period for responding to Investment Company Act Release No. 21538 is extended to March 29, 1996.

Dated: January 11, 1996.
By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96–540 Filed 1–18–96; 8:45 am]
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17 CFR Part 270

[Release No. IC–21660; File No. S7–2–96]

RIN 3235–AG59

Distribution of Shares by Registered Open-End Management Investment Company

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Commission is proposing a technical amendment to the rule under the Investment Company Act of 1940 relating to the distribution of shares by registered open-end management investment companies. Among other things, the rule requires the payment of an asset-based sales load to be made pursuant to a written plan that contains certain provisions and specifies the amount of the asset-based load. The proposed amendment would provide that a plan adopted prior to an investment company's initial public offering would not have to be approved by shareholders. Since the investment company's directors must approve the plan, and investors that buy their shares after the company's public offering, in effect, ''vote with their dollars'' to accept the plan, shareholder approval of the plan prior to the company's public offering is not necessary.

DATES: Comments must be received on or before February 22, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. All comment letters should refer to File No. S7–2–96. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Holly Hill-Little, Staff Attorney, or Elizabeth R. Krentzman, Assistant Chief, (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on a proposed amendment to rule 12b-1 [17 CFR 270.12b-1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'').

I. Discussion

Rule 12b-1 governs the payment of asset-based sales loads by registered open-end management investment companies (individually, a ''fund''). Among other things, rule 12b-1 requires a fund's payment of an asset-based sales load to be made pursuant to a written plan that contains certain provisions and specifies the amount of the load (a ''rule 12b-1 plan'').[1] The rule requires a rule 12b-1 plan to be approved by a majority of the fund's board of directors, including a majority of the independent directors, and a majority of the fund's outstanding shares prior to the plan's implementation.[2]

The shareholder approval requirement is unnecessary when a rule 12b-1 plan is adopted prior to a fund's initial public offering. Under these circumstances, the shareholders voting typically will be comprised of persons involved in organizing the fund (*i.e.*, the fund's investment adviser or its affiliates).[3] Shareholder approval, therefore, is virtually automatic, mechanical, and offers no real protection to the fund's shareholders. Investors purchasing shares in a fund's initial public offering, in effect, ''vote with their dollars'' to accept the fund's rule 12b-1 plan since the terms of the plan, and its effects on fund expenses, are disclosed in the fund's prospectus.[4]

As noted above, the fund's directors must approve the rule 12b-1 plan, including the asset-based load payable thereunder. In addition, fund shareholders must approve any changes in the rule 12b-1 plan that would materially increase the amount of the asset-based sales load and have the right to terminate the plan at any time. Taken together, these provisions provide shareholders with sufficient protection, without the need for a vote prior to the fund's public offering.

The proposed amendment would provide that a rule 12b-1 plan adopted prior to a fund's initial public offering would not have to be approved by shareholders.[5] If a fund adopts a rule 12b-1 plan following a public offering, the amended rule, like the current rule, would require the fund's shareholders to approve the plan.[6] The Commission requests comment on the proposed amendment.

II. Cost/Benefit Analysis

The proposed amendment would provide that a rule 12b–1 plan adopted prior to a fund's initial public offering would not have to be approved by shareholders. Shareholder approval is unnecessary since the fund's board of directors must approve the rule 12b–1 plan, and investors participating in the fund's initial public offering effectively ''vote with their dollars'' to accept the plan. The proposed amendment, if adopted, would no longer require funds to undergo the perfunctory exercise of obtaining approval from persons who have supplied the fund with its initial capital prior to the fund's public offering.

III. Summary of Initial Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act [U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendment would not, if adopted, have a significant economic impact on a substantial number of small entities. The amendment would enable funds, including small entities, to forgo the minimal time and expense associated with obtaining shareholder approval of rule 12b–1 plans from persons who have supplied the fund with its initial capital prior to the fund's initial public offering. The Chairman's

[1] 17 CFR 270.12b-1(b).

[2] 17 CFR 270.12b-1(b)(1) and (2). The fund's board also must approve the continuation of the plan at least annually. 17 CFR 270.12b-1(b)(3)(i).

[3] In 1992, the Division of Investment Management discontinued the practice of requiring funds to submit their rule 12b-1 plans and certain other matters to a shareholder vote following the initial public offering of the fund's shares. *See* Investment Company Institute (pub. avail. Nov. 6, 1992).

[4] Items 2 and 7 of Form N–1A under the Securities Act of 1933 and the Investment Company Act, 17 CFR 239.15A and 274.11A.

[5] The Division of Investment Management has recommended eliminating the requirement for a vote on rule 12b-1 plans by initial fund shareholders. Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 277–78 (1992). Commenters, including the Investment Company Institute, also have recommended eliminating this requirement. Memorandum of the Investment Company Institute, Proposals To Improve Investment Company Regulation 27 (July 19, 1995).

[6] The proposed amendment would continue to require shareholder approval of a plan that is adopted after the sale of the fund's securities to persons who are not affiliates of the fund or its sponsor. Thus, for example, a plan would have to be approved by shareholders if adopted following the distribution of securities to persons other than fund insiders who provide the fund's ''seed capital'' required by section 14 of the Investment Company Act [15 U.S.C. 80a-14], without regard to whether the offering was registered under the Securities Act of 1933 [15 U.S.C. 77a].

certification is attached to this release as Appendix A.

IV. Statutory Authority

The Commission is proposing to amend rule 12b–1 pursuant to the authority set forth in sections 6(c), 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 6(c), 12(b), 37(a)].

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

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

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

1. The authority citation for Part 270 continues to read, in part, as follows:

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

* * * * *

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

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

* * * * *

(b) * * *

(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 or affiliated persons of such persons;

* * * * *

By the Commission.

Dated: January 5, 1996.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*], which would provide that a plan for the payment of an asset-based sales load adopted prior to an investment company's initial public offering would not have to be approved by shareholders, would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendment would enable investment companies, including small entities, to forgo the minimal time and expense associated with obtaining shareholder approval of these plans from persons who have supplied the companies with their initial capital. Accordingly, the proposed amendment would not have a significant economic impact on a substantial number of small entities.

Dated: December 28, 1995.

Arthur Levitt,

Chairman.

[FR Doc. 96–504 Filed 1–18–96; 8:45 am]

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, to Hear Oral Argument in Lieu of Briefs, and to Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Notice of Extension of Comment Period.

SUMMARY: In light of the most recent shutdown of Agency operations due to the lack of appropriated funds, the National Labor Relations Board (NLRB) is extending from December 29, 1995, until January 25, 1996, the deadline for filing comments in response to its recent proposal to make permanent, following expiration of the experimental period, the experimental modifications to its rules authorizing the use of settlement judges and providing administrative law judges (ALJs) with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (see 60 FR 61679). In a related document published elsewhere in today's Federal Register, the NLRB is also extending the experimental period from January 31, 1996, until March 1, 1996, to allow the Board time to consider the comments.

DATES: The deadline for filing comments on the Board's proposal to make the experimental modifications to the NLRB's rules permanent upon expiration of the experimental period is extended from December 29, 1995, until January 25, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Room 11600, Washington, D.C. 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

On December 22, 1994, following consideration of the comments received to the NPR, the Board issued a notice implementing, on a one-year experimental basis, the proposed modifications (59 FR 65942). The notice provided that the modifications would become effective on February 1, 1995, and would expire at the end of the one-year experimental period on January 31, 1996, absent renewal by the Board.

On December 1, 1995, following a review of the experience to date with the modifications and the views of the NLRB's Advisory Committee on Agency Procedure, the Board issued a notice proposing to make the modifications permanent upon expiration of the one-year experimental period on January 31, 1996 (60 FR 61679). The notice provided for a period of public comment on this proposal, until December 29, 1995.

Beginning December 18, 1995, during the comment period, and continuing until January 5, 1996, the Agency's offices were closed due to the lack of appropriated funds. As a result, both the experiment and the comment period were interrupted.

Accordingly, consistent with the Agency's recently announced shutdown procedures (60 FR 50648), the Board has decided to extend from December 29, 1995, until January 25, 1996, the deadline for filing comments on its proposal to make the experimental modifications to the NLRB's rules permanent upon expiration of the experimental period. In a related document published elsewhere in today's Federal Register, the Board is also extending the experimental period from January 31, 1996, until March 1, 1996, to allow the Board time to consider the comments.

Dated, Washington, D.C., January 16, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

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