includes amendments that are effective but for which compliance may not yet be required. More information about applicable compliance dates may be found in: 1) Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)]; 2) Share Repurchase Disclosure Modernization (May 3, 2023) [88 FR 36002 (June 2, 2023)]; and 3) Listing Standards for Recovery of Erroneously Awarded Compensation (Oct. 26, 2022) [87 FR 73076 (Nov. 28, 2022)].

This is a reference copy of Form N-CSR. You may not send a completed printout of this form to the SEC to satisfy a filing obligation. You can only satisfy an SEC filing obligation by submitting the information required by this form to the SEC in electronic format online at <https://www.edgarfiling.sec.gov>.

NOTE: This version of Form N-CSR includes certain amendments that the Commission recently adopted, as indicated in bracketed text throughout this document. More information about these amendments' compliance dates may be found in the Commission releases cited in the bracketed text.

[Note Compliance date for Items 7 to 11 is July 24, 2024]

OMB APPROVAL	
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM N-CSR

**CERTIFIED SHAREHOLDER REPORT OF REGISTERED MANAGEMENT
INVESTMENT COMPANIES**

Investment Company Act file number _____

(Exact name of registrant as specified in charter)

(Address of principal executive offices) (Zip code)

(Name and address of agent for service)

Registrant's telephone number, including area code: _____

Date of fiscal year end: _____

Date of reporting period: _____

Form N-CSR is to be used by management investment companies to file reports with the Commission not later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under Rule 30e-1 under the Investment Company Act of 1940 (17 CFR 270.30e-1). The Commission may use the information provided on Form N-CSR in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N-CSR, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N-CSR unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the

burden to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 2569 (10/23)

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-CSR.

Form N-CSR is a combined reporting form that is to be used for reports of registered management investment companies under Section 30(b)(2) of the Investment Company Act of 1940 (the “Act”) and Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”), filed pursuant to Rule 30b2-1(a) under the Act (17 CFR 270.30b2-1(a)). A report on this Form shall be filed within 10 days after the transmission to stockholders of any annual or semi-annual report that is required to be transmitted to stockholders pursuant to Rule 30e-1 under the Act (17 CFR 270.30e-1).

B. Application of General Rules and Regulations.

The General Rules and Regulations under the Act and the Exchange Act contain certain general requirements that are applicable to reporting on any form under those Acts. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report.

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b-11 (17 CFR 270.8b-11) and 8b-12 (17 CFR 270.8b-12) under the Act and Rules 12b-11 (17 CFR 240.12b-11) and 12b-12 (17 CFR 240.12b-12) under the Exchange Act. The Commission does not furnish blank copies of this Form to be filled in for filing.
2. These general instructions are not to be filed with the report.
3. Attention is directed to Rule 12b-20 under the Exchange Act (17 CFR 240.12b-20), which states: “In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.”
4. *Interactive Data File.* An Interactive Data File as defined in Rule 11 of Regulation S-T [17 CFR 232.11] is required to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T [17 CFR 232.405] by a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a et seq.) to the extent required by Rule 405 of Regulation S-T.

D. Incorporation by Reference.

A registrant may incorporate by reference information required by Items 4, 5, 18, and 19(a)(1) and 19(a)(2). No other Items of the Form shall be answered by incorporating any information by reference.

The information required by Items 4, 5 and 18 may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A (17 CFR 240.14a-1 *et seq.*)) or definitive information statement (filed or to be filed pursuant to Regulation 14C (17 CFR 240.14c-1 *et seq.*)) involving the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by an annual report on this Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 303 of Regulation S-T (17 CFR 232.303) (specific requirements for electronically filed documents); Rule 12b-23 under the Exchange Act (17 CFR 240.12b-23) (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Exchange Act); and Rule 0-4 under the Investment Company Act of 1940 (17 CFR 270.0-4) (additional rules on incorporation by reference for investment companies).

E. Definitions.

Unless the context clearly indicates the contrary, terms used in this Form N-CSR have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the Form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report.

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S-T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed. Copies not manually signed must bear typed or printed signatures.

2. (a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive and principal financial officers.

(b) The name of each person who signs the report shall be typed or printed beneath his or her signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the report. Attention is directed to Rule 12b-11 under the Exchange Act (17 CFR 240.12b-11) and Rule 8b-11 under the Act (17 CFR 270.8b-11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Reports to Stockholders.

(a) Include a copy of the report transmitted to stockholders pursuant to Rule 30e-1 under the Act (17 CFR 270.30e-1).

(b) Include a copy of each notice transmitted to stockholders in reliance on Rule 30e-3 under the Act (17 CFR 270.30e-3) that contains disclosures specified by paragraph (c)(3) of that rule.

Item 2. Code of Ethics.

(a) Disclose whether, as of the end of the period covered by the report, the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party. If the registrant has not adopted such a code of ethics, explain why it has not done so.

Instruction to paragraph (a).

The information required by this Item is only required in an annual report on this Form N-CSR.

(b) For purposes of this Item, the term "code of ethics" means written standards that are reasonably designed to deter wrongdoing and to promote:

- (1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- (2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;
- (3) Compliance with applicable governmental laws, rules, and regulations;
- (4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and
- (5) Accountability for adherence to the code.

(c) The registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item. The registrant must file a copy of any such amendment as an exhibit pursuant to Item 18(a)(1), unless the registrant has elected to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2) of this Item, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (f)(3) of this Item.

(d) If the registrant has, during the period covered by the report, granted a waiver, including an implicit waiver, from a provision of the code of ethics to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the registrant or a third party, that relates to one or more of the items set forth in paragraph (b) of this Item, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(e) If the registrant intends to satisfy the disclosure requirement under paragraph (c) or (d) of this Item regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

(f) The registrant must:

(1) File with the Commission, pursuant to Item 18(a)(1), a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report on this Form N-CSR;

(2) Post the text of such code of ethics on its Internet website and disclose, in its most recent report on this Form N-CSR, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(3) Undertake in its most recent report on this Form N-CSR to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

Instructions to Item 2.

1. A registrant may have separate codes of ethics for different types of officers. Furthermore, a "code of ethics" within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (f), a registrant need only file, post, or provide the portions of a broader document that constitutes a "code of ethics" as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a registrant elects to satisfy paragraph (f) of this Item by posting its code of ethics on its website pursuant to paragraph (f)(2), the code of ethics must remain accessible on its website for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its website pursuant to paragraph (f)(2).

3. The registrant does not need to provide any information pursuant to paragraphs (c) and (d) of this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this Form N-CSR its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.
4. The registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.
5. For purposes of this Item:
 - (a) The term “waiver” means the approval by the registrant of a material departure from a provision of the code of ethics; and
 - (b) The term “implicit waiver” means the registrant’s failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7), of the registrant.

Item 3. Audit Committee Financial Expert.

- (a) (1) Disclose that the registrant’s board of directors has determined that the registrant either:
 - (i) Has at least one audit committee financial expert serving on its audit committee; or
 - (ii) Does not have an audit committee financial expert serving on its audit committee.
- (2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert and whether that person is “independent.” In order to be considered “independent” for purposes of this Item, a member of an audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:
 - (i) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or

- (ii) Be an “interested person” of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)).
- (3) If the registrant provides the disclosure required by paragraph (a)(1)(ii) of this Item, it must explain why it does not have an audit committee financial expert.

Instructions to paragraph (a).

1. The information required by this Item is only required in an annual report on Form N-CSR.

2. If the registrant’s board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (a)(2) of this Item.

(b) For purposes of this Item, an “audit committee financial expert” means a person who has the following attributes:

- (1) An understanding of generally accepted accounting principles and financial statements;
- (2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;
- (3) Experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant’s financial statements, or experience actively supervising one or more persons engaged in such activities;
- (4) An understanding of internal control over financial reporting; and
- (5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

- (1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions;
- (2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;
- (3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or
- (4) Other relevant experience.

(d) (1) A person who is determined to be an audit committee financial expert will not be deemed an “expert” for any purpose, including without limitation for purposes of Section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.

Instruction to Item 3.

If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (c)(4) of this Item, the registrant shall provide a brief listing of that person’s relevant experience.

Item 4. Principal Accountant Fees and Services.

(a) Disclose, under the caption Audit Fees, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant’s annual financial statements or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(b) Disclose, under the caption Audit-Related Fees, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit of the registrant’s financial statements and are not reported under paragraph (a) of this Item. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(c) Disclose, under the caption Tax Fees, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice, and tax planning. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(d) Disclose, under the caption All Other Fees, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (a) through (c) of this Item. Registrants shall describe the nature of the services comprising the fees disclosed under this category.

(e) (1) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7) of Rule 2-01 of Regulation S-X.

(2) Disclose the percentage of services described in each of paragraphs (b) through (d) of this Item that were approved by the audit committee pursuant to paragraph (c)(7)(i)(C) of Rule 2-01 of Regulation S-X.

(f) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

(g) Disclose the aggregate non-audit fees billed by the registrant's accountant for services rendered to the registrant, and rendered to the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is sub-contracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides ongoing services to the registrant for each of the last two fiscal years of the registrant.

(h) Disclose whether the registrant's audit committee of the board of directors has considered whether the provision of non-audit services that were rendered to the registrant's investment adviser (not including any subadviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the investment adviser that provides ongoing services to the registrant that were not pre-approved pursuant to paragraph (c)(7)(ii) of Rule 2-01 of Regulation S-X is compatible with maintaining the principal accountant's independence.

(i) A registrant identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)), as having retained, for the preparation of the audit report on its financial statements included in the Form N-CSR, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction must electronically submit to the Commission on a supplemental basis documentation that establishes that the registrant is not owned or controlled by a governmental entity in the foreign jurisdiction. The registrant must submit this documentation on or before the due date for this form. A registrant that is owned or controlled by a foreign governmental entity is not required to submit such documentation.

(j) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b-4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)), as having retained, for the preparation of the audit report on its financial statements included in the Form N-CSR, a registered public accounting firm

that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must provide the below disclosures. Also, any such identified foreign issuer that uses a variable-interest entity or any similar structure that results in additional foreign entities being consolidated in the financial statements of the registrant is required to provide the below disclosures for itself and its consolidated foreign operating entity or entities. A registrant must disclose:

- (1) That, for the immediately preceding annual financial statement period, a registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant;
- (2) The percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized;
- (3) Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the registrant;
- (4) The name of each official of the Chinese Communist Party who is a member of the board of directors of the registrant or the operating entity with respect to the registrant; and
- (5) Whether the articles of incorporation of the registrant (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

Instructions.

1. The information required by this Item 4 is only required in an annual report on this Form N-CSR.
2. For purposes of paragraphs (b), (c), and (d), registrants that are investment companies must disclose fees billed for services rendered to the registrant and separately, disclose fees required to be approved pursuant to paragraph (c)(7)(ii) of Rule 2-01 of Regulation S-X. Registered investment companies must also disclose the fee percentages as required by Item 4(e)(2) for the registrant and separately, disclose the fee percentages as required by Item 4(e)(2) for the fees required to be approved by the investment company registrant's audit committee pursuant to paragraph (c)(7)(ii) of Rule 2-01 of Regulation S-X.

Item 5. Audit Committee of Listed Registrants

(a) If the registrant is a listed issuer as defined in Rule 10A-3 under the Exchange Act (17 CFR 240.10A-3), state whether or not the registrant has a separately-designated standing audit committee established in accordance with Section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)). If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as

the registrant's audit committee as specified in Section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(b) If applicable, provide the disclosure required by Rule 10A-3(d) under the Exchange Act (17 CFR 240.10A-3(d)) regarding an exemption from the listing standards for audit committees.

Instruction. The information required by this Item is only required in an annual report on this Form N-CSR.

Item 6. Investments.

(a) File Schedule I—Investments in securities of unaffiliated issuers as of the close of the reporting period as set forth in § 210.1212 of Regulation S-X [17 CFR 210.12-12], unless the schedule is included as part of the report to shareholders filed under Item 1 of this Form or is included in the financial statements filed under Item 7 of this Form.

Instruction to paragraph (a).

Schedule I—Investments in securities of unaffiliated issuers filed under this Item must be audited, except that in the case of a report on this Form N-CSR as of the end of a fiscal half-year Schedule I—Investments in securities of unaffiliated issuers need not be audited.

(b) If the registrant has divested itself of securities in accordance with Section 13(c) of the Investment Company Act of 1940 following the filing of its last report on Form N-CSR and before filing of the current report, disclose the following information for each such divested security:

- (1) Name of the issuer;
- (2) Exchange ticker symbol;
- (3) Committee on Uniform Securities Identification Procedures (“CUSIP”) number;
- (4) Total number of shares or, for debt securities, principal amount divested;
- (5) Date(s) that the securities were divested;
- (6) If the registrant holds any securities of the issuer on the date of filing, the exchange ticker symbol; CUSIP number; and the total number of shares or, for debt securities, principal amount held on the date of filing; and
- (7) Name of the statute that added the provision of Section 13(c) in accordance with which the securities were divested.

This Item 6(b) shall terminate one year after the first date on which all statutory provisions that underlie Section 13(c) of the Investment Company Act of 1940 have terminated.

Instructions to paragraph (b).

1. This Item may be used by a registrant that divested itself of securities in accordance with Section 13(c) of the Investment Company Act. A registrant is not required to include disclosure under this Item; however, the limitation on civil, criminal, and administrative actions under Section 13(c) of the Investment Company Act does not apply with respect to a divestment that is not disclosed under this Item.
2. If a registrant divests itself of securities in accordance with Section 13(c) of the Act during the period that begins on the fifth business day before the date of filing a Form N-CSR and ends on the date of filing, it may disclose the divestment in either the Form N-CSR or an amendment thereto that is filed not later than five business days after the date of filing the Form N-CSR.
3. For purposes of determining when a divestment should be reported under this Item, if a registrant divests its holdings in a particular security in a related series of transactions, the registrant may deem the divestment to occur at the time of the final transaction in the series. In that case, the registrant should report each transaction in the series on a single Form N-CSR, but should separately state each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date.

Item 7. Financial Statements and Financial Highlights for Open-End Management Investment Companies. [Compliance date July 24, 2024]

- (a) An open-end management investment company registered on Form N-1A [17 CFR 239.15 and 17 CFR 274.11A] must file its most recent annual or semi-annual financial statements required, and for the periods specified, by Regulation S-X.
- (b) An open-end management investment company registered on Form N-1A [17 CFR 239.15 and 17 CFR 274.11A] must file the information required by Item 13 of Form N-1A.

Instructions to paragraphs (a) and (b).

1. The financial statements and financial highlights filed under this Item must be audited and be accompanied by any associated accountant's report, as defined in rule 1-02(a) of Regulation S-X [17 CFR 210.1-02(a)], except that in the case of a report on this Form N-CSR as of the end of a fiscal half-year, the financial statements and financial highlights need not be audited.
2. In the case of a Money Market Fund, Schedule I—Investments in securities of unaffiliated issuers [17 CFR 210.12-12B] may be omitted from its financial statements, provided that: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free telephone number; (ii) on the Fund's website, if

applicable; and (iii) on the Commission's website at [http:// www.sec.gov](http://www.sec.gov); and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first class mail or other means designed to ensure equally prompt delivery.

Item 8. Changes in and Disagreements with Accountants for Open-End Management Investment Companies. [Compliance date July 24, 2024]

An open-end management investment company registered on Form N-1A [17 CFR 239.15 and 17 CFR 274.11A] must disclose the information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S-K [17 CFR 229.304].

Item 9. Proxy Disclosures for Open-End Management Investment Companies. [Compliance date July 24, 2024]

If any matter was submitted during the period covered by the report to a vote of shareholders of an open-end management investment company registered on Form N-1A [17 CFR 239.15A and 17 CFR 274.11A], through the solicitation of proxies or otherwise, the company must furnish the following information:

- (1) The date of the meeting and whether it was an annual or special meeting.
- (2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.
- (3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this Item.

Item 10. Remuneration Paid to Directors, Officers, and Others of Open-End Management Investment Companies. [Compliance date July 24, 2024]

Unless the following information is disclosed as part of the financial statements included in Item 7, an open-end management investment company registered on Form N-1A [17 CFR 239.15A and 17 CFR 274.11A] must disclose the aggregate remuneration paid by the company during the period covered by the report to:

- (1) All directors and all members of any advisory board for regular compensation;
- (2) Each director and each member of an advisory board for special compensation;
- (3) All officers; and
- (4) Each person of whom any officer or director of the Fund is an affiliated person.

Item 11. Statement Regarding Basis for Approval of Investment Advisory Contract. [Compliance date July 24, 2024]

If the board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

- (1) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. These factors would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (e.g., pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons and how they assisted the board in concluding that the contract should be approved; and
- (2) If applicable, 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.

Instructions.

- (1) Board approvals covered by this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this Item include subadvisory contracts.

(2) Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that conclusion affected its decision to approve the contract.

(3) If any factor enumerated in this Item is not relevant to the board's evaluation of an investment advisory contract, explain the reasons why that factor is not relevant;

Item 12. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies.

A closed-end management investment company that is filing an annual report on this Form N-CSR must, unless it invests exclusively in non-voting securities, describe the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, including the procedures that the company uses when a vote presents a conflict between the interests of its shareholders, on the one hand, and those of the company's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)) and the rules thereunder) of the company, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the company's investment adviser, or any other third party, that the company uses, or that are used on the company's behalf, to determine how to vote proxies relating to portfolio securities.

Instruction. A company may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

Item 13. Portfolio Managers of Closed-End Management Investment Companies.

(a) If the registrant is a closed-end management investment company that is filing an annual report on this Form N-CSR, provide the following information:

(1) State the name, title, and length of service of the person or persons employed by or associated with the registrant or an investment adviser of the registrant who are primarily responsible for the day-to-day management of the registrant's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years.

Instructions to paragraph (a)(1).

1. Provide the information required by this paragraph as of the date of filing of the report. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons associated with the registrant or an investment adviser of the registrant is jointly and primarily responsible for the day-to-day management of the registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (e.g., lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the registrant's portfolio. If more than five persons are jointly and primarily responsible for the day-to-day management of the registrant's portfolio, the registrant need only provide information for the five persons with the most significant responsibility for the day-to-day management of the registrant's portfolio.

(2) If a Portfolio Manager required to be identified in response to paragraph (a)(1) of this Item is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

- (i) The Portfolio Manager's name;
- (ii) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:
 - (A) Registered investment companies;
 - (B) Other pooled investment vehicles; and
 - (C) Other accounts.
- (iii) For each of the categories in paragraph (a)(2)(ii) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and
- (iv) A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the registrant's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(2)(ii) of this Item, on the other. This description would include, for example, material conflicts between the investment strategy of the registrant and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the registrant and other accounts managed by the Portfolio Manager.

Instructions to paragraph (a)(2).

1. Provide the information required by this paragraph as of the end of the registrant's most recently completed fiscal year, except that, in the case of any newly identified Portfolio Manager, information must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to paragraph (a)(2) of this Item.

(3) Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to paragraph (a)(1) of this Item. For each type of compensation (e.g., salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on the registrant's pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the registrant's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

Instructions to paragraph (a)(3).

1. Provide the information required by this paragraph as of the end of the registrant's most recently completed fiscal year, except that, in the case of any newly identified Portfolio Manager, information must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, relocation, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the registrant, the registrant's investment adviser, or any other source with respect to management of the registrant and any other accounts included in the response to paragraph (a)(2)(ii) of this Item. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the registrant and other accounts, e.g., if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the registrant, this must be disclosed.

(4) For each Portfolio Manager required to be identified in response to paragraph (a)(1) of this Item, state the dollar range of equity securities in the registrant beneficially owned by the Portfolio Manager using the following ranges: none, \$1-\$10,000, \$10,001-\$50,000, \$50,001-\$100,000, \$100,001-\$500,000, \$500,001-\$1,000,000, or over \$1,000,000.

Instructions to paragraph (a)(4).

1. Provide the information required by this paragraph as of the end of the registrant's most recently completed fiscal year, except that, in the case of any newly identified Portfolio Manager, information must be provided as of the most recent practicable date. Specify the valuation date.

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

(b) If the registrant is a closed-end management investment company that is filing a report on this Form N-CSR other than an annual report, disclose any change, as of the date of filing, in any of the Portfolio Managers identified in response to paragraph (a)(1) of this Item in the registrant's most recent annual report on Form N-CSR. In addition, for any newly identified Portfolio Manager, provide the information required by paragraph (a)(1) of this Item as of the date of filing of the report and the information required by paragraphs (a)(2), (a)(3), and (a)(4) of this Item as of the most recent practicable date.

Item 14. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers.

(a) Purchases of Equity Securities by the Registrant and Affiliated Purchasers.

(i) If the registrant is a closed-end management investment company, provide the specified information in the following tabular format, disclosing, for the period covered by the report, the total purchases made during each day by or on behalf of the registrant or any "affiliated purchaser," as defined in § 240.10b-18(a)(3) of this chapter, of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to section 12 of the Exchange Act.

(ii) Disclose in the table:

(A) The date, which is the date on which the purchase of shares (or units) is executed (column (a));

(B) The class of shares (or units), which should clearly identify the class, even if the registrant has only one class of securities outstanding (column (b));

- (C) The total number of shares (or units) purchased on this date, which includes all shares (or units) purchased by or on behalf of the registrant or any affiliated purchaser, regardless of whether made pursuant to publicly announced repurchase plans or programs (column (c));
- (D) The average price paid per share (or unit), which shall be reported in U.S. dollars and exclude brokerage commissions and other costs of execution (column (d));
- (E) The total number of shares (or units) purchased on this date as part of publicly announced repurchase plans or programs (column (e));
- (F) The aggregate maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the publicly announced repurchase plans or programs (column (f));
- (G) Total number of shares (or units) purchased on this date on the open market, which includes all shares (or units) repurchased by the registrant in open-market transactions, and does not include shares (or units) purchased in tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions (column (g));
- (H) Total number of shares (or units) purchased on this date that are intended by the registrant to qualify for the safe harbor in § 240.10b-18 (Rule 10b-18) of this chapter (column (h)); and
- (I) Total number of shares (or units) purchased on this date pursuant to a plan that is intended by the registrant to satisfy the affirmative defense conditions of § 240.10b5-1(c) (Rule 10b5-1(c)) of this chapter (column (i)).
- (iii) Disclose, by footnote to the table, the date any plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) for the shares (or units) in column (i) was adopted or terminated.
- (iv) In determining whether to check the box under "Registrant Purchases of Equity Securities," the registrant may rely on the following, unless the registrant knows or has reason to believe that a form was filed inappropriately or that a form should have been filed but was not:
- (A) A review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto filed electronically with the Commission during the registrant's most recent fiscal year;
- (B) A review of Form 5 (17 CFR 249.105) and amendments thereto filed electronically with the Commission with respect to the registrant's most recent fiscal year; and
- (C) Any written representation from the reporting person that no Form 5 is required. The registrant must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request.

REGISTRANT PURCHASES OF EQUITY SECURITIES

Use the checkbox to indicate if any officer or director reporting pursuant to Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) purchased or sold shares or other units of the class of the registrant's equity securities that are registered pursuant to section 12 of the Exchange Act and subject of a publicly announced plan or program within four (4) business days before or after the registrant's announcement of such repurchase plan or program or the announcement of an increase of an existing share repurchase plan or program

(a) Execution Date	(b) Class of Shares (or Units)	(c) Total Number of Shares (or Units) Purchased	(d) Average Price Paid per Share (or Unit)	(e) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(f) Aggregate Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Publicly Announced Plans or Programs	(g) Total Number of Shares (or Units) Purchased on the Open Market	(h) Total Number of Shares (or Units) Purchased that are Intended to Qualify for the Safe Harbor in Rule 10b18	(i) Total Number of Shares (or Units) Purchased Pursuant to a Plan that is Intended to Satisfy the Affirmative Defense Conditions of Rule 10b5-1(c)
Total								

(b) Disclose the specified information in narrative form with respect to the registrant's repurchases of equity securities disclosed in paragraph (a) and refer to the particular repurchases in the table in paragraph (a) that correspond to the different parts of the narrative, if applicable:

- (1) The objectives or rationales for each repurchase plan or program and the process or criteria used to determine the amount of repurchases;
- (2) The number of shares (or units) purchased other than through a publicly announced plan or program, and the nature of the transaction (e.g., whether the purchases were made in open market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions);
- (3) For publicly announced repurchase plans or programs:
 - (i) The date each plan or program was announced;
 - (ii) The dollar amount (or share or unit amount) approved;
 - (iii) The expiration date (if any) of each plan or program;
 - (iv) Each plan or program that has expired during the period covered by the table in paragraph (a); and

- (v) Each plan or program the registrant has determined to terminate prior to expiration, or under which the registrant does not intend to make further purchases.
- (4) Any policies and procedures relating to purchases and sales of the registrant's securities by its officers and directors during a repurchase program, including any restrictions on such transactions.
- (c) The disclosure provided pursuant to this Item must be provided in an Interactive Data File as required by § 232.405 of this chapter (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.

Item 15. Submission of Matters to a Vote of Security Holders.

Describe any material changes to the procedures by which shareholders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S-K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a-101)), or this Item.

Instruction: For purposes of this Item, adoption of procedures by which shareholders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 407(c)(2)(iv) of Regulation S-K (17 CFR 229.407) (as required by Item 22(b)(15) of Schedule 14A (17 CFR 240.14a-101)), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

Item 16. Controls and Procedures.

- (a) Disclose the conclusions of the registrant's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the registrant's disclosure controls and procedures (as defined in Rule 30a-3(c) under the Act (17 CFR 270.30a-3(c))) as of a date within 90 days of the filing date of the report that includes the disclosure required by this paragraph, based on the evaluation of these controls and procedures required by Rule 30a-3(b) under the Act (17 CFR 270.30a-3(b)) and Rules 13a-15(b) or 15d-15(b) under the Exchange Act (17 CFR 240.13a-15(b) or 240.15d-15(b)).

(b) Disclose any change in the registrant’s internal control over financial reporting (as defined in Rule 30a-3(d) under the Act (17 CFR 270.30a-3(d)) that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting.

Instruction to paragraph (b).

Until the date that the registrant has filed its first report on Form N-PORT (17 CFR 270.150), the registrant’s disclosures required by this Item are limited to any change in the registrant’s internal control over financial reporting that occurred during the registrant’s last fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting.

Item 17. Disclosure of Securities Lending Activities for Closed-End Management Investment Companies.

(a) If the registrant is a closed-end management investment company, provide the following dollar amounts of income and fees/compensation related to the securities lending activities of the registrant during its most recent fiscal year:

- (1) Gross income from securities lending activities;
- (2) All fees and/or compensation for each of the following securities lending activities and related services: any share of revenue generated by the securities lending program paid to the securities lending agent(s) (“revenue split”); fees paid for cash collateral management services (including fees deducted from a pooled cash collateral reinvestment vehicle) that are not included in the revenue split; administrative fees that are not included in the revenue split; fees for indemnification that are not included in the revenue split; rebates paid to borrowers; and any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees;
- (3) The aggregate fees/compensation disclosed pursuant to paragraph (2); and
- (4) Net income from securities lending activities (*i.e.*, the dollar amount in paragraph (1) minus the dollar amount in paragraph (3)).

Instruction to paragraph (a).

If a fee for a service is included in the revenue split, state that the fee is “included in the revenue split.”

(b) If the registrant is a closed-end management investment company, describe the services provided to the registrant by the securities lending agent in the registrant’s most recent fiscal year.

Item 18. Recovery of Erroneously Awarded Compensation. (a) If at any time during or after the last completed fiscal year the registrant was required to prepare an accounting restatement that required recovery of erroneously awarded compensation pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D-1, or there was an outstanding balance as of the end of the last completed fiscal year of erroneously awarded compensation to be recovered from the application of the policy to a prior restatement, the registrant must provide the following information:

(1) For each restatement:

- (i) The date on which the registrant was required to prepare an accounting restatement;
- (ii) The aggregate dollar amount of erroneously awarded compensation attributable to such accounting restatement, including an analysis of how the amount was calculated;
- (iii) If the financial reporting measure defined in 17 CFR 10D-1(d) related to a stock price or total shareholder return metric, the estimates that were used in determining the erroneously awarded compensation attributable to such accounting restatement and an explanation of the methodology used for such estimates;
- (iv) The aggregate dollar amount of erroneously awarded compensation that remains outstanding at the end of the last completed fiscal year; and
- (v) If the aggregate dollar amount of erroneously awarded compensation has not yet been determined, disclose this fact, explain the reason(s) and disclose the information required in (ii) through (iv) in the next annual report that the registrant files on this Form N-CSR;

(2) If recovery would be impracticable pursuant to 17 CFR 10D-1(b)(1)(iv), for each named executive officer and for all other executive officers as a group, disclose the amount of recovery forgone and a brief description of the reason the registrant decided in each case not to pursue recovery; and

(3) For each named executive officer from whom, as of the end of the last completed fiscal year, erroneously awarded compensation had been outstanding for 180 days or longer since the date the registrant determined the amount the individual owed, disclose the dollar amount of outstanding erroneously awarded compensation due from each such individual.

(b) If at any time during or after its last completed fiscal year the registrant was required to prepare an accounting restatement, and the registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's compensation recovery policy required by the listing standards adopted pursuant to 17 CFR 240.10D-1, briefly explain why application of the recovery policy resulted in this conclusion.

Item 19. Exhibits.

(a) File the exhibits listed below as part of this Form.

(1) Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 2, to the extent that the registrant intends to satisfy the Item 2 requirements through filing of an exhibit.

(2) Any policy required by the listing standards adopted pursuant to Rule 10D-1 under the Exchange Act (17 CFR 240.10D-1) by the registered national securities exchange or registered national securities association upon which the registrant's securities are listed.

Instruction to paragraph (a)(2).

The exhibit required by this paragraph (a)(2) is only required in an annual report on Form N-CSR.

(3) A separate certification for each principal executive and principal financial officer of the registrant as required by Rule 30a-2(a) under the Act (17 CFR 270.30a-2(a)), exactly as set forth below:

CERTIFICATIONS

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N-CSR of [identify registrant];
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 30a-3(c) under the Investment Company Act of 1940) and internal control over financial reporting (as defined in Rule 30a-3(d) under the Investment Company Act of 1940) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information

relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of a date within 90 days prior to the filing date of this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize, and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: _____

[Signature]

[Title]

Instruction to paragraph (a)(3).

Until the date that the registrant has filed its first report on Form N-PORT (17 CFR 270.150), in the certification required by Item 19(a)(3), the registrant's certifying officers must certify that they have disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

(1) Any written solicitation to purchase securities under Rule 23c-1 under the Act (17 CFR 270.23c-1) sent or given during the period covered by the report by or on behalf of the registrant to 10 or more persons.

(2) Change in the registrant's independent public accountant. Provide the information called for by Item 4 of Form 8-K under the Exchange Act (17 CFR 249.308). Unless otherwise specified by Item 4, or related to and necessary for a complete understanding of information not previously disclosed, the information should relate to events occurring during the reporting period.

(b) If the report is filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by Rule 30a-2(b) under the Act (17 CFR 270.30a-2(b)), Rule 13a-14(b) or Rule 15d-14(b) under the Exchange Act (17 CFR 240.13a-14(b) or 240.15d-14(b)), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as an exhibit. A certification furnished pursuant to this paragraph will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

Instructions to Item 19.

1. Letter or number the exhibits in the sequence that they appear in this item. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

2. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

3. The registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (e.g., disclosure of bank account numbers, social security numbers, home addresses and similar information).

SIGNATURES

[See General Instruction F]

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934 and the Investment Company Act of 1940, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his or her signature.

OMB APPROVAL	
OMB APPROVAL	3235-0705
Expires:	Dec. 31, 2026
hours per response.....	10.6

Form N-CRs filed on or after June 11, 2024 will need to reflect amendments contained in the Release regarding Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A [Release Nos. 33-11211; 34-97876; IA-6344; IC-34959;] (July 12, 2023). See the Form N-CR that follows on page 771.

[Form to be used prior to
June 11, 2024]

FORM N-CR CURRENT REPORT

MONEY MARKET FUND MATERIAL EVENTS

Form N-CR is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a-7 under the Investment Company Act of 1940 (“Investment Company Act”) (17 CFR 270.2a-7) (“money market funds”), to file current reports with the Commission pursuant to rule 30b1-8 under the Investment Company Act (17 CFR 270.30b1-8). The Commission may use the information provided on Form N-CR in its regulatory, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-CR

Form N-CR is the public reporting form that is to be used for current reports of money market funds required by section 30(b) of the Act and rule 30b1-8 under the Act. A money market fund must file a report on Form N-CR upon the occurrence of any one or more of the events specified in Parts B—H of this form. Unless otherwise specified, a report is to be filed within one business day after occurrence of the event, and will be made public immediately upon filing. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the report is to be filed on the first business day thereafter.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be

carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

SEC 2918 (1-15)

C. Information to Be Included in Report Filed on Form N-CR

Upon the occurrence of any one or more of the events specified in Parts B—H of Form N-CR, a money market fund must file a report on Form N-CR that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B—H of the form.

D. Filing of Form N-CR

A money market fund must file Form N-CR in accordance with rule 232.13 of Regulation S-T. Form N-CR must be filed electronically using the Commission's EDGAR system.

E. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-CR unless the form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

F. Definitions

References to sections and rules in this Form N-CR are to the Investment Company Act (15 U.S.C 80a), unless otherwise indicated. Terms used in this Form N-CR have the same meaning as in the Investment Company Act or rule 2a-7 under the Investment Company Act, unless otherwise indicated. In addition, as used in this Form N-CR, the term "fund" means the registrant or a separate series of the registrant.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM N-CR CURRENT REPORT
MONEY MARKET FUND MATERIAL EVENTS

Part A: General information

- Item A.1 Report for [mm/dd/yyyy].
- Item A.2 CIK Number of registrant.
- Item A.3 EDGAR Series Identifier.
- Item A.4 Securities Act File Number.
- Item A.5 Provide the name, e-mail address, and telephone number of the person authorized to receive information and respond to questions about this Form N-CR.

Part B: Default or event of insolvency of portfolio security issuer

If the issuer of one or more of the fund's portfolio securities, or the issuer of a demand feature or guarantee to which one of the fund's portfolio securities is subject, and on which the fund is relying to determine the quality, maturity, or liquidity of a portfolio security, experiences a default or event of insolvency (other than an immaterial default unrelated to the financial condition of the issuer), and the portfolio security or securities (or the securities subject to the demand feature or guarantee) accounted for at least 1/2 of 1 percent of the fund's total assets immediately before the default or event of insolvency, disclose the following information:

- Item B.1 Security or securities affected. Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (e.g., CUSIP, ISIN, CIK, LEI).
- Item B.2 Date(s) on which the default(s) or Event(s) of Insolvency occurred.
- Item B.3 Value of affected security or securities on the date(s) on which the default(s) or event(s) of insolvency occurred.
- Item B.4 Percentage of the fund's total assets represented by the affected security or securities.
- Item B.5 Brief description of actions fund plans to take, or has taken, in response to the default(s) or event(s) of insolvency.

Instruction. For purposes of Part B, an instrument subject to a demand feature or guarantee will not be deemed to be in default (and an event of insolvency with respect to the security will not be deemed to have occurred) if: (i) in the case of an instrument subject to a demand feature, the

demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a guarantee with respect to an asset-backed security pursuant to rule 2a-7(a)(16)(ii) is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

A report responding to Items B.1 through B.4 is to be filed within one business day after occurrence of an event contemplated in this Part B. An amended report responding to Item B.5 is to be filed within four business days after occurrence of an event contemplated in this Part B.

Part C: Provision of financial support to fund

If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, provides any form of financial support to the fund (including any (i) capital contribution, (ii) purchase of a security from the fund in reliance on § 270.17a-9, (iii) purchase of any defaulted or devalued security at par, (iv) execution of letter of credit or letter of indemnity, (v) capital support agreement (whether or not the fund ultimately received support), (vi) performance guarantee, or (vii) any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; excluding, *however*, any (i) routine waiver of fees or reimbursement of fund expenses, (ii) routine inter-fund lending (iii) routine inter-fund purchases of fund shares, or (iv) any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio), disclose the following information:

- Item C.1 Description of nature of support.
- Item C.2 Person providing support.
- Item C.3 Brief description of relationship between the person providing support and the fund.
- Item C.4 Date support provided.
- Item C.5 Amount of support.
- Item C.6 Security supported (if applicable). Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI).
- Item C.7 Value of security supported on date support was initiated (if applicable).
- Item C.8 Brief description of reason for support.
- Item C.9 Term of support.

Item C.10 Brief description of any contractual restrictions relating to support.

Instruction. If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, purchases a security from the fund in reliance on § 270.17a-9, the fund must provide the purchase price of the security in responding to Item C.6.

A report responding to Items C.1 through C.7 is to be filed within one business day after occurrence of an event contemplated in this Part C. An amended report responding to Items C.8 through C.10 is to be filed within four business days after occurrence of an event contemplated in this Part C.

Part D: Deviation between current net asset value per share and intended stable price per share If a retail money market fund's or a government money market fund's current net asset value per share (rounded to the fourth decimal place in the case of a fund with a \$1.00 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward from its intended stable price per share by more than $\frac{1}{4}$ of 1 percent, disclose:

Item D.1 Date(s) on which such downward deviation exceeded $\frac{1}{4}$ of 1 percent.

Item D.2 Extent of deviation between the fund's current net asset value per share and its intended stable price per share.

Item D.3 Principal reason or reasons for the deviation, including the name of any security whose value calculated using available market quotations (or an appropriate substitute that reflects current market conditions) or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event), has contributed to the deviation. For any such security, disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (e.g., CUSIP, ISIN, CIK, LEI).

Instruction. A report responding to Items D.1 and D.2 is to be filed within one business day after occurrence of an event contemplated in this Part D. An amended report responding to Items D.3 is to be filed within four business days after occurrence of an event contemplated in this Part D.

Part E: Imposition of liquidity fee

If a fund (except a government money market fund that is relying on the exemption in rule 2a-7(c)(2)(iii)): (i) at the end of a business day, has invested less than ten percent of its total assets in weekly liquid assets or (ii) has invested less than thirty percent of its total assets in weekly liquid assets and imposes a liquidity fee pursuant to rule 2a-7(c)(2)(i) or (ii), disclose the following information:

Item E.1 Initial date on which the fund invested less than ten percent of its total assets in weekly liquid assets, if applicable.

- Item E.2 If the fund imposes a liquidity fee pursuant to rule 2a-7(c)(2), date on which the fund instituted the liquidity fee.
- Item E.3 Percentage of the fund's total assets invested in weekly liquid assets as of the dates reported in items E.1 and E.2, as applicable.
- Item E.4 Size of the liquidity fee, if any.
- Item E.5 Brief description of the facts and circumstances leading to the fund's investing in the amount of weekly liquid assets reported in Item E.3.
- Item E.6 Brief discussion of the primary considerations or factors taken in account by the board of directors in its decision to impose (or not impose) a liquidity fee.

Instruction. A report responding to Items E.1 through E.4 is to be filed within one business day after occurrence of an event contemplated in this Part E. An amended report responding to Items E.5 and E.6 is to be filed within four business days after occurrence of an event contemplated in this Part E.

Part F: Suspension of fund redemptions

If a fund suspends redemptions pursuant to rule 2a-7(c)(2)(i), disclose the following information:

- Item F.1 Percentage of the fund's total assets invested in weekly liquid assets as of the date on which the fund suspended redemptions.
- Item F.2 Date on which the fund initially suspended redemptions.
- Item F.3 Brief description of the facts and circumstances leading to the fund's investing in the amount of weekly liquid assets stated in Item F.1.
- Item F.4 Brief discussion of the primary considerations or factors taken in account by the board of directors in its decision to suspend the fund's redemptions.

Instruction. A report responding to Items F.1 and F.2 is to be filed within one business day after occurrence of an event contemplated in this Part F. An amended report responding to Items F.3 and F.4 is to be filed within four business days after occurrence of an event contemplated in this Part F.

Part G: Removal of liquidity fees and/or resumption of fund redemptions

If a fund that has imposed a liquidity fee and/or suspended the fund's redemptions pursuant to rule 2a-7(c)(2) determines to remove such fee and/or resume fund redemptions, disclose the following, as applicable:

- Item G.1 Date on which the fund removed the liquidity fee and/or resumed fund redemptions.

Part H: Optional disclosure

If a fund chooses, at its option, to disclose any other events or information not otherwise required by this form, it may do so under this Item H.1.

Item H.1 Optional disclosure.

Instruction. Item H.1 is intended to provide a fund with additional flexibility, if it so chooses, to disclose any other events or information not otherwise required by this form, or to supplement or clarify any of the disclosures required elsewhere in this form. Part H does not impose on funds any affirmative obligation. A fund may file a report on Form N-CR responding to Part H at any time.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date _____

_____ (Registrant)

_____ (Signature)*

* Print name and title of the signing officer under his/her signature.

[Form to be used after
June 11, 2024]

FORM N-CR CURRENT REPORT

MONEY MARKET FUND MATERIAL EVENTS

Form N-CR is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a-7 under the Investment Company Act of 1940 (“Investment Company Act”) (17 CFR 270.2a-7) (“money market funds”), to file current reports with the Commission pursuant to rule 30b1-8 under the Investment Company Act (17 CFR 270.30b1-8). The Commission may use the information provided on Form N-CR in its regulatory, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-CR

Form N-CR is the public reporting form that is to be used for current reports of money market funds required by section 30(b) of the Act and rule 30b1-8 under the Act. A money market fund must file a report on Form N-CR upon the occurrence of any one or more of the events specified in Parts B—F of this form. Unless otherwise specified, a report is to be filed within one business day after occurrence of the event. A report will be made public immediately upon filing. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the report is to be filed on the first business day thereafter.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

SEC 2918 (1-15)

C. Information to Be Included in Report Filed on Form N-CR

Upon the occurrence of any one or more of the events specified in Parts B—F of Form N-CR, a money market fund must file a report on Form N-CR that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B—F of the form.

D. Filing of Form N-CR

A money market fund must file Form N-CR in accordance with rule 232.13 of Regulation S-T. Reports on Form N-CR must be filed electronically using the Commission's Electronic Data, Gathering, Analysis and Retrieval ("EDGAR") system in accordance with Regulation S-T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

E. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-CR unless the form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

F. Definitions

References to sections and rules in this Form N-CR are to the Investment Company Act (15 U.S.C 80a), unless otherwise indicated. Terms used in this Form N-CR have the same meaning as in the Investment Company Act or rule 2a-7 under the Investment Company Act, unless otherwise indicated.

In addition, the following definitions apply:

"Fund" means the registrant or a separate series of the registrant.

"LEI" means, with respect to any company, the "legal entity identifier" as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

"Registrant" means the investment company filing this report or on whose behalf the report is filed.

"Series" means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) (17 CFR 270.18f-2(a))

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM N-CR CURRENT REPORT
MONEY MARKET FUND MATERIAL EVENTS

Part A: General information

- Item A.1 Report for [mm/dd/yyyy].
- Item A.2 Name of registrant.
- Item A.3 CIK Number of registrant.
- Item A.4 LEI of registrant.
- Item A.5 Name of series.
- Item A.6 EDGAR Series Identifier.
- Item A.7 LEI of series.
- Item A.8 Securities Act File Number.
- Item A.9 Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N-CR.

Part B: Default or event of insolvency of portfolio security issuer

If the issuer of one or more of the fund's portfolio securities, or the issuer of a demand feature or guarantee to which one of the fund's portfolio securities is subject, and on which the fund is relying to determine the quality, maturity, or liquidity of a portfolio security, experiences a default or event of insolvency (other than an immaterial default unrelated to the financial condition of the issuer), and the portfolio security or securities (or the securities subject to the demand feature or guarantee) accounted for at least $\frac{1}{2}$ of 1 percent of the fund's total assets immediately before the default or event of insolvency, disclose the following information:

- Item B.1 Security or securities affected. Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI).
- Item B.2 Date(s) on which the default(s) or Event(s) of Insolvency occurred.
- Item B.3 Value of affected security or securities on the date(s) on which the default(s) or event(s) of insolvency occurred.
- Item B.4 Percentage of the fund's total assets represented by the affected security or securities.

Item B.5 Brief description of actions fund plans to take, or has taken, in response to the default(s) or event(s) of insolvency.

Instruction. For purposes of Part B, an instrument subject to a demand feature or guarantee will not be deemed to be in default (and an event of insolvency with respect to the security will not be deemed to have occurred) if: (i) in the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a guarantee with respect to an asset-backed security pursuant to rule 2a-7(a)(16)(ii) is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

A report responding to Items B.1 through B.4 is to be filed within one business day after occurrence of an event contemplated in this Part B. An amended report responding to Item B.5 is to be filed within four business days after occurrence of an event contemplated in this Part B.

Part C: Provision of financial support to fund

If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, provides any form of financial support to the fund (including any (i) capital contribution, (ii) purchase of a security from the fund in reliance on § 270.17a-9, (iii) purchase of any defaulted or devalued security at par, (iv) execution of letter of credit or letter of indemnity, (v) capital support agreement (whether or not the fund ultimately received support), (vi) performance guarantee, or (vii) any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; excluding, *however*, any (i) routine waiver of fees or reimbursement of fund expenses, (ii) routine inter-fund lending (iii) routine inter-fund purchases of fund shares, or (iv) any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio), disclose the following information:

Item C.1 Description of nature of support.

Item C.2 Person providing support.

Item C.3 Brief description of relationship between the person providing support and the fund.

Item C.4 Date support provided.

Item C.5 Amount of support.

Item C.6 Security supported (if applicable). Disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable), at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI) and the date the fund acquired the security.

- Item C.7 Value of security supported on date support was initiated (if applicable).
- Item C.8 Brief description of reason for support.
- Item C.9 Term of support.
- Item C.10 Brief description of any contractual restrictions relating to support.

Instruction. If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, purchases a security from the fund in reliance on § 270.17a-9, the fund must provide the purchase price of the security in responding to Item C.6.

A report responding to Items C.1 through C.7 is to be filed within one business day after occurrence of an event contemplated in this Part C. An amended report responding to Items C.8 through C.10 is to be filed within four business days after occurrence of an event contemplated in this Part C.

Part D: Deviation between current net asset value per share and intended stable price per share If a retail money market fund's or a government money market fund's current net asset value per share (rounded to the fourth decimal place in the case of a fund with a \$1.00 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward from its intended stable price per share by more than $\frac{1}{4}$ of 1 percent, disclose:

- Item D.1 Date(s) on which such downward deviation exceeded $\frac{1}{4}$ of 1 percent.
- Item D.2 Extent of deviation between the fund's current net asset value per share and its intended stable price per share.
- Item D.3 Principal reason or reasons for the deviation, including the name of any security whose value calculated using available market quotations (or an appropriate substitute that reflects current market conditions) or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event), has contributed to the deviation. For any such security, disclose the name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.*, CUSIP, ISIN, CIK, LEI).

Instruction. A report responding to Items D.1 and D.2 is to be filed within one business day after occurrence of an event contemplated in this Part D. An amended report responding to Items D.3 is to be filed within four business days after occurrence of an event contemplated in this Part D.

Part E: Liquidity threshold event

If a fund has invested less than: (i) 25% of its total assets in weekly liquid assets or (ii) 12.5% of its total assets in daily liquid assets, disclose the following information:

- Item E.1 Initial date on which the fund invested less than 25% of its total assets in weekly liquid assets, if applicable.

- Item E.2 Initial date on which the fund invested less than 12.5% of its total assets in daily liquid assets, if applicable.
- Item E.3 Percentage of the fund's total assets invested in both weekly liquid assets and daily liquid assets as of any dates reported in Items E.1 or E.2.
- Item E.4 Brief description of the facts and circumstances leading to the fund investing less than 25% of its total assets in weekly liquid assets or less than 12.5% of its total assets in daily liquid assets, as applicable.

Instruction. A report responding to Items E.1, E.2, and E.3 is to be filed within one business day after occurrence of an event contemplated in this Part E. An amended report responding to Item E.4 is to be filed within four business days after occurrence of an event contemplated in this Part E.

Part F: Optional disclosure

If a fund chooses, at its option, to disclose any other events or information not otherwise required by this form, it may do so under this Item F.1.

Item F.1 Optional disclosure.

Instruction. Item F.1 is intended to provide a fund with additional flexibility, if it so chooses, to disclose any other events or information not otherwise required by this form, or to supplement or clarify any of the disclosures required elsewhere in this form. Part F does not impose on funds any affirmative obligation. A fund may file a report on Form N-CR responding to Part F at any time.

Part G: Removal of liquidity fees and/or resumption of fund redemptions

If a fund that has imposed a liquidity fee and/or suspended the fund's redemptions pursuant to rule 2a-7(c)(2) determines to remove such fee and/or resume fund redemptions, disclose the following, as applicable:

Item G.1 Date on which the fund removed the liquidity fee and/or resumed fund redemptions.

Part H: Optional disclosure

If a fund chooses, at its option, to disclose any other events or information not otherwise required by this form, it may do so under this Item H.1.

Item H.1 Optional disclosure.

Instruction. Item H.1 is intended to provide a fund with additional flexibility, if it so chooses, to disclose any other events or information not otherwise required by this form, or to supplement or clarify any of the disclosures required elsewhere in this form. Part H does not impose on funds any affirmative obligation. A fund may file a report on Form N-CR responding to Part H at any time.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date _____

_____ (Registrant)

_____ (Signature)*

* Print name and title of the signing officer under his/her signature.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-RN

This is a reference copy of Form N-RN. You may not send a completed printout of this form to the SEC to satisfy a filing obligation. You can only satisfy an SEC filing obligation by submitting the information required by this form to the SEC in electronic format online at <https://www.edgarfiling.sec.gov>.

OMB APPROVAL	
OMB Number:	3235-0754
Expires:	November 30, 2023
Estimated average burden hours per response	4.36

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM N-RN

**CURRENT REPORT FOR REGISTERED MANAGEMENT INVESTMENT
COMPANIES AND BUSINESS DEVELOPMENT COMPANIES**

Form N-RN is to be used by a registered open-end management investment company or series thereof, but not including a fund that is regulated as a money market fund under rule 2a-7 under the Act (17 CFR 270.2A-7) (a “registered open-end fund”), a registered closed-end management investment company (a “registered closed-end fund”), or a closed-end management investment company that has elected to be regulated as a business development company (a “business development company”), to file current reports with the Commission pursuant to rule 18f-4(c)(7) and rule 30b1-10 under the Investment Company of 1940 Act [15 U.S.C. 80a] (“Act”) (17 CFR 270.18f-4(c)(7); 17 CFR 270.30b1-10). The Commission may use the information provided on Form N-RN in its regulatory, disclosure review, inspection, and policy-making roles.

GENERAL INSTRUCTIONS

A. Rules as to Use of Form N-RN.

(1) Form N-RN is the reporting form that is to be used for current reports of registered open-end funds (not including funds that are regulated as money market funds under rule 2a-7 under the Act), registered closed-end funds, and business development companies (together, “registrants”) required by, as applicable, section 30(b) of the Act and rule 30b1-10 under the Act, as well as rule 18f-4(c)(7) under the Act. The Commission does not intend to make public information reported on Form N-RN that is identifiable to any particular registrant, although the Commission may use Form N-RN information in an enforcement action.

(2) Unless otherwise specified, a report on this Form N-RN is required to be filed, as applicable, within one business day of the occurrence of the event specified in Parts B—G of this form. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the one business day period shall begin to run on, and include, the first business day thereafter.

(3) For registered open-end funds required to comply with rule 22e-4 under the Investment Company Act [17 CFR 270.22e-4], complete Parts B—D of this form, as applicable. For registrants that are subject to a VaR test under rule 18f-4(c)(2)(i) [17 CFR 270.18f-4(c)(2)(i)], complete Parts E—G of this form, as applicable.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Information to Be Included in Report Filed on Form N-RN

Upon the occurrence of the event specified in Parts B—G of Form N-RN, as applicable, a registrant must file a report on Form N-RN that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B—G of the Form.

D. Filing of Form N-RN

A registrant must file Form N-RN in accordance with rule 232.13 of Regulation S-T (17 CFR Part 232). Form N-RN must be filed electronically using the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

E. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N-RN unless the form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

F. Definitions

References to sections and rules in this Form N-RN are to the Investment Company Act (15 U.S.C 80a), unless otherwise indicated. Terms used in this Form N-RN have the same meaning as in the Investment Company Act, rule 22e-4 under the Investment Company Act (for Parts B-D of the Form), or rule 18f-4 under the Investment Company Act (for Part E – G of the Form), unless otherwise indicated. In addition, as used in this Form N-RN, the term registrant means the registrant or a separate series of the registrant, as applicable.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM N-RN
CURRENT REPORT
FOR
REGISTERED MANAGEMENT INVESTMENT COMPANIES
AND BUSINESS DEVELOPMENT COMPANIES

PART A. General Information

- Item A.1.** Report for [mm/dd/yyyy].
- Item A.2.** Name of Registrant.
- Item A.3.** CIK Number of registrant.
- Item A.4.** Name of Series, if applicable.
- Item A.5.** EDGAR Series Identifier, if applicable.
- Item A.6.** Securities Act File Number, if applicable.
- Item A.7.** Provide the name, e-mail address, and telephone number of the person authorized to receive information and respond to questions about this Form N-RN.

PART B. Above 15% Illiquid Investments

If more than 15 percent of the registrant's net assets are, or become, illiquid investments that are assets as defined in rule 22e-4, then report the following information:

- Item B.1.** Date(s) on which the registrant's illiquid investments that are assets exceeded 15 percent of its net assets.
- Item B.2.** The current percentage of the registrant's net assets that are illiquid investments that are assets.
- Item B.3.** Identification of illiquid investments. For each investment that is an asset that is held by the registrant that is considered illiquid, disclose (1) the name of the issuer, the title of the issue or description of the investment, the CUSIP (if any), and at least one other identifier, if available (*e.g.*, ISIN, Ticker, or other unique identifier (if ticker and ISIN are not available)) (indicate the type of identifier used), and (2) the percentage of the fund's net assets attributable to that investment.

PART C. At or Below 15% Illiquid Investments

If a registrant that has filed Part B of Form N-RN determines that its holdings in illiquid investments that are assets have changed to be less than or equal to 15 percent of the registrant's net assets, then report the following information:

- Item C.1.** Date(s) on which the registrant's illiquid investments that are assets fell to or below 15 percent of net assets.
- Item C.2.** The current percentage of the registrant's net assets that are illiquid investments that are assets.

PART D. Assets that Are Highly Liquid Investments Below the Highly Liquid Investment Minimum

If a registrant's holdings in assets that are highly liquid investments fall below its highly liquid investment minimum for more than 7 consecutive calendar days, then report the following information:

- Item D.1.** Date(s) on which the registrant's holdings of assets that are highly liquid investments fell below the fund's highly liquid investment minimum.

PART E. Relative VaR Test Breaches

If a registrant is subject to the relative VaR test under rule 18f-4(c)(2)(i) [17 CFR 270.18f-4(c)(2)(i)], and the fund determines that it is not in compliance with the relative VaR test and has not come back into compliance within 5 business days after such determination, provide:

- Item E.1.** The dates on which the VaR of the registrant's portfolio exceeded 200% or 250% (as applicable under rule 18f-4 [17 CFR 270.18f-4]) of the VaR of its designated reference portfolio.
- Item E.2.** The VaR of the registrant's portfolio on the dates each exceedance occurred.
- Item E.3.** The VaR of the registrant's designated reference portfolio on the dates each exceedance occurred.
- Item E.4.** As applicable, either the name of the registrant's designated index, or a statement that the registrant's designated reference portfolio is the registrant's securities portfolio.
- Item E.5.** As applicable, the index identifier for the registrant's designated index.

PART F. Absolute VaR Test Breaches

If a registrant is subject to the absolute VaR test under rule 18f-4(c)(2)(i) [17 CFR 270.18f-4(c)(2)(i)], and the fund determines that it is not in compliance with the absolute VaR test and has not come back into compliance within 5 business days after such determination, provide:

- Item F.1.** The dates on which the VaR of the registrant's portfolio exceeded 20% or 25% (as applicable under rule 18f-4 [17 CFR 270.18f-4]) of the value of the registrant's net assets.
- Item F.2.** The VaR of the registrant's portfolio on the dates each exceedance occurred.
- Item F.3.** The value of the registrant's net assets on the dates each exceedance occurred.

PART G. Compliance with VaR Test

If a registrant that has filed Part E or Part F of Form N-RN has come back into compliance with either the relative VaR test or the absolute VaR test, as applicable, then report the following information:

- Item G.1.** Dates on which the VaR of the registrant's portfolio exceeded applicable VaR limit described in Item E.1 or Item F.1.
- Item G.2.** The current VaR of the registrant's portfolio.

PART H. Explanatory Notes (if any)

A registrant may provide any information it believes would be helpful in understanding the information reported in response to any Item of this Form.

[To Be Replaced by new
Form on July 1, 2024 See Page 788]

OMB APPROVAL	
OMB Number:	3235-0582
Expires:	July 31, 2024
Estimated average burden Hours per response.....	4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-PX

ANNUAL REPORT OF PROXY VOTING RECORD OF REGISTERED MANAGEMENT
INVESTMENT COMPANY

Investment Company Act file number _____

(Exact name of registrant as specified in charter)

(Address of principal executive offices)

(Zip code)

(Name and address of agent for service)

Registrant's telephone number, including area code:

Date of fiscal year end:

Date of reporting period:

Form N-PX is to be used by a registered management investment company, other than a small business investment company registered on Form N-5 (§§ 239.24 and 274.5), to file reports with the Commission, not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and rule 30bl-4 thereunder (17 CFR 270.30bl-4). The Commission may use the information provided on Form N-PX in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N-PX, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N-PX unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the

burden to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-PX.

Form N-PX is to be used for reports pursuant to Section 30 of the Investment Company Act of 1940 (the “Act”) and Rule 30b1-4 under the Act (17 CFR 270.30b1-4) by all registered management investment companies, other than small business investment companies registered on Form N-5 (§§ 239.24 and 274.5 of this chapter), to file their complete proxy voting record not later than August 31 of each year for the most recent twelve-month period ended June 30.

B. Application of General Rules and Regulations.

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

SEC 2451 (4-22)

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

C. Preparation of Report.

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b-I I (17 CFR 270.8b-11) and 8b-12 (17 CFR 270.8b-12) under the Act. The Commission does not furnish blank copies of this form to be filled in for filing.
2. These general instructions are not to be filed with the report.

D. Incorporation by Reference.

No items of this Form shall be answered by incorporating any information by reference.

E. Definitions.

Unless the context clearly indicates the contrary, terms used in this Form N-PX have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report.

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 et seq. of Regulation S-T (17 CFR 232.201 et seq.)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report filed with the Commission must be manually signed. Copies not manually signed must bear typed or printed signatures.

2. (a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 8b-11 under the Act (17 CFR 270.8b-11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Proxy Voting Record.

Disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the registrant was entitled to vote:

(a) The name of the issuer of the portfolio security;

(b) The exchange ticker symbol of the portfolio security;

(c) The Council on Uniform Securities Identification Procedures (“CUSIP”) number for the portfolio security;

(d) The shareholder meeting date;

(e) A brief identification of the matter voted on;

(f) Whether the matter was proposed by the issuer or by a security holder;

(g) Whether the registrant cast its vote on the matter;

(h) How the registrant cast its vote (e.g., for or against proposal, or abstain; for or withhold regarding election of directors); and

(i) Whether the registrant cast its vote for or against management.

Instructions.

1. In the case of a registrant that offers multiple series of shares, provide the information required by this Item separately for each series. The term “series” means shares offered by a registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f-2(a) under the Act (17 CFR 270.18f-2(a)).

2. The exchange ticker symbol or CUSIP number required by paragraph (b) or (c) of this Item may be omitted if it is not available through reasonably practicable means, e.g. in the case of certain securities of foreign issuers.

SIGNATURES

[See General Instruction F]

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his or her signature.

OMB Number:	3235-0582
Expires:	Sept. 30, 2026
Estimated average burden hours per response.....	21.05

AMENDED FORM N-PX

Managers and funds are required to file their first reports on amended Form N-PX by August 31, 2024, with these reports covering the period of July 1, 2023 to June 30, 2024

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-PX

ANNUAL REPORT OF PROXY VOTING RECORD

GENERAL INSTRUCTIONS

NOTE: This version of Form N-PX is effective July 1, 2024. More information about effective dates may be found in Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (Nov. 2, 2022) [87 FR 78770 (Dec. 22, 2022)]. Until reporting for the reporting period ending June 30, 2024, registrants should continue to file the currently effective version of Form N-PX. See Page 784.

A. Rule as to Use of Form N-PX.

Form N-PX is to be used by a registered management investment company, other than a small business investment company registered on Form N-5 (17 CFR 239.24 and 274.5), to file the registered management investment company's complete proxy voting record pursuant to Section 30 of the Investment Company Act of 1940 ("Investment Company Act") and Rule 30b1-4 thereunder (17 CFR 270.30b1-4). Form N-PX also is to be used by a person that is required to file reports under Rule 13f-1 ("Institutional Manager"), to file the Institutional Manager's proxy voting record regarding votes pursuant to Sections 14A(a) and (b) of the Securities Exchange Act of 1934 ("Exchange Act") on certain executive compensation matters. Pursuant to Section 14A(d) of the Exchange Act and Rule 14Ad-1 thereunder (17 CFR 240.14Ad-1). Form N-PX is to be filed not later than August 31 of each year for the most recent 12-month period ended June 30, except in the case of Institutional Managers that make initial or final filings on Form 13F during the relevant 12-month period as described in General Instruction F.

B. Application of General Rules and Regulations.

The General Rules and Regulations under the Investment Company Act and the Exchange Act contain certain general requirements that are applicable to reporting on any form under those Acts. These general requirements should be read and observed carefully in the preparation and filing of reports on this form, except that any provision in the form or in these instructions is controlling.

C. Joint Reporting Rules.

1. If two or more Institutional Managers, each of which is required by Rule 14Ad-1 to file a report on Form N-PX for the reporting period, exercised voting power over the same securities on a vote pursuant to Section 14A(a) or (b) of the Exchange Act, only one such Institutional Manager must include the information regarding that vote in its report on Form N-PX.
2. Two or more Institutional Managers that are affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act, may file a joint report on a single Form N - PX notwithstanding that such Institutional Managers do not exercise voting power over the same securities.
3. An Institutional Manager is not required to report proxy votes that are reported on a Form N-PX report that is filed by a Fund.
4. An Institutional Manager that exercised voting power over any security with respect to proxy votes that are reported by another Institutional Manager or Managers pursuant to General Instruction C. 1 or C.2, or are reported on a Form N-PX report filed by a Fund, must identify each Institutional Manager and Fund reporting on its behalf in the manner described in Special Instruction B.2.d. and B.2.e.
5. An Institutional Manager reporting proxy votes on behalf of another Institutional Manager pursuant to General Instruction C. 1 or C.2 must identify any other Institutional Managers on whose behalf the filing is made in the manner described in Special Instruction C.2.
6. A Fund reporting proxy votes that would otherwise be required to be reported by an Institutional Manager must identify any Institutional Managers on whose behalf the filing is made in the manner described in Special Instruction C .2.

D. Signature and Filing of Report.

1. (a) For reports filed by a Fund, the report must be signed on behalf of the Fund by its principal executive officer or officers. For reports filed by Institutional Managers, the report must be signed on behalf of the Institutional Manager by an authorized person. Attention is directed to Rule 12b-11 under the Exchange Act and Rule 8b-11 under the Investment Company Act concerning signatures.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature.

2. A reporting person must file reports on Form N-PX electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system in accordance with Regulation S-T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

E. Definitions.

As used in this Form N-PX, the terms set out below have the following meanings: "Fund" means a registered management investment company (other than a small business investment company registered on Form N-5 (17 CFR 239.24 and 274.5)) or a separate Series of the registered management investment company.

"Institutional Manager" means a person that is required to file reports under Rule 13f-1 under the Exchange Act.

"LEI" means, with respect to any company, the "legal entity identifier" as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation. "Reporting Person" means the Institutional Manager or Fund filing this report or on whose behalf the report is filed.

"Series" means shares issued by a registered management investment company that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f-2(a) under the Investment Company Act [17 CFR 270.18f-2(a)].

F. Transition Rules for Institutional Managers

1. An Institutional Manager is not required to file a report on Form N-PX for the 12-month period ending June 30 of the calendar year in which the manager's initial filing on Form 13F is due pursuant to Rule 13f-1 under the Exchange Act. For purposes of this paragraph, an "initial filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F was required for the immediately preceding calendar quarter.

2. An Institutional Manager is not required to file a report on Form N-PX with respect to any shareholder vote at a meeting that occurs after September 30 of the calendar year in which the manager's final filing on Form 13F is due pursuant to Rule 13f-1 under the Exchange Act. An Institutional Manager is required to file a Form N-PX for the period July 1 through September 30 of the calendar year in which the manager's final filing on Form 13F is due pursuant to Rule 13f-1 under the Exchange Act; this filing is required to be made not later than March 1 of the immediately following calendar year. For purposes of this paragraph, a "final filing" on Form 13F means any quarterly filing on Form 13F if no filing on Form 13F is required for the immediately subsequent calendar quarter.

SPECIAL INSTRUCTIONS

A. Organization of Form N-PX.

1. This form consists of three parts: the Form N-PX Cover Page (“Cover Page”), the Form N-PX Summary Page (“Summary Page”), and the proxy voting information required by the form (“Proxy Voting Information”).
2. Present the Cover Page and the Summary Page information in the format and order provided in the form. Do not include any additional information on the Summary Page.

B. Cover Page.

1. Amendments to a Form N-PX report must either restate the Form N-PX report in its entirety or include only proxy voting information that is being reported in addition to the information already reported in a current public Form N-PX report for the same period. If the Form N-PX report is filed as an amendment, then the reporting person must check the amendment box on the Cover Page, enter the amendment number, and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new Proxy Voting Information. Each amendment must include a complete Cover Page and, if applicable, a Summary Page.
2. Designate the Report Type for the Form N-PX report by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Persons Reporting for this Manager (on the Cover Page), the Summary Page, and the Proxy Voting Information, as follows:
 - a. For a report by a Fund, if the Fund held one or more securities it was entitled to vote, check the box for Report Type “Fund Voting Report,” omit from the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.
 - b. For a report by a Fund, if the Fund did not hold any securities it was entitled to vote and therefore does not have any proxy votes to report, check the box for Report Type “Fund Notice Report” and file the Cover Page, required signature, and, if applicable, the Summary Page information about the series.
 - c. For a report by an Institutional Manager that includes all proxy votes required to be reported by the Institutional Manager, check the box for Report Type “Institutional Manager Voting Report,” omit from the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.
 - d. For a report by an Institutional Manager, if no proxy votes are reported by the Institutional Manager in the filing, check the box for Report Type “Institutional Manager Notice Report,” on the Cover Page and complete the notice report filing explanation section. If all the votes required to be reported by the Institutional Manager are reported by another Institutional Manager or by one or more Funds, check the explanatory box

indicating “all proxy votes are reported by other reporting persons,” include the List of Other Persons Reporting for this Manager, and file the Cover Page and required signature only. All other reporting persons may omit this section. If the reporting manager did not exercise voting power over securities involving any reportable voting matter, check the explanatory box indicating “the reporting person did not exercise voting power for any reportable voting matter and therefore does not have any proxy votes to report for the reporting period” and file the Cover Page and required signature only. If the reporting manager has a policy not to vote on any proxy matters, clearly disclosed the policy, and did not vote any proxy matters during the reporting period, check the explanatory box indicating “the reporting person has a clearly disclosed policy of not voting, and did not vote, on any proxy voting matters” and file the Cover Page and required signature only.

e. For a report by an Institutional Manager, if only part of the proxy votes required to be reported by the Institutional Manager are reported by another Institutional Manager or Managers or one or more Funds, check the box for Report Type “Institutional Manager Combination Report,” include on the Cover Page the List of Other Persons Reporting for this Manager, and include both the Summary Page and the Proxy Voting Information.

3. If the Institutional Manager has a number assigned by the Financial Industry Regulatory Authority’s Central Registration Depository system or by the Investment Adviser Registration Depository system (“CRD number”), provide the Manager’s CRD number. If the Institutional Manager has a file number (*e.g.*, 801-, 8-, 866-, 802-) assigned by the Commission (“SEC file number”), provide the Manager’s SEC file number. If the Reporting Person has a Legal Entity Identifier (“LEI”), provide the Reporting Person’s LEI.

4. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information at the end of the Cover Page, except as permitted by paragraph (o) of Item 1.

C. Summary Page.

1. Include on the Summary Page the total number of included Institutional Managers with votes reported in this Form N-PX report pursuant to General Instruction C, not counting the reporting person filing this report. *See* Special Instruction C.2. If none, enter the number zero (“0”).

2. Include on the Summary Page the list of included Institutional Managers with votes reported in this Form N-PX report pursuant to General Instruction C. Use the title, column headings, and format provided.

a. If this Form N-PX report does not report the proxy votes of any Institutional Manager other than the reporting person, enter the word “NONE” under the title and omit the column headings and list entries.

b. If this Form N-PX report reports the proxy votes of one or more Institutional Managers other than the reporting person, enter in the list of included Institutional Managers all such Institutional Managers together with their respective Form 13F file numbers, if known, and, if they exist, any of the respective CRD Numbers, LEIs, and SEC File Numbers assigned to each manager. (The Form 13F file numbers are assigned to Institutional Managers when they file their first Form 13F). Assign a number to each Institutional Manager in the list of included Institutional Managers, and present the list in sequential order. The numbers need not be consecutive. Do not include the reporting person filing this report.

3. For reports filed by a Fund, include on the Summary Page: the total number of Series of the Fund reported in this Form N-PX, if any; the name of each Series included; each Series identification number; and the LEI for any Series of the Fund. If this Form N-PX report does not report the proxy votes of any Series, enter the word “NONE” under the title and omit the column headings and list entries.

D. Proxy Voting Information.

1. Disclose the information required or permitted by Item 1 in the order presented in paragraphs (a) through (o) of Item 1.

2. A reporting person must provide the Council on Uniform Securities Identification Procedures (“CUSIP”) number for the security pursuant to Item 1(b), unless the CUSIP is not available through reasonably practicable means, *e.g.*, in the case of certain securities of foreign issuers. If the CUSIP is not available through reasonably practicable means, the reporting person must provide the International Securities Identification Number (“ISIN”) pursuant to Item 1 (c), unless the ISIN is not available through reasonably practicable means. A reporting person may choose to report the global share class Financial Instrument Global Identifier (“FIGI”) for the security pursuant to Item 1(d).

3. Item 1(f) requires an identification of the matter voted on for all matters. If a form of proxy in connection with a matter is subject to rule 14a-4 under the Exchange Act [17 CFR 240.14a-4], the description in Item 1 (f) must: (i) use the same language that is on the form of proxy to identify the matter; (ii) identify all matters in the same order as on the form of proxy; and (iii) for election of directors, identify each director separately in the same order as on the form of proxy, even if the election of directors is presented as a single matter on the form of proxy. In all other cases, provide a brief identification of the matters voted on and limit use of abbreviations, which should not be used other than for commonly understood terms or for terms that the issuer abbreviated in its description of the matter.

4. Item 1(g) requires the reporting person to categorize each matter from a list of categories that may apply to such matter. In responding to Item 1(g), a reporting person must choose all categories applicable to such matter.

5. In responding to paragraph (i) of Item 1, a reporting person may use the number of shares voted as reflected in its records at the time of filing a report on Form N-PX. If the reporting person has not received confirmation of the actual number of votes cast prior to filing a report on Form N-PX, the numbers reported may reflect the number of shares instructed to be cast. A reporting person is not required to amend a previously filed Form N-PX report if the reporting person subsequently receives confirmation of the actual number of votes cast.

6. In responding to paragraphs (i) and (j) of Item 1:

a. An Institutional Manager must report the number of shares that the Institutional Manager is reporting on behalf of another Institutional Manager pursuant to General Instruction C.1 or C.2 separately from the number of shares that the Institutional Manager is reporting only on its own behalf. An Institutional Manager also must separately report shares when the groups of Institutional Managers on whose behalf the shares are reported are different. For example, if the reporting Institutional Manager is reporting on behalf of Manager A with respect to 10,000 shares and on behalf of Managers A and B with respect to 50,000 shares, then the groups of 10,000 and 50,000 shares must be separately reported.

b. A Fund must separately report shares that are reported on behalf of different Institutional Managers or groups of Institutional Managers pursuant to General Instruction C.3.

7. For purposes of paragraph (j) of Item 1, a reporting person is considered to have loaned securities if it loaned the securities directly or loaned the securities indirectly through a lending agent.

8. If management did not make a recommendation on how to vote on a particular matter, a reporting person should respond “none” to paragraph (1) of Item 1 for that matter.

9. In the case of a reporting person that is a Fund that offers multiple Series, provide the information required by Item 1 separately by Series (for example, provide Series A’s full proxy voting record, followed by Series B’s full proxy voting record).

10. In response to paragraph (o), a reporting person may provide additional information about the matter or how it voted, provided the information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. The disclosure permitted by paragraph (o) is optional. A reporting person is not required to respond to paragraph (o) for any vote, and if a reporting person does provide additional information for one or more votes, it is not required to provide this information for all votes.

INSTRUCTIONS FOR CONFIDENTIAL TREATMENT REQUESTS

1. An Institutional Manager should make requests for confidential treatment of information reported on this form in accordance with rule 24b-2(i) under the Exchange Act [17 CFR 240.24b-2(i)].
2. Paragraph (i) of rule 24b-2 requires a person filing confidential information with the Commission to indicate at the appropriate place in the public filing that the confidential portion has been so omitted and filed separately with the Commission. An Institutional Manager must comply with this provision by including on the Cover Page a statement that confidential information has been omitted from the public Form N-PX report and filed separately with the Commission.
3. An Institutional Manager must file electronically, in accordance with rule 101(d) of Regulation S-T [17 CFR 232.101(d)], all requests for and information subject to the request for confidential treatment.
4. An Institutional Manager must file all requests for and information subject to the request for confidential treatment in accordance with the instructions for filing confidential treatment requests for information filed on Form 13F. In making a determination as to requests for confidential treatment of information filed on Form N-PX, the Commission will apply the same standards as set forth in Section 13(f)(4) and (5) of the Exchange Act [15 U.S.C. 78m(f)(4) and (5)] and rule 24b-2. If a request for confidential treatment of information filed on Form N-PX relates to a request for confidential treatment of information included in an Institutional Manager's filing on Form 13F, the Institutional Manager should so state and identify the related request. In such cases, the Institutional Manager need not repeat the analysis set forth in the request for confidential treatment in connection with the Form 13F filing. The Institutional Manager's request, however, must explain whether and, if so, how the Form N-PX and Form 13F confidential treatment requests are related and should identify if any of the analysis in its request for confidential treatment on Form 13F does not apply, or applies differently, to its report on Form N-PX.
5. An Institutional Manager requesting confidential treatment must provide enough factual support for its request to enable the Commission to make an informed judgment as to the merits of the request, including a demonstration that the information is customarily and actually kept private by the Institutional Manager and that failure to grant the request for confidential treatment would be likely to cause harm to the Institutional Manager.
6. State, and provide justification for, the period of time for which confidential treatment of the proxy voting information is requested. The time period specified may not exceed one (1) year from the date that the Form N-PX report is required to be filed with the Commission.
7. At the expiration of the period for which confidential treatment has been granted (the "Expiration Date") and unless a *de novo* request for confidential treatment of the in-

formation that meets the requirements of Rule 24b-2 and these Confidential Treatment Instructions is filed with the Commission at least fourteen (14) days in advance of the Expiration Date, the Institutional Manager will make such proxy voting information public as set forth in Confidential Treatment Instruction 8.

8. Unless a hardship exemption is available, the Institutional Manager must submit electronically within six (6) business days of the expiration of confidential treatment or notification of denial, as applicable, a Form N-PX amendment to its previously filed public Form N-PX report that includes the proxy voting information as to which the Commission denied confidential treatment or for which confidential treatment has expired. Such Form N-PX amendment must be timely filed: (i) upon the denial by the Commission of a request for confidential treatment; (ii) upon expiration of the time period for which an Institutional Manager has requested confidential treatment; or (iii) upon the expiration of the confidential treatment previously granted for a filing. If an Institutional Manager files an amendment, the amendment must not be a restatement; the Institutional Manager must designate it as an amendment that adds new proxy voting information. The Institutional Manager must include at the top of the Form N-PX Cover Page the following legend to correctly designate the type of filing being made:

THIS FILING LISTS PROXY VOTE INFORMATION REPORTED ON THE FORM N-PX FILED ON (DATE) PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FOR WHICH (THAT REQUEST WAS DENIED/CONFIDENTIAL TREATMENT EXPIRED) ON (DATE).

PAPERWORK REDUCTION ACT INFORMATION

Form N-PX is to be used by a Fund to file reports with the Commission pursuant to Section 30 of the Investment Company Act and Rule 30bl-4 thereunder. Form N-PX also is to be used by an Institutional Manager to file reports with the Commission as required by Section 14A(d) of the Exchange Act and Rule 14Ad-1 thereunder. Form N-PX is to be filed not later than August 31 of each year, containing the reporting person's proxy voting record for the most recent 12-month period ended June 30. The Commission may use the information provided on Form N-PX in its regulatory, disclosure review, inspection, and policymaking roles.

Funds and Institutional Managers are required to disclose the information specified by Form N-PX, and the Commission will make this information public. Funds and Institutional Managers are not required to respond to the collection of information contained in Form N-PX unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM N-PX
ANNUAL REPORT OF PROXY VOTING RECORD
FORM N-PX COVER PAGE

(Name of reporting person) (For registered management investment companies, provide exact name of registrant as specified in charter)

(Address of principal executive offices)

(Zip code)

(Name and address of agent for service)

Telephone number of reporting person, including area code: _____

Report for the [year ended June 30, _____] [period July 1, _____ to September 30, _____]

SEC Investment Company Act or Form 13F File Number: [811-] [028-] _____

CRD Number (if any): _____

Other SEC File Number (if any): _____

Legal Entity Identifier (if any): _____

Check here if amendment ; Amendment number: _____

This Amendment (check only one): is a restatement.

adds new proxy voting entries.

Report Type (check only one): Registered Management Investment Company.

Fund Voting Report (Check here if the registered management investment company held one or more securities it was entitled to vote.)

Fund Notice Report (Check here if the registered management investment company did not hold any securities it was entitled to vote and therefore does not have any proxy votes to report.)

Institutional Manager.

Institutional Manager Voting Report (Check here if all proxy votes of this reporting manager are reported in this report.)

Institutional Manager Notice Report (Check here if no proxy votes are reported in this report and complete the notice report filing explanation section below)

Notice report filing explanation:

all proxy votes for which the manager exercised voting power are reported by other reporting persons

the manager did not exercise voting power for any reportable voting matter and therefore does not have any proxy votes to report

the manager has a clearly disclosed policy of not voting, and did not vote, on any proxy voting matters

Institutional Manager Combination Report (Check here if a portion of the proxy votes for this reporting manager are reported in this report and a portion are reported by other reporting person(s).)

[] Confidential Treatment Requested. (The Institutional Manager has omitted from this public Form N-PX one or more proxy vote(s) for which it is requesting confidential treatment from the U.S. Securities and Exchange Commission pursuant to the instructions of this form)

List of Other Persons Reporting for this Manager: [If there are no entries in this list, omit this section.]

Investment Company Act or Form 13F Number [811-] [028-]	CRD Number (if any)	Other SEC File Number (if any)	LEI (any file)	Name
_____	_____	_____	_____	_____

[Repeat as necessary.]

FORM N-PX SUMMARY PAGE

Information about Institutional Managers.

Number of Included Institutional Managers: _____

List of Included Institutional Managers:

Provide a numbered list of the name(s), 13F file number(s), CRD Numbers (if any), SEC File Number(s) (if any), and LEI (if any) of all Institutional Managers with respect to which this report is filed, other than the reporting person filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

<u>No.</u>	<u>Form 13F File Number 28</u>	<u>CRD Number (if any)</u>	<u>SEC File Number(if any)</u>	<u>LEI (if any)</u>	<u>Name</u>
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[Repeat as necessary.]

Information about the Series.

Number of Series: _____

Provide a list of the name(s) and identification number(s) of all Series with respect to which this report is filed.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

<u>Series Identification Number</u>	<u>LEI</u>	<u>Series Name</u>
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[Repeat as necessary.]

FORM N-PX

Item 1. Proxy Voting Record.

If the reporting person is a Fund, disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the Fund was entitled to vote, including securities on loan for purposes of this form. If the reporting person is an Institutional Manager, disclose the following information for each shareholder vote pursuant to Sections 14A(a) and (b) of the Exchange Act over which the Institutional Manager exercised voting power, as defined in Rule 14Ad-1(d) under the Exchange Act [17 CFR 240.14Ad-1].

- (a) The name of the issuer of the security;
- (b) The Council on Uniform Securities Identification Procedures (“CUSIP”) number for the security;
- (c) The International Securities Identification Number (“ISIN”) for the security;
- (d) The global share class Financial Instrument Global Identifier (“FIGI”) for the security (optional);
- (e) The shareholder meeting date;
- (f) An identification of the matter voted on;
- (g) All categories applicable to the matter voted on from the following list of categories:
 - (A) Director elections;
 - (B) Section 14A say-on-pay votes (examples: section 14A executive compensation, section 14A executive compensation vote frequency, section 14A extraordinary transaction executive compensation);
 - (C) Audit-related (examples: auditor ratification, auditor rotation);
 - (D) Investment company matters (examples: new or changed investment management agreement, assignment of investment management agreement, business development company approval of restricted securities or asset coverage ratio change, closed-end investment company issuance of shares below net asset value);
 - (E) Shareholder rights and defenses (examples: adoption or modification of a shareholder rights plan, control share acquisition provisions, fair price provisions, board classification, cumulative voting);
 - (F) Extraordinary transactions (examples: merger, asset sale, liquidation, buyout, joint venture, going private, spinoff, delisting);

- (G) Capital structure (examples: security issuance, stock split, reverse stock split, dividend, buyback, tracking stock, adjustment to par value, authorization of additional stock);
 - (H) Compensation (examples: board compensation, executive compensation (other than Section 14A say-on-pay), board or executive anti-hedging, board or executive anti-pledging, compensation clawback, 10b5-1 plans);
 - (I) Corporate governance (examples: te1m limits, board committee issues, size of board, articles of incorporation or bylaws, codes of ethics, approval to adjourn, acceptance of minutes, proxy access);
 - (J) Environment or climate (examples: greenhouse gas (GHG) emissions, transition planning or reporting, biodiversity or ecosystem risk, chemical footprint, renewable energy or energy efficiency, water issues, waste or pollution, deforestation or land use, say-on-climate, environmental justice);
 - (K) Human rights or human capital/workforce (examples: workforce-related mandatory arbitration, supply chain exposure to human rights risks, outsourcing or offshoring, workplace sexual harassment);
 - (L) Diversity, equity, and inclusion (examples: board diversity, pay gap);
 - (M) Other social issues (examples: lobbying, political or charitable activities, data privacy, responsible tax policies, consumer protection); or
 - (N) Other (along with a brief description).
- (h) For reports filed by Funds, disclose whether the matter was proposed by the issuer or by a security holder;
 - (i) The number of shares that were voted, with the number zero (“0”) entered if no shares were voted;
 - (j) The number of shares that the reporting person loaned and did not recall;
 - (k) How the shares in paragraph (i) were voted (e.g., for or against proposal, or abstain; for or withhold regarding election of directors) and, if the votes were cast in multiple manners (e.g., for and against), the number of shares voted in each manner;
 - (l) Whether the votes disclosed in paragraph (k) represented votes for or against management’s recommendation;
 - (m) If applicable, identify each Institutional Manager on whose behalf this Form N-PX report is being filed (other than the reporting person filing the report) that exercised voting power over the security by entering the number assigned to the Institutional Manager on the Summary Page;

- (n) If applicable, identify the Series that was eligible to vote the security by providing the Series identification number listed on the Summary Page; and
- (o) Any other information the reporting person would like to provide about the matter or how it voted.

SIGNATURES

[See General Instruction D]

Pursuant to the requirements of the [Securities Exchange Act of 1934 (for Institutional Managers)] [Investment Company Act of 1940 (for Funds)], the reporting person has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Reporting Person) _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his or her signature.

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