

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 239, 249, 270, and 274

[Release Nos. 33-8393; 34-49333; IC-26372; File No. S7-51-02]

RIN 3235-AG64

### Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the periodic disclosure provided by registered management investment companies about their costs, portfolio investments, and past performance. The amendments will require a registered open-end management investment company to include in its shareholder reports disclosure of fund expenses borne by shareholders during the reporting period. The amendments also will permit a registered management investment company to include a summary portfolio schedule of investments in its reports to shareholders, provided that the complete schedule is filed with the Commission and is provided to shareholders upon request, free of charge. In addition, the amendments will require a registered management investment company to include a tabular or graphic presentation of its portfolio holdings in its reports to shareholders. The amendments also will require a registered management investment company to disclose its complete portfolio schedule on a quarterly basis in filings with the Commission that will be certified by the company's principal executive and financial officers and available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System. Finally, the amendments will require a registered open-end management investment company to include Management's Discussion of Fund Performance in its annual report to shareholders.

**DATES:** *Effective Date:* May 10, 2004.

*Compliance Date:* See Section II.D. of this release for information on compliance dates.

**FOR FURTHER INFORMATION CONTACT:** John M. Faust, Attorney, Christopher P.

Kaiser, Special Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942-0721, at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (the "Commission") is adopting new rule 30b1-5<sup>1</sup> and amendments to rules 30a-2,<sup>2</sup> 30a-3,<sup>3</sup> and 30d-1<sup>4</sup> under the Investment Company Act of 1940<sup>5</sup> ("Investment Company Act"); amendments to Forms N-1A,<sup>6</sup> N-2,<sup>7</sup> and N-3<sup>8</sup> under the Investment Company Act and the Securities Act of 1933<sup>9</sup> ("Securities Act"); new Form N-Q<sup>10</sup> and amendments to Form N-CSR<sup>11</sup> under the Investment Company Act and the Securities Exchange Act of 1934<sup>12</sup> ("Exchange Act"); and amendments to Article 6<sup>13</sup> and Article 12<sup>14</sup> of Regulation S-X.<sup>15</sup>

#### Table of Contents

##### Executive Summary

##### I. Background

- A. Disclosure of Fund Expenses
- B. Disclosure of Fund Portfolio Holdings
- C. The Commission's Proposal

##### II. Discussion

- A. Disclosure of Fund Expenses
- B. Disclosure of Portfolio Holdings
  - 1. Summary Portfolio Schedule
  - 2. Exemption of Money Market Funds from Portfolio Schedule Requirements in Shareholder Reports
  - 3. Tabular or Graphic Presentation of Portfolio Holdings
  - 4. Quarterly Filing of Complete Portfolio Schedule
- C. Management's Discussion of Fund Performance ("MDFP")

- D. Compliance Date

##### III. Paperwork Reduction Act

##### IV. Cost/Benefit Analysis

##### V. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

##### VI. Final Regulatory Flexibility Analysis

##### VII. Statutory Authority

<sup>1</sup> 17 CFR 270.30b1-5.

<sup>2</sup> 17 CFR 270.30a-2.

<sup>3</sup> 17 CFR 270.30a-3.

<sup>4</sup> 17 CFR 270.30d-1.

<sup>5</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>6</sup> 17 CFR 239.15A; 17 CFR 274.11A.

<sup>7</sup> 17 CFR 239.14; 17 CFR 274.11a-1.

<sup>8</sup> 17 CFR 239.17; 17 CFR 274.11b.

<sup>9</sup> 15 U.S.C. 77a *et seq.*

<sup>10</sup> 17 CFR 249.332; 17 CFR 274.130.

<sup>11</sup> 17 CFR 249.331; 17 CFR 274.128.

<sup>12</sup> 15 U.S.C. 78a *et seq.*

<sup>13</sup> 17 CFR 210.6.

<sup>14</sup> 17 CFR 210.12.

<sup>15</sup> 17 CFR 210.

Text of Rule and Form Amendments

#### Executive Summary

We are adopting rule and form amendments<sup>16</sup> that:

- Require open-end management investment companies ("mutual funds") to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders;<sup>17</sup>

- Permit a management investment company registered under the Investment Company Act ("fund") to include a summary portfolio schedule in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on Form N-CSR semi-annually and is provided to shareholders upon request, free of charge;

- Exempt money market funds from including a portfolio schedule in reports to shareholders, provided that this information is filed with the Commission on Form N-CSR and is provided to shareholders upon request, free of charge;

- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;

- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new Form N-Q, which will be filed under the Investment Company Act and the Exchange Act and certified by the fund's principal executive and financial officers; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.<sup>18</sup>

These amendments are intended to provide better information to investors

<sup>16</sup> The Commission proposed these amendments in December 2002. Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] ("Proposing Release").

<sup>17</sup> A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* section 4 of the Investment Company Act [15 U.S.C. 80a-4]. Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4-5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* section 5 of the Investment Company Act [15 U.S.C. 80a-5]. Open-end companies ("mutual funds") generally offer and sell new shares to the public on a continuous basis, while closed-end companies generally engage in traditional underwritten offerings of a fixed number of shares and in most cases do not offer their shares to the public on a continuous basis.

<sup>18</sup> Item 5 of Form N-1A.

about fund costs, investments, and performance.

## I. Background

The Investment Company Act and rules thereunder require each fund to transmit a report to its shareholders semi-annually, within 60 days of the end of the period for which the shareholder report is made, and to file the report with the Commission no later than 10 days after it is transmitted to shareholders.<sup>19</sup> Shareholder reports are one of the principal means by which funds provide periodic information to their investors. Fund shareholder reports historically have served primarily as a vehicle to provide financial statements and other financial information to shareholders.<sup>20</sup> We believe that today's amendments and new rules will make these reports more effective vehicles for communicating information to investors. Today's amendments principally address disclosure of fund expenses and portfolio holdings, two significant areas for improvement that have been the subject of public discussion and concern.

### A. Disclosure of Fund Expenses

Potential mutual fund investors receive significant disclosure about fund fees and expenses. Since 1988, the Commission has required the mutual fund prospectus to include a fee table that shows all fees and charges associated with a mutual fund investment as a percentage of net assets.<sup>21</sup> Recent rulemaking initiatives have also sought to improve disclosure to investors of mutual fund fees and charges. For example, the Commission

<sup>19</sup> See section 30(e) of the Investment Company Act [15 U.S.C. 80a-29(e)]; Rule 30e-1 under the Investment Company Act [17 CFR 270.30e-1] (transmission of report to shareholders); section 30(b)(2) of the Investment Company Act [15 U.S.C. 80a-30(b)(2)]; Rule 30b2-1 under the Investment Company Act [17 CFR 270.30b2-1] (filing of shareholder report with the Commission); Form N-CSR (form used by registered management investment companies to file shareholder reports).

<sup>20</sup> Section 30(e) of the Investment Company Act [15 U.S.C. 80a-29(e)] (requiring a fund to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); National Securities Markets Improvement Act of 1996, Pub. L. 104-290, section 207, 110 Stat. 3416, 3430 (Oct. 11, 1996) (adding section 30(f) to the Investment Company Act, which allows the Commission to require that semi-annual reports "include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors").

<sup>21</sup> Item 3 of Form N-1A; Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)] (release adopting mutual fund fee table); Investment Company Act Release No. 15932 (Aug. 18, 1987) [52 FR 32018 (Aug. 25, 1987)] (release proposing mutual fund fee table).

recently adopted amendments requiring investment company advertisements to highlight the availability and importance of information on fees and charges found in the prospectus<sup>22</sup> and has proposed amendments to the mutual fund prospectus that would require enhanced disclosure regarding breakpoint discounts on front-end sales loads.<sup>23</sup> In addition, the Commission published a concept release seeking views regarding improving disclosure of transaction costs.<sup>24</sup> Finally, the Commission recently proposed new rules that would require broker-dealers to provide their customers with information, at the point of sale and in transaction confirmations, regarding the costs and conflicts of interest that arise from the distribution of mutual fund shares.<sup>25</sup>

In addition, the Commission has undertaken efforts to increase investor awareness and understanding of the significance of the costs that they pay in connection with mutual fund investments. For example, we recently added educational information to our Web site addressing breakpoints on front-end sales loads and prospectus fee tables.<sup>26</sup> Since 1999, the Commission has made available on its Web site the Mutual Fund Cost Calculator, an Internet-based tool that enables investors to compare the costs of owning different funds.<sup>27</sup>

Despite these ongoing efforts, the degree to which investors understand mutual fund fees and expenses remains a source of concern. Mutual fund fees are of two types, transactional (e.g., sales loads, redemption fees) and ongoing (e.g., asset-based charges such as management fees and 12b-1 fees).<sup>28</sup> While transactional fees are relatively

<sup>22</sup> See Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760 (Oct. 6, 2003)].

<sup>23</sup> See Investment Company Act Release No. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)].

<sup>24</sup> See Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)].

<sup>25</sup> See Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)].

<sup>26</sup> See *Breakpoints* (last modified Jan. 17, 2003), <http://www.sec.gov/answers/breakpt.htm>; *Tips for Reading a Prospectus* (last modified Feb. 5, 2003), <http://www.sec.gov/answers/mfprospectustips.htm>.

<sup>27</sup> *Mutual Fund Cost Calculator* (last modified July 24, 2000), <http://www.sec.gov/investor/tools/mfcc/mfcc-int.htm>. See also *Invest Wisely: An Introduction to Mutual Funds* (last modified June 2, 2003), <http://www.sec.gov/investor/pubs/inwsmf.htm> (investor brochure describing types of mutual fund fees and expenses); *Mutual Fund Fees and Expenses* (last modified Oct. 19, 2000), <http://www.sec.gov/answers/mffees.htm>.

<sup>28</sup> A 12b-1 fee is a fee charged by some mutual funds against fund assets to pay for marketing and distribution activities. See section 12(b) of the Investment Company Act [80 U.S.C. 80a-12(b)]; Rule 12b-1 under the Investment Company Act [17 CFR 270.12b-1].

transparent, ongoing fees are less evident because they are deducted from fund assets and are reflected in reduced account balances rather than being separately stated. Significant concerns have been raised regarding the degree to which investors understand the nature and effect of these ongoing fees.<sup>29</sup> These ongoing fees can have a dramatic effect on an investor's return. A 1% annual fee, for example, will reduce an ending account balance by 18% on an investment held for 20 years. In December 2002, we proposed amendments intended to address these concerns, that would require a registered open-end management investment company to include in its shareholder reports disclosure of fund expenses borne by shareholders during the reporting period.<sup>30</sup>

### B. Disclosure of Fund Portfolio Holdings

Currently, funds are required to include their complete portfolio holdings in the reports that are delivered to all shareholders twice a year.<sup>31</sup> Investor groups, members of the

<sup>29</sup> See, e.g., Mara Der Haranesian, et al., *How to Fix the Mutual Funds Mess*, Business Week, Sept. 22, 2003, at 106 (discussing the impact of fees on returns and arguing that it is difficult for investors to determine what they personally pay based on a fund's expense ratio); Chuck Jaffe, *In "Plain English," Disclosure is a Joke*, The Boston Globe, August 31, 2003, at E4 (arguing for more understandable fee disclosure in fund prospectuses); Theo Francis, *Getting the Most From Fund Costs*, Wall Street Journal, Dec. 2, 2002, at R1 (discussing the importance of considering fees and expenses when investing in mutual funds, and explaining how to use the SEC's cost calculator); James Glassman, *A Failing Grade for Mutual Funds*, Washington Post, Dec. 1, 2002, at H1 (discussing importance of differences in expenses to fund returns, and using examples from SEC's cost calculator); Neil Weinberg, *Fund Manager Knows Best; As Corporations are Fessing Up to Investors, Mutual Funds Still Gloss Over Costs*, Forbes Magazine, Oct. 14, 2002 (84% of investors believe higher expenses result in higher performance); *Investors Need to Bone Up on Bonds and Costs, According to Vanguard/Money Investor Literacy Test*, Press Release, Business Wire, Sept. 25, 2002 (75% of survey respondents could not accurately define fund expense ratio and 64% did not understand the impact of expenses on fund returns).

<sup>30</sup> See Proposing Release, *supra* note 16. Cf. Mutual Funds Integrity and Fee Transparency Act of 2003, H.R. 2420, 108th Cong. § 101 (2003); Mutual Fund Investor Confidence Restoration Act of 2003, S. 1971, 108th Cong. § 101 (2003); Mutual Fund Investor Protection Act of 2003, S. 1958, 108th Cong. § 101 (2003) (requiring enhanced disclosure of mutual fund operating expenses).

<sup>31</sup> Rule 6-10(c)(1) of Regulation S-X [17 CFR 210.6-10(c)(1)] requires that schedules of investments be filed in support of the balance sheet entries for these investments. The forms of these schedules are specified in Rules 12-12 to 12-14 of Regulation S-X [17 CFR 210.12-12 to 210.12-14]. The schedules of investments are also required to be included with the financial statements in the Statement of Additional Information ("SAI") of a fund, which is part of the registration statement

fund industry, and others have suggested ways to improve this disclosure regime, both by increasing the frequency with which funds disclose their portfolio holdings, and by streamlining the portfolio schedules that are delivered to investors to make them more useful and understandable.

First, some have argued that investors would benefit if funds were required to disclose their complete portfolio schedules more frequently than semi-annually. The Commission has received six rulemaking petitions in the past several years that advocate more frequent disclosure of funds' portfolio holdings.<sup>32</sup> The petitioners argue that increasing the frequency of portfolio disclosure by funds will allow investors to better monitor the extent to which their funds' portfolios overlap, and hence will enable investors to make more informed asset allocation decisions. In addition, the petitioners argue that more frequent disclosure would expose "style drift" (when the actual portfolio holdings of a fund deviate from its stated investment objective) and provide investors with greater information about how a fund is complying with its stated investment objective. The petitioners also argue that more frequent disclosure would help to shed light on and prevent several potential forms of portfolio manipulation, such as "window dressing" (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and "portfolio pumping" (buying shares of stock the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results).

Second, others have argued that permitting funds to include a summary portfolio schedule in lieu of a complete portfolio schedule in their shareholder

reports would enable investors to focus on a fund's principal holdings and thereby better evaluate the fund's risk profile and investment strategy.<sup>33</sup> At the same time, the fund's full portfolio schedule would remain available, upon request, to those investors who find this information useful. In addition, these advocates have argued that the use of a summary schedule would reduce the burden on the funds and their shareholders of providing unnecessarily lengthy schedules of portfolio investments, which at present may require as many as 35 or 40 pages to list. For many funds, such as index funds, providing a lengthy portfolio schedule may not contribute significantly to investor understanding regarding the fund's primary investment focus. It may, however, result in significant printing and mailing costs, which are ultimately borne by investors.

The amendments that we proposed in December 2002 were intended to address both of these suggestions for improvement. First, the proposed amendments would require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on proposed Form N-Q. Second, the proposed amendments would permit a fund to include a summary portfolio schedule of investments in its reports to shareholders, provided that the complete schedule is filed with the Commission and is provided to shareholders upon request, free of charge.

### C. The Commission's Proposal

The Commission received 65 comment letters on the proposed amendments regarding shareholder reports and quarterly portfolio disclosure from individual investors, professional and trade associations, investor advocacy groups, members of the fund industry, bar associations, accounting firms, consultants, and academics. These commenters generally supported the Commission's proposals to improve the periodic disclosure provided to investors, although some expressed concerns regarding portions

of the proposals or suggested changes. Today, the Commission is adopting these proposed amendments, with certain modifications as described below to address the suggestions of commenters.

## II. Discussion

### A. Disclosure of Fund Expenses

We are adopting, substantially as proposed, the requirement that mutual funds disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period. Mutual fund shareholder reports will be required to include: (1) The cost in dollars associated with an investment of \$1,000, based on the fund's actual expenses and return for the period; and (2) the cost in dollars associated with an investment of \$1,000, based on the fund's actual expenses for the period and an assumed return of 5 percent per year.<sup>34</sup> The first figure is intended to permit investors to estimate the actual costs, in dollars, that they bore over the reporting period. The second figure is intended to provide investors with a basis for comparing the level of current period expenses of different funds. Together, the two expense figures are designed to increase investor understanding of the fees that they pay on an ongoing basis for investing in a fund.

### Location of Disclosure

We continue to believe that disclosure of current period expenses in the shareholder reports strikes an appropriate balance between investors' need for this information and the costs and burdens that would be associated with providing this information on an individualized basis. Commenters, including individual investors and fund groups, generally supported the proposed expense disclosure on the grounds that it would enhance investor understanding of fund expenses. However, two commenters encouraged the Commission to consider an alternative approach that would require expense disclosure in quarterly account statements, consisting of either the amount of expenses paid by the individual investor, or expenses associated with a standardized investment amount.

We are not persuaded that expense disclosure in quarterly account statements would be preferable to the proposed shareholder reports disclosure. Disclosure of expenses in a fund's shareholder reports will enable investors to evaluate this information

filed with the Commission under both the Securities Act and the Investment Company Act. See current Item 22 of Form N-1A; Item 23 of Form N-2; Item 27(a) of Form N-3.

<sup>32</sup> See Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001); Rulemaking Petition by the American Federation of Labor and the Congress of Industrial Organizations (Dec. 20, 2000); Rulemaking Petition by the National Association of Investors Corporation (Oct. 9, 2000); Rulemaking Petition by the Consumer Federation of America, *et al.* (Aug. 8, 2000); Rulemaking Petition by the Financial Planning Association (June 28, 2000); Rulemaking Petition by Fund Democracy, LLC (June 28, 2000). The petitions are available for inspection and copying in File No. S7-51-02 in the Commission's public reference room.

<sup>33</sup> See Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Barry P. Barbash, Director, Division of Investment Management, Securities and Exchange Commission ("SEC") (Aug. 11, 1998); Letter from Heidi Stam, Principal, Securities Regulation, The Vanguard Group, to Cynthia Fornelli, Deputy Director, Division of Investment Management, SEC (Oct. 13, 1999); Letter from Robert C. Pozen, General Counsel and Managing Director, Fidelity Investments, to The Honorable Steven Wallman, Commissioner, SEC (May 5, 1995). The letters are available for inspection and copying in File No. S7-51-02 in the Commission's public reference room.

<sup>34</sup> Item 21(d)(1) of Form N-1A.

alongside other key information about the fund's operating results, including management's discussion of the fund's performance. In effect, shareholders will be able to evaluate the costs they pay against the services they receive. By contrast, expense disclosure in quarterly account statements would provide a less effective context for investors to assess the expenses shown.

In addition, disclosure of the cost in dollars associated with an investment of \$1,000, based on the fund's actual expenses for the period and an assumed return of 5 percent per year, will provide investors with expense information in a standardized manner that will facilitate comparison of ongoing costs among funds. By contrast, personalized expense disclosure in quarterly account statements would not assist investors in making comparisons among funds because it would be based on different investment amounts and different rates of return.

We acknowledge that individualized expense disclosure in quarterly account statements would have the benefit of providing cost disclosure tailored to each investor. Our approach, however, effectively permits an investor to estimate this personalized information readily (by dividing the investor's account value by \$1,000 and multiplying the result by the cost shown for a \$1,000 investment).

The Commission's approach also avoids certain costs and logistical complexity that individualized disclosure in quarterly statements might entail. Mutual fund expenses are charged against fund assets and are not accounted for on an individual account basis. Therefore, implementation of individualized expense disclosure would require systems changes to provide for expense accounting on an individual account basis. Moreover, in many cases, fund shares are held by broker-dealers, financial advisers, and other third-party intermediaries, who must prepare accurate and timely customer account statements by integrating data supplied by many unrelated fund groups. In addition to the systems changes necessary for the fund itself, these financial intermediaries would need to implement new systems in order to calculate and report personalized expense information for each fund held in an account each quarter. Estimates of the costs of these changes are substantial. One commenter estimated, based on a survey of various industry participants conducted in 2000, that the aggregate costs to survey respondents associated with calculating and disclosing individualized fund expenses

would be \$200.4 million in initial implementation costs and \$65 million in annual, ongoing costs.<sup>35</sup> By contrast, we estimate that the costs for standardized cost disclosure in shareholder reports, including printing and mailing costs, and the costs of preparing the new disclosure, would total approximately \$16 million annually.<sup>36</sup>

#### Format and Methodology

Our amendments will require both an expense example based on the fund's actual expenses and actual return, and an expense example based on actual expenses and a 5% assumed return, as proposed. We note that several commenters objected to the second example. These commenters raised concerns that this example would make the fee disclosure unnecessarily cumbersome, particularly for multiple class funds. They also argued that it might confuse investors because the example in the shareholder report would be similar, but not identical, to the example in the fee table of the fund prospectus. For example, one commenter noted that the fee table example reflects sales charges, whereas the shareholder report example would not. We continue to believe, however, that this second example will enhance the utility to investors of the expense disclosure by facilitating comparison of ongoing expenses among funds. While the first example, based on the actual return of the fund, will enable investors to estimate readily the actual dollar cost that they paid over the reporting period, it cannot effectively serve as a vehicle for comparison of fund expenses, because the fund's return will necessarily affect the expenses incurred. The second example facilitates comparison by standardizing assumed return.

The methodology for calculation of the expense disclosure that we are adopting is similar to that required for the expense example in the fee table of the mutual fund prospectus and, with one exception, is unchanged from our proposal.<sup>37</sup> We are modifying the proposal to base the expense figures on costs associated with an investment of \$1,000, as opposed to \$10,000. We believe that it may be easier for shareholders to estimate their actual

<sup>35</sup> Investment Company Institute Survey on GAO Report on Mutual Fund Fees (Jan. 31, 2001) (available for inspection and copying in File No. S7-51-02 in the Commission's Public Reference Room).

<sup>36</sup> See Section IV., "Cost/Benefit Analysis," *infra*.

<sup>37</sup> See Section II.B. of the Proposing Release, *supra* note 16, 68 FR at 168-169 (describing methodology to be used).

expenses using an example based on a \$1,000 amount because it will simplify the multiplication involved, *e.g.*, for shareholders holding less than \$10,000 in a fund.

We are also modifying the format of the expense example to include the account values for an initial investment of \$1,000 as of the end of the period alongside the expense figures, and to show the fund's expense ratio expressed as a percentage. In the proposing release, we requested comment on better approaches to providing disclosure to investors about actual costs paid over the current period, and on possible modifications to the proposed computation methodology to help achieve the objective of permitting investors to estimate the actual costs, in dollars, that they bore over the reporting period. Several commenters addressed ways to improve the expense examples, and one commenter suggested addressing the impact of brokerage and related soft dollar expenses.

The Commission has given additional consideration to the questions raised in its request for comment and the comments received and has determined to modify the expense example to include figures for ending account value, as well as the fund's expense ratio as a percentage.<sup>38</sup> We believe that this revised format will help investors better understand the impact of fund expenses and the relationship between expenses and return, as well as the effect of brokerage and soft dollar expenses. These changes are designed to help investors understand ongoing fund costs and make better cost comparisons among funds.

Under the amendments we are adopting, the figures for beginning and ending account value and expenses paid will be required to be shown in a tabular format.<sup>39</sup> The instructions to the table clarify that the expense calculations are to be based on the fund's most recent fiscal half-year (the fund's second fiscal half-year in the case of an annual report). A fund will be required to state, in a footnote to the table, that expenses are equal to the fund's annualized expense ratio, multiplied by the average account value over the period, multiplied by the number of days in the fund's most recent fiscal half-year divided by 365 or 366 (to reflect the one-half year period shown). The expense ratio shown in the footnote to the table will be expressed on an annualized basis and calculated in the

<sup>38</sup> See Section IV.B., "Cost/Benefit Analysis: Costs," *infra*, for a discussion of the costs to funds of including the additional information.

<sup>39</sup> Item 21(d)(1) of Form N-1A.

manner required in the financial highlights table using the expenses for the fund's most recent fiscal half-year.<sup>40</sup>

The numerical expense disclosure will be accompanied by a prescribed narrative explanation, including an explanation of the types of costs charged by mutual funds and the assumptions used in the example.<sup>41</sup> We are revising the proposed narrative disclosure requirements to reflect that expenses will be shown in a table alongside the ending account values for a \$1,000 initial investment. In addition, we are adding headings and revising the narrative disclosure to separate more clearly the explanations of the two expense examples. We are also adding material to the required narrative disclosure, explaining how the investor can use the information in the first expense example, together with the investor's account value, to estimate the expenses that the investor paid. A fund that charges any account fees or other recurring fees that are not included in the expenses shown in the table will be required to disclose the amounts of these fees; describe the accounts that are charged these fees; and explain how an investor would use this information to estimate the total ongoing expenses paid over the period, the impact of these fees on ending account value, and how an investor would use this information to compare the ongoing costs of investing in different funds. Finally, a fund may modify the narrative explanations if the explanation contains comparable information to that shown, and will be required to make any modifications necessary to reflect accurately the fund's circumstances.<sup>42</sup>

#### B. Disclosure of Portfolio Holdings

The Commission is adopting, with several modifications to address commenters' concerns, rule and form amendments that will: (1) Permit a fund to include a summary portfolio schedule in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission semi-annually on Form N-CSR and is provided to shareholders upon request, free of charge; (2) exempt money market funds from including a portfolio schedule in reports to shareholders, provided that this information is filed with the Commission on Form N-CSR and is provided to shareholders upon request, free of charge; (3) require reports to shareholders to include a tabular or graphic presentation of a

fund's portfolio holdings by identifiable category; and (4) require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new Form N-Q, which will be certified by the fund's principal executive and financial officers. Together, these amendments will replace a one-size-fits-all approach to portfolio holdings disclosure, where all funds deliver their full portfolio schedules to all their shareholders twice a year, with a layered approach that will make more information available while permitting funds to tailor their shareholder reports to their particular circumstances and investors to tailor the amount of information they receive to meet their particular needs. This approach is intended to result in the availability of enhanced portfolio information at a reduced cost.

#### 1. Summary Portfolio Schedule

We are adopting, with modifications to address commenters' concerns, amendments that will permit a fund to include in its reports to shareholders a summary portfolio schedule, in lieu of a complete portfolio schedule. The complete portfolio schedule will, however, continue to be available, free of charge, to those investors who are interested in this more detailed information. These amendments are designed to streamline shareholder reports and help investors to focus on a fund's principal holdings, and thereby better evaluate the fund's risk profile and investment strategy. Commenters generally supported these proposed amendments, agreeing that they would encourage investors to focus on a fund's most significant investments.

Our amendments to Regulation S-X will permit a fund to include in its reports to shareholders a summary portfolio schedule, *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers*, in lieu of the full schedule contained in *Schedule I—Investments in securities of unaffiliated issuers*.<sup>43</sup> The summary portfolio schedule will include each of the fund's 50 largest holdings in unaffiliated issuers and each investment in unaffiliated issuers that exceeds one percent of the fund's net asset value.<sup>44</sup>

Commenters generally supported these thresholds.

We are requiring, as proposed, that with respect to each issue required to be listed, the schedule would show (1) the name of the issuer and title of issue; (2) the balance held at the close of the period (*i.e.*, the number of shares or the principal amount of bonds and notes); (3) the value of the issue at the close of the period; and (4) the percentage value of the issue compared to net assets.<sup>45</sup> The summary schedule would also show the total value of all investments in securities of unaffiliated issuers.<sup>46</sup>

Funds will continue to be required to include in their reports to shareholders the other schedules currently required by Regulation S-X.<sup>47</sup> Some commenters argued that funds should also be permitted to include the investments described by these schedules, and in particular investments in securities of affiliated issuers and investments other than securities, in a summary portfolio schedule. These commenters reasoned that inclusion of these investments in a summary schedule would serve to focus investors' attention on the fund's most significant investments in these areas. Other commenters, however, reasoned that providing a complete presentation of these investments is important to investors and gives them a better understanding of the nature of the fund's investments, its hedging strategies, its use of leverage, and any potential conflicts of interest in the management of the fund. We agree with these latter commenters. Requiring a complete presentation of investments other than securities of unaffiliated issuers in shareholder reports is important in order to provide investors with an understanding of the risks and potential conflicts of interest associated with the fund's portfolio.

#### Format of the Summary Schedule

As adopted, our amendments to Regulation S-X will require the securities in the summary schedule to be identified by category.<sup>48</sup> Specifically, the summary schedule must be categorized by (i) the type of investment (such as common stocks, preferred stocks, convertible securities, fixed

<sup>45</sup> Columns A, B, C, and D of Schedule VI.

<sup>46</sup> Note 7 to Schedule VI.

<sup>47</sup> In addition to *Schedule I—Instruments in securities of unaffiliated issuers*, Article 6-10(c) of Regulation S-X [17 CFR 210.6-10(c)] requires the following schedules to be filed: *Schedule II—Investments—other than securities* [17 CFR 210.12-13]; *Schedule III—Investments in and advances to affiliates* [17 CFR 210.12-14]; *Schedule IV—Investments—securities sold short* [17 CFR 210.12-12A]; and *Schedule V—Open option contracts written* [17 CFR 210.12-12B].

<sup>48</sup> Note 1 to Schedule VI.

<sup>40</sup> Instruction 1(c) to Item 21(d)(1) of Form N-1A.

<sup>41</sup> Item 21(d)(1) and Instruction 1(b) to Item 21(d)(1) of Form N-1A.

<sup>42</sup> Instruction 1(b) to Item 21(d)(1) of Form N-1A.

<sup>43</sup> Schedule I of Regulation S-X [17 CFR 210.12-12]; Schedule VI of Regulation S-X [17 CFR 210.12-12C]; Article 6-10(c)(2) of Regulation S-X [17 CFR 210.6-10(c)(2)]; Instruction 1 to Item 21(b)(1) and Instruction to Item 21(c)(1) of Form N-1A; Instructions 4.a., 5.a., and 7 to Item 23 of Form N-2; Instructions 4.(i), 5.(i), and 7 to Item 27(a) of Form N-3.

<sup>44</sup> Note 3 to Schedule VI.

income securities, government securities, options purchased, warrants, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, other investment companies, and so forth); and (ii) the related industry, country, or geographic region of the investment.<sup>49</sup> We are also adopting a conforming amendment to clarify that these categories are required to be used in the complete portfolio schedule, in lieu of the current required categories.<sup>50</sup>

Our proposal would have required the securities in the summary schedule to be listed in order of descending value. However, we are persuaded by a number of commenters who asked that we require, or at least permit, funds to list securities according to identifiable categories. These commenters argued that this presentation would enhance investors' understanding of the different kinds of investments in the fund, for example, by illustrating whether a fund is significantly concentrated in one particular industry or geographic region. While we considered giving funds the flexibility to list the securities in the summary portfolio either in order of descending value or by categories, we determined that requiring a consistent approach would benefit investors who seek to compare the summary portfolio schedules of different funds, or the summary portfolio schedule and the complete portfolio schedule.

We had proposed to require that all securities not separately listed in the summary schedule be listed in a category labeled "Other securities."<sup>51</sup> Because we are requiring issues in the summary schedule to be categorized, however, we are modifying the proposal to require a fund, within each category identified, to group all issues that are not separately listed in a sub-category labeled "Other securities."<sup>52</sup> The summary schedule will be required to show the subtotals for each category of investments, subdivided by industry, country, or geographic region, together

with their percentage value compared to net assets.<sup>53</sup>

As in the current complete portfolio schedule, the summary schedule will require funds to identify by an appropriate symbol each issue of securities that is non-income producing, each issue of securities held in connection with open put or call option contracts or loans for short sales, and each issue of restricted securities.<sup>54</sup> Also, as in the current complete schedule, a fund will be required to state in a footnote to the summary schedule the following amounts based on cost for Federal income tax purposes: (i) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost; (ii) aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value; (iii) net unrealized appreciation and depreciation; and (iv) the aggregate cost of securities for Federal income tax purposes.<sup>55</sup>

#### Aggregation of Issues in the Summary Schedule

Our amendments include aggregation rules applicable to the summary portfolio schedule. First, we are adopting our proposed requirement that a fund aggregate and treat as a single issue short-term debt instruments of the same issuer (with disclosure indicating the range of interest rates and maturity dates).<sup>56</sup> In response to a commenter's suggestion, we are also clarifying that short-term debt instruments are debt instruments whose maturities or expiration dates at the time of acquisition are one year or less, and we are adding a similar clarification to the full portfolio schedule.<sup>57</sup>

Second, we are adopting our proposed requirement that a fund aggregate and treat as a single issue fully collateralized repurchase agreements (with footnote disclosure indicating the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon purchase, the range of purchase dates, and a description of the securities subject to the repurchase agreements).<sup>58</sup> This aggregation would apply to all fully collateralized repurchase agreements without regard to their percentage of net asset value or their issuer.

Third, we are clarifying the treatment of restricted and unrestricted securities

of the same issue. Restricted and unrestricted securities of the same issue should be aggregated for purposes of determining whether the issue is among the 50 largest issues, but should not be combined in the schedule.<sup>59</sup> The proposal, which tracked the current complete portfolio schedule, stated that the summary schedule could not combine restricted securities with unrestricted securities of the same issue, but did not address whether these securities should be aggregated for purposes of determining whether an issue is among the 50 largest issues.

Fourth, we are adopting our proposal that, for purposes of determining whether the value of an issue exceeds one percent of net asset value, a fund will be required to aggregate and treat as a single issue all securities of any one issuer.<sup>60</sup> If multiple securities of an issuer aggregate to greater than one percent of net asset value, each issue will be required to be listed separately in the schedule, with the exceptions described in the following paragraph.<sup>61</sup> We are clarifying that the U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities is a separate issuer. For example, Fannie Mae, Sallie Mae, and Freddie Mac each will be considered a separate issuer.

Fifth, if multiple securities of an issuer aggregate to greater than one percent of net asset value, a fund may aggregate and list as a single issue: (a) Fixed-income securities of the same issuer which are not among the 50 largest issues and whose value does not exceed one percent of net asset value of the registrant as of the close of the period (indicating the range of interest rates and maturity dates); and (b) U.S. government securities of a single agency, instrumentality, or corporation, which are not among the 50 largest issues and whose value does not exceed one percent of net asset value of the registrant as of the close of the period (indicating the range of interest rates and maturity dates).<sup>62</sup> Under our proposal, all securities of each such issuer would have been aggregated to determine whether the value of the securities exceeded the 1% of net asset value threshold, but, if this threshold was exceeded, each such security would

<sup>49</sup>Note 1 to Schedule VI.

<sup>50</sup>Note 2 to Schedule I. Currently, the complete portfolio schedule requires a fund to list separately (a) common shares, (b) preferred shares, (c) bonds and notes, (d) time deposits, and (e) put and call options purchased. Within each of these subdivisions, a fund must classify investments in an appropriate manner according to type of business, e.g., aerospace, banking, chemicals, machinery and machine tools, petroleum, utilities, etc.; or according to type of instrument, e.g., commercial paper, bankers' acceptances, certificates of deposit.

<sup>51</sup>Proposed Note 2 to Schedule VI.

<sup>52</sup>Note 4 to Schedule VI.

<sup>53</sup>Note 2 to Schedule VI.

<sup>54</sup>Notes 8, 9, and 10 to Schedule VI; Notes 5, 6, and 7 to Schedule I.

<sup>55</sup>Note 11 to Schedule VI; Note 8 to Schedule I.

<sup>56</sup>Note 3 to Schedule VI.

<sup>57</sup>Note 3 to Schedule VI; Note 2 to Schedule I.

<sup>58</sup>Note 3 to Schedule VI.

<sup>59</sup>Notes 3 and 4 to Schedule VI.

<sup>60</sup>Note 3 to Schedule VI. As described above, however, all fully collateralized repurchase agreements are required to be aggregated and treated as a single issue.

<sup>61</sup>Note 4 to Schedule VI. Restricted and unrestricted securities of the same issue will be listed separately.

<sup>62</sup>Note 4 to Schedule VI.

then be listed separately (unless the securities were otherwise subject to aggregation as short-term debt instruments). One commenter pointed out that this requirement would nullify the benefits of the summary schedule for U.S. government and corporate fixed income funds that invest in numerous issues of a single issuer. In essence, the commenter argued that, for such government securities and fixed-income funds, the proposed rules would have required the listing of nearly every issue, regardless of size, and that this result would be inconsistent with the purpose of the summary schedule. We agree.

For example, assume that a fund that invests exclusively in U.S. Treasury securities holds the following: the fund's 50 largest holdings, 20 issues which each exceed 1% of net asset value but are not among the 50 largest holdings, and 930 issues each of which does not exceed 1% of net asset value (and is not among the 50 largest holdings). Also assume that none of the 1,000 issues qualifies as short-term debt. The rules we are adopting require that all securities of any one issuer be aggregated and treated as a single issue for purposes of determining whether the value of a security exceeds 1% of net asset value, so all 1,000 issues, considered in the aggregate, would exceed the threshold. As proposed, the summary schedule would have required that each of the 1,000 issues be listed separately. As adopted, however, the summary schedule would require a separate listing only for each of the 50 largest holdings and each of the 20 other issues that considered separately exceed the 1% of net asset value threshold. The remaining 930 issues would be aggregated and listed as a single issue.

Sixth, we are modifying the proposed requirements for the summary portfolio schedule to permit certain securities to be identified as "Miscellaneous securities," as is currently permitted in the complete portfolio schedule.<sup>63</sup> Currently, a fund's portfolio schedule may list an amount not exceeding five percent of the total value of the portfolio holdings in one amount as "Miscellaneous securities," provided that securities so listed are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously been reported by name to the shareholders, or set forth in any registration statement, application, or annual report or otherwise made available to the public.<sup>64</sup> Commenters

noted that funds rely on this exclusion in the complete portfolio schedule to guard against the premature release of certain positions in securities of unaffiliated issuers that could lead to front-running and other predatory trading practices.

We agree with these commenters that funds should not be forced to choose between using the summary schedule and relying on this exclusion. Thus, the final rules permit any issues that would otherwise be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue to be listed in one amount as "Miscellaneous securities" in the summary schedule, provided that the securities so listed are eligible to be, and are, categorized as "Miscellaneous securities" in the fund's complete schedule.<sup>65</sup> The rules make clear, however, that if any security that is included in "Miscellaneous securities" would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue, the remaining securities of that group must nonetheless be listed as required even if the remaining securities alone would not otherwise be required to be listed in this manner.<sup>66</sup> For example, assume that a fund holds three securities of Corporation X as follows: common stock valued at 0.7% of net asset value, preferred stock valued at 0.4% of net asset value, and bonds valued at 0.3% of net asset value, none of which is among the fund's largest 50 issues. If the fund lists the common stock as "Miscellaneous securities," it must still separately list the preferred stock and bonds because the aggregate value of all three issues exceeds one percent of net asset value.

We note that the terms "Miscellaneous securities" and "Other securities"<sup>67</sup> may be unclear to many investors. To avoid confusion, we are therefore requiring that, if any securities are listed as "Miscellaneous securities" or "Other securities," a fund briefly explain in a footnote what those terms represent.<sup>68</sup> We are adopting a conforming requirement with respect to the term "Miscellaneous securities" in the complete portfolio schedule.<sup>69</sup>

#### Filing and Availability of Complete Portfolio Schedule

To ensure that shareholders have continued access to a complete schedule

of the fund's portfolio holdings, any fund that uses a summary portfolio schedule will be required to file its complete portfolio schedule with the Commission on Form N-CSR, which will be available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR").<sup>70</sup> In addition, any fund that uses a summary portfolio schedule will be required to send its complete schedule of investments in securities of unaffiliated issuers to shareholders upon request within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery, and to disclose in its reports to shareholders that this complete portfolio schedule is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site.<sup>71</sup>

<sup>70</sup> Item 6 of Form N-CSR. Funds that include the complete portfolio schedule in their shareholder reports will also file this schedule on Form N-CSR, as part of the shareholder report. This schedule must be audited, except in the case of a report on Form N-CSR as of the end of a fiscal half-year. Instruction to Item 6 of Form N-CSR.

<sup>71</sup> Instruction 1 to Item 21(b)(1) and Instruction to Item 21(c)(1) of Form N-1A; Instruction 7 to Item 23 of Form N-2; Instruction 7 to Item 27(a) of Form N-3.

A fund may incorporate its financial statements by reference into its registration statement. A fund that includes a summary portfolio schedule in its reports to shareholders, and that chooses to incorporate its financial statements in its Statement of Additional Information ("SAI") by reference, would be expected to incorporate by reference its full portfolio schedule from Form N-CSR, along with the other financial statements and supporting schedules in its annual report to shareholders. See General Instruction D.1.(c) to Form N-1A (permitting incorporation by reference into the SAI generally); General Instruction F to Form N-2 (permitting incorporation by reference of information from Form N-CSR in response to Item 23 ("Financial Statements")); General Instruction G to Form N-3 (permitting incorporation by reference of information from Form N-CSR in response to Item 27 ("Financial Statements")). Such a fund would be required to deliver the full portfolio schedule from Form N-CSR, as well as the shareholder report, upon a shareholder request for the SAI. See Instruction to Item 10(a)(2)(iii) of Form N-1A (requiring any information incorporated by reference into the SAI to be delivered with the SAI unless the information has been previously delivered in a shareholder report and the fund states that the shareholder report is available, without charge, upon request); General Instruction F to Form N-2 (requiring any information incorporated by reference into the SAI to be delivered with the SAI unless the person to whom the SAI is sent or given holds securities of the fund and otherwise has received copies of the material, and fund states that the material is available, without charge, upon request); General Instruction G to Form N-3 (same).

<sup>63</sup> Note 5 to Schedule VI.

<sup>64</sup> Note 5 to Schedule VI.

<sup>65</sup> See discussion of "Other securities" in Section II.B.1, "Summary Portfolio Schedule: Format of the Summary Schedule," *supra*.

<sup>66</sup> Note 6 to Schedule VI.

<sup>67</sup> Note 1 to Schedule I.

<sup>63</sup> Note 5 to Schedule VI.

<sup>64</sup> Note 1 to Schedule I.

## 2. Exemption of Money Market Funds From Portfolio Schedule Requirements in Shareholder Reports

We are adopting, as proposed, the amendment permitting money market funds to omit Schedule I, the schedule of investments in securities of unaffiliated issuers, from their reports to shareholders, provided that they make this schedule available to shareholders upon request and free of charge, and disclose the availability of the schedule in their reports to shareholders.<sup>72</sup> Currently, money market funds, like other funds, are required to include their portfolio schedules in the shareholder reports that are delivered to all investors.

While commenters generally supported the proposed exemption for money market funds from a requirement to include portfolio holdings in their reports to shareholders, some commenters objected. These commenters argued that information regarding a money market fund's significant investments is helpful to understanding a money market fund's financial statements, and that exclusion of such disclosure from shareholder reports implies that money market fund shareholders need not inform themselves about their fund's credit quality, maturity, and diversification characteristics. We continue to believe, however, that portfolio holdings disclosure of money market funds in reports to shareholders is not necessary because the investments of money market funds are circumscribed by the credit quality, maturity, and portfolio diversification requirements of rule 2a-7 under the Investment Company Act.<sup>73</sup> Portfolio holdings schedules of money market funds typically contain a list of short-term government and corporate debt securities that may not assist the average investor in evaluating the money market fund, or in distinguishing one money market fund from another.

Our amendments will require money market funds to file their complete portfolio holdings schedules semi-annually with the Commission on Form N-CSR, however, so that complete information about their portfolios will remain available to interested investors.<sup>74</sup> In addition, we are requiring any money market fund that does not include its complete portfolio schedule in its reports to shareholders to disclose in its shareholder reports that its complete schedule of

investments in unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site at <http://www.sec.gov>.<sup>75</sup> Finally, the amendments will require a money market fund to send its complete schedule of investments in securities of unaffiliated issuers within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.<sup>76</sup>

As adopted, the exemption for money market funds from portfolio holdings disclosure in shareholder reports would not apply to disclosure of investments other than investments in securities of unaffiliated issuers. One commenter had suggested that the exemption be extended to other investments, particularly investments in securities of affiliated issuers. We disagree. We believe that, as with other funds, requiring a complete presentation of investments other than securities of unaffiliated issuers in money market fund shareholder reports is important in order to provide investors with an understanding of the risks and potential conflicts of interest associated with the money market fund's portfolio.

## 3. Tabular or Graphic Presentation of Portfolio Holdings

We are also adopting, with modifications, the requirement that a fund include in its annual and semi-annual reports to shareholders a presentation using tables, charts, or graphs that depicts the fund's portfolio holdings by reasonably identifiable categories (e.g., industry sector, geographic region, credit quality, or maturity).<sup>77</sup> We believe that such a presentation could illustrate, in a concise and user-friendly format, the allocation of a fund's investments across asset classes. We believe that this presentation, coupled with a summary portfolio schedule, has the potential to effectively convey to investors key information about a fund's investments. Particularly in the case of a fund with a large number of holdings, the combination of a summary portfolio schedule and a tabular or graphic asset allocation presentation could be significantly more useful to many

investors than the fund's complete portfolio schedule standing alone.

A fund will have the flexibility to determine both the categories to be used (e.g., industry sector, geographic region, credit quality, maturity, etc.) and the format (e.g., tables, charts, graphs, etc.). The categories in this presentation will be required to be selected, and the presentation formatted, in a manner reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives. We had proposed to require that the fund select categories and design the format of the tabular or graphic presentation to provide the "most useful information" to investors about the types of investments. However, one commenter objected to this standard, arguing that the determination of what constituted the "most useful information" about a fund would require a subjective judgment open to second-guessing, and that instead a requirement that a fund provide "useful information" to investors would be sufficient. Another commenter, by contrast, suggested that the Commission prescribe the categories to be used in the tabular or graphic presentation, arguing that some degree of consistency in format is necessary to make the information in the presentation accessible and understandable to investors.

We believe that it is not advisable at the present time to require a standardized format for the tabular or graphic presentation. Permitting a fund to determine the means of presenting this portfolio information will allow each fund to tailor this presentation in a manner that is appropriate to its holdings. For example, a domestic equity fund could choose to categorize its investments by attributes such as industry sector, market capitalization, or price-earnings ratio. A bond fund could choose to categorize its investments by attributes such as credit quality or maturity or government versus non-government securities.<sup>78</sup> Prescribing specific categories to be used, by contrast, might result in presentations that are not particularly relevant for investors in a given fund. For example, categories such as market capitalization and industry sector might be less relevant for investors in an international

<sup>72</sup> 17 CFR 210.12-12. See Instruction 2 to Item 21(b)(1) and Instruction to Item 21(c)(1) of Form N-1A; Instruction 7(ii) to Item 27(a) of Form N-3.

<sup>73</sup> 17 CFR 270.2a-7.

<sup>74</sup> Item 6 of Form N-CSR.

<sup>75</sup> Instruction 2 to Item 21(b)(1) and Instruction to Item 21(c)(1) of Form N-1A; Instruction 7(ii) to Item 27(a) of Form N-3.

<sup>76</sup> *Id.*

<sup>77</sup> Item 21(d)(2) of Form N-1A; Instruction 6.a to Item 23 of Form N-2; Instruction 6(i) to Item 27(a) of Form N-3.

<sup>78</sup> Credit quality would be required to be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3-1 under the Exchange Act [17 CFR 240.15c3-1(c)(2)(vi)(E), (F), and (H)]. The fund could use ratings of only one NRSRO. Item 21(d)(2) of Form N-1A; Instruction 6.a to Item 23 of Form N-2; Instruction 6(i) to Item 27(a) of Form N-3.

or global equity fund than categories showing the distribution of the fund's holdings across regions or countries. In addition, a prescribed category, such as market capitalization or industry sector, might convey little useful information about a fund that has a principal investment strategy of investing primarily in securities in only one component of that category (e.g., a small capitalization fund).

However, we also believe that a standard requiring that a fund's tabular or graphic presentation be designed merely to provide "useful information" may result in presentations that do not effectively convey to investors the allocation of a fund's investments across relevant asset classes. As a result, we are adopting a standard that should allow funds sufficient flexibility, while encouraging development of tabular or graphic presentations that clearly depict the types of investments made by a fund. Over time, this flexible approach may enable both funds and the Commission to determine whether certain types of presentations are more effective for different types of funds.

Further, as adopted, the amendments will permit a fund the flexibility to base the tabular or graphic presentation on either net asset value or total investments, rather than solely net asset value, as proposed. However, as with the selection of the categories and the formatting of the presentation to be used, funds must select the basis of presentation (e.g., net asset value or total investments) in a manner reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives. We are providing funds this flexibility because there may be instances where net asset value differs from total investments and a presentation based on total investments might be clearer to shareholders. A presentation based on total investments might be preferable when, for example, a fund has borrowed money for investment purposes. In this case, the fund's investments would total more than 100 percent of net asset value, making the fund's investments difficult to present graphically on a net asset value basis. Regardless of which method is chosen, funds should clearly identify the basis of the presentation and provide any additional explanatory information that would be useful in understanding the presentation.

Finally, we have modified the amendments to require that the tables, charts, or graphs depict the "portfolio holdings," rather than the "securities holdings" of the fund. We are adopting this modification to clarify that the tabular or graphic presentation must

reflect all of the investment activities of the fund, and not just investments in securities of unaffiliated issuers or investments in securities generally.

#### 4. Quarterly Filing of Complete Portfolio Schedule

We are adopting the requirement that a fund file its complete portfolio holdings schedule with the Commission on a quarterly basis, with one modification. A fund will be required to file its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR,<sup>79</sup> and will be required to file its complete portfolio schedules for the first and third fiscal quarters on new Form N-Q, within 60 days of the end of the quarter.<sup>80</sup> Form N-Q will require funds to file the same schedules of investments that are currently required in annual and semi-annual reports to shareholders. These schedules may be unaudited.<sup>81</sup> As proposed, Form N-Q would have been filed under the Investment Company Act only. We are adopting Form N-Q as a combined Exchange Act and Investment Company Act form.

We are adopting, as proposed, the requirement that Form N-Q be filed with the Commission on EDGAR. Form N-Q will not be required to be delivered to shareholders. However, a fund will be required to include in its annual and semi-annual reports to shareholders a statement that: (i) The fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (ii) the fund's Forms N-Q are available on the Commission's Web site at <http://www.sec.gov>; (iii) the fund's Forms N-Q may be reviewed and copied at the Commission's Public Reference Room, and how information on the operation of the Public Reference Room may be obtained; and (iv) if the fund makes the information on Form N-Q available to shareholders on its Web site or upon request, a description of

how the information may be obtained from the fund.<sup>82</sup> This approach is designed to strike an appropriate balance between investors' interest in more frequent portfolio information and the costs associated with disclosing and making that information available to investors, which are ultimately borne by investors.

Commenters, including investors and many fund groups, generally supported the proposal for quarterly portfolio disclosure on Form N-Q. Commenters argued that quarterly disclosure with a 60-day delay would help investors to better monitor whether, and how, a fund is complying with its stated investment objective, and noted that quarterly disclosure would make it easier to track whether funds are engaging in forms of portfolio manipulation such as "window dressing." However, some commenters, including individual investors and investor advocacy groups, suggested that portfolio disclosure be required even more frequently, such as monthly, or that the proposed delay for filing the quarterly disclosure be shortened to 30 days, to provide investors with even more certainty that a fund is investing consistent with its investment objective. By contrast, other commenters, including some fund groups, raised concerns that the proposed quarterly disclosure may expand the opportunities for professional traders to exploit portfolio information by engaging in predatory trading practices. The commenters suggested modifications to the proposals to address these concerns, including allowing funds to request confidential treatment of certain holdings otherwise required to be reported on Form N-Q, and decreasing the frequency of required reports on Form 13F or increasing the 45 day delay for these reports.<sup>83</sup>

We have determined to adopt the proposed requirement for quarterly disclosure of portfolio holdings with a 60-day delay. We are not requiring more frequent portfolio disclosure, or a shorter delay, because we take seriously concerns that more frequent portfolio holdings disclosure and/or a shorter delay for release of this information may expand the opportunities for predatory trading practices that harm fund

<sup>79</sup> Item 6 of Form N-CSR. See note and accompanying text, *supra*.

<sup>80</sup> Form N-Q; 17 CFR 249.332; 17 CFR 274.130; rule 30b1-5 under the Investment Company Act. Small business investment companies ("SBICs") registered with the Commission on Form N-5 will not be required to file Form N-Q. General Instruction A to Form N-Q. Although they are management investment companies, SBICs are not currently required to deliver reports to shareholders containing financial statements, and hence are not required to deliver schedules of investments to their shareholders.

<sup>81</sup> See Item 1 of Form N-Q; *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12-12]; *Schedule II—Investments-other than securities* [17 CFR 210.12-13]; *Schedule III—Investments in and advances to affiliates* [17 CFR 210.12-14]; *Schedule IV—Investments-securities sold short* [17 CFR 210.12-12A]; and *Schedule V—Open option contracts written* [17 CFR 210.12-12B].

<sup>82</sup> Item 21(d)(3) of Form N-1A; Instruction 6.b. to Item 23 of Form N-2; Instruction 6.(ii) to Item 27(a) of Form N-3.

<sup>83</sup> See section 13(f) of the Exchange Act [15 U.S.C. 78m(f)]; rule 13f-1 under the Exchange Act [17 CFR 240.13f-1]. Fund managers and other institutional investment managers exercising investment discretion over \$100 million or more in certain equity securities must disclose information about portfolios that they manage on Form 13F within 45 days of the end of each quarter.

shareholders. However, we also do not believe that it is appropriate to modify our proposal by adopting a confidential treatment mechanism. We believe that such a mechanism is unnecessary because the 60-day delay in the quarterly disclosure will adequately protect funds from predatory trading practices. In addition, we believe that requiring quarterly portfolio disclosure, as proposed, may help to address the concerns raised by recent allegations that some mutual fund managers have selectively disclosed their portfolio holdings in order to reward large investors.<sup>84</sup>

We have also determined not to modify the reporting requirements of Form 13F at this time. Fund portfolio holdings have been required to be disclosed on Form 13F, aggregated by investment manager, since 1979.<sup>85</sup> By contrast, concerns about predatory

trading practices arising from Form 13F have surfaced recently in the context of the current proposal. Commenters have not presented concrete evidence that quarterly disclosure of aggregate holdings by institutional investment managers on Form 13F has resulted in such trading practices.

As proposed, Form N-Q would have been filed under the Investment Company Act only. We are adopting Form N-Q as a reporting form under sections 13 and 15(d) of the Exchange Act, in addition to the Investment Company Act. We are also requiring that Form N-Q be signed and certified by its principal executive and financial officers, consistent with section 302 of the Sarbanes-Oxley Act of 2002.<sup>86</sup> In addition, we are amending rule 30a-3 under the Investment Company Act to broaden the definition of disclosure controls and procedures to include controls and procedures designed to ensure that information required to be disclosed on Form N-Q is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms.<sup>87</sup> As is currently the case with Form N-CSR, a fund's management would be required to evaluate, with the participation of its principal executive and financial officers, the effectiveness of the fund's disclosure controls and procedures within the 90-day period prior to the filing of a report on Form N-Q.<sup>88</sup>

We are designating Form N-Q as a filing required under the Exchange Act, because the fund's portfolio schedule constitutes financial information of great significance to investors. We believe that requiring certification of this financial information is consistent with the intent of the certification requirement of section 302 of the Sarbanes-Oxley Act, which is to improve the quality of the disclosure that a company provides about its financial condition in its periodic reports to investors. We also note that the complete financial statements required in the shareholder reports included in Form N-CSR are required to be certified, and that funds are required to maintain the disclosure controls and procedures, and internal control over financial reporting, referenced in the certification on Form N-CSR. The Commission believes that any marginal increase in costs associated with certifying the portfolio holdings information contained in filings on

Form N-Q will be justified by the benefits to investors.

The certification required for Form N-Q will be similar to that required for Form N-CSR. However, because Form N-Q will only contain a fund's schedules of investments and not complete financial statements, the certification on Form N-Q will require a certifying officer to state, based on the officer's knowledge, that the schedules of investments included in the report fairly present in all material respects the investments of the registrant as of the end of the fiscal quarter for which the report is filed.<sup>89</sup> By contrast, the certification in Form N-CSR requires a certifying officer to state, based on the officer's knowledge, that the financial statements, and other financial information included in the 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 the report.<sup>90</sup>

In addition, because funds will now be filing periodic reports under the Exchange Act on a quarterly basis, the form of certification for Form N-Q will require a certifying officer to state that he or she has disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal quarter, rather than the registrant's most recent fiscal half-year, as Form N-CSR currently requires.<sup>91</sup> We are adding an Item to Form N-Q for funds to disclose any such change in internal control over financial reporting.<sup>92</sup> We are also adopting conforming changes to the comparable disclosure item and the certification of Form N-CSR.<sup>93</sup> Because the certification of Form N-Q, like the current certification of Form N-CSR, will require the certifying officers to state that they have conducted an evaluation of the fund's disclosure controls and procedures and have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures as of a date within 90 days prior to the filing date of the report, Form N-Q will

<sup>84</sup> See *SEC v. Gary L. Pilgrim, Harold J. Baxter, and Pilgrim Baxter & Associates, Ltd.*, (United States District Court, E.D. Pa., Civil Action No. 03-CV-6341) (alleged disclosure of nonpublic fund portfolio information by adviser's principal permitted certain investors to exploit mispricing of the fund's net asset value); *In the Matter of Alliance Capital Management, L.P.*, Investment Advisers Act Release No. 2205 (Dec. 18, 2003) (disclosure of material nonpublic information about certain mutual fund portfolio holdings permitted favored client to profit from market timing). See also Investment Company Act Release No. 26337 (Jan. 20, 2004) [69 FR 40410 (Jan. 27, 2004)] (proposing requirements for investment adviser codes of ethics, including provisions reasonably designed to prevent misuse of material nonpublic information about client securities, holdings, and transactions); Investment Company Act Release No. 26299 Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (stating that a fund's compliance policies and procedures should address misuses of nonpublic information, including the disclosure to third parties of material information about the fund's portfolio, its trading strategies, or pending transactions); Investment Company Act Release No. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)] (proposing rules requiring disclosure by mutual funds of their policies and procedures with respect to the disclosure of their portfolio securities).

<sup>85</sup> Institutional investment managers may request confidential treatment of information in filings on Form 13F pursuant to section 13(f)(3) of the Exchange Act [15 U.S.C. 78m(f)(3)] on the basis, among others, that the information would reveal an investment manager's ongoing program of acquisition or disposition. See Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 87 (1975). An application for confidential treatment on this basis must, among other requirements: (a) Describe the investment strategy being followed with respect to the relevant securities holdings; (b) explain why public disclosure of the securities would, in fact, be likely to reveal the investment strategy; (c) demonstrate that such revelation of an investment strategy would be premature, and indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; and (d) demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position. Instructions for Confidential Treatment Requests, Form 13F [17 CFR 249.325].

<sup>86</sup> Rule 30d-1 under the Investment Company Act [17 CFR 270.30d-1]; General Instruction F.2.(a) to Form N-Q; section 302 of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745 (2002).

<sup>87</sup> 17 CFR 270.30a-3(c).

<sup>88</sup> 17 CFR 270.30a-3(b).

<sup>89</sup> Paragraph 3 of certification exhibit of Item 3 of Form N-Q.

<sup>90</sup> Paragraph 3 of certification exhibit of Item 11(a)(2) of Form N-CSR.

<sup>91</sup> Paragraph 4(d) of certification exhibit of Item 3 of Form N-Q.

<sup>92</sup> Item 2(b) of Form N-Q.

<sup>93</sup> Item 10(b) of Form N-CSR; paragraph 4(d) of certification exhibit of Item 11(a)(2) of Form N-CSR.

include an Item requiring disclosure of the conclusions of this evaluation.<sup>94</sup>

### C. Management's Discussion of Fund Performance ("MDFP")

We are adopting, as proposed, a requirement that a mutual fund, other than a money market fund, include MDFP in its annual reports to shareholders.<sup>95</sup> Currently, a mutual fund is required to include MDFP in its prospectus unless the fund includes the information in its latest annual report to shareholders.<sup>96</sup> We note that mutual funds typically include MDFP in their annual reports. We believe that requiring MDFP to be included in the annual report will aid investors in assessing a fund's performance over the prior year and will complement other "backward looking" information required in the annual report, such as financial statements. In addition, requiring MDFP to be included in annual reports to shareholders will mean that this information will be required to be certified by a fund's principal executive and financial officers pursuant to section 302 of the Sarbanes-Oxley Act and rule 30a-2 under the Investment Company Act.

Most commenters supported the proposed requirement that MDFP be included in mutual fund annual reports. However, one commenter argued that requiring MDFP to be certified by a fund's principal executive and financial officers would have a negative impact on the quality of MDFP, as funds may be reluctant to include subjective, albeit useful, information that does not readily lend itself to meaningful certification. We disagree with this commenter's conclusion that MDFP should not be certified. Investors rely upon MDFP to explain the investment operations and performance of a mutual fund, which is as significant for investors in a fund as management's discussion and analysis of financial condition and results of operations is for investors in an operating company. We believe that a requirement that MDFP be included in shareholder reports and certified by a mutual fund's principal executive and

financial officers will encourage funds to include a more complete and accurate discussion of the factors that affected fund performance in their MDFP. We have asked our staff in their review of fund shareholder reports to continue to focus on the sufficiency of MDFP disclosures and identify instances where funds have failed to provide sufficient substantive discussion of the factors that affected the fund's performance during the reporting period.<sup>97</sup>

### D. Compliance Date

The effective date for these amendments will be May 10, 2004. We are requiring all fund reports to shareholders for periods ending on or after July 9, 2004 to comply with the amendments. In addition, we are requiring funds to file quarterly reports on Form N-Q with respect to any fiscal quarter ending on or after July 9, 2004. This timeframe is consistent with the transition period requested by most commenters, and is appropriate in light of the systems changes and other tasks that many funds may have to undertake.

Funds will be required to comply with the amendments to Items 10(b) and 11 of Form N-CSR upon the effective date. However, we are adding transition provisions in Form N-CSR that will require funds to comply with some of the current requirements of these Items, which require disclosure of changes in internal control over financial reporting with respect to the entire semi-annual period covered by the report, until the earlier of June 30, 2005, or the date that a fund has filed its first report on Form N-Q.<sup>98</sup> We would expect that by June 30, 2005, all funds will have begun to file reports on Form N-Q that would include disclosure regarding changes in internal control over financial reporting that occurred during the most recent fiscal quarter. This transition rule is intended to prevent any gap in the disclosure that funds provide regarding changes in internal control over financial reporting.

Funds will not be required to comply with the portion of the introductory

language in paragraph 4 of the certification in Item 3 of the Form N-Q that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting, or with paragraph 4(b) of the certification, until the first report on Form N-Q following a report on Form N-CSR that is required to contain these portions of the certification. This compliance date is consistent with the transition period we provided in adopting these portions of the certification for Form N-CSR, in which we stated that funds must comply with these portions of the certification beginning with the first annual report on Form N-CSR for a fiscal year ending on or after June 15, 2004.<sup>99</sup>

### III. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The titles for the collections of information are: (1) "Form N-1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies;" (2) "Form N-2—Registration Statement of Closed-End Management Investment Companies;" (3) "Form N-3—Registration Statement of Separate Accounts Organized as Management Investment Companies;" (4) "Form N-CSR—Certified Shareholder Report of Registered Management Investment Companies;" (5) "Rule 30e-1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies;" (6) "Form N-Q—Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company;" and (7) "Rule 30b1-5 under the Investment Company Act of 1940, 'Quarterly Report.'" An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N-1A (OMB Control No. 3235-0307), Form N-2 (OMB Control No. 3235-0026), and Form N-3 (OMB Control No. 3235-0316) were adopted pursuant to section 8(a) of the Investment Company Act (15 U.S.C. 80a-8) and section 5 of the Securities Act (15 U.S.C. 77e). Form N-CSR (OMB Control No. 3235-0570) was adopted pursuant to section 30 of the Investment

<sup>94</sup> Item 2(a) of Form N-Q.

<sup>95</sup> Item 21(b)(7) of Form N-1A.

<sup>96</sup> Current Item 5 of Form N-1A. Currently, a fund that includes MDFP in its annual report must disclose in its prospectus that its annual report contains a discussion of the market conditions and investment strategies that significantly affected the fund's performance during its last fiscal year and that this discussion will be made available upon request and without charge. Current Item 1(b)(1) of Form N-1A. Because we are now requiring MDFP in a mutual fund's annual report, we are amending Instruction 5 to Item 1(b)(1) to require all funds, other than many market funds (which are not required to provide MDFP), to include this prospectus disclosure.

<sup>97</sup> See *In the Matter of Davis Selected Advisers "NY, Inc., Investment Advisers Act Release No. 2055 (Sept. 4, 2002)* (fund violated section 34(b) of the Investment Company Act [15 U.S.C. 80a-34(b)] by failing to disclose the material impact that investments in initial public offerings had on its performance during its previous fiscal year in its MDFP). See also Investment Company Act Release No. 25870, *supra* note 16, 68 FR at 170 (noting that the staff has identified instances where MDFP has provided insufficient substantive discussion of the factors that affected the fund's performance, and asking the staff to continue to focus on deficiencies in MDFP disclosure).

<sup>98</sup> Instruction to Item 10(b) of Form N-CSR; Instruction to Item 11(a)(2) of Form N-CSR.

<sup>99</sup> Investment Company Act Release No. 26068 (June 5, 2003) [68 FR 36636, 36650 (June 18, 2003)] (amending Form N-CSR certification).

Company Act (15 U.S.C. 80a-29) and sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). Rule 30e-1 (OMB Control No. 3235-0025) was adopted pursuant to section 30(e) of the Investment Company Act (15 U.S.C. 80a-29(e)). Form N-Q (OMB Control No. 3235-0578) is being adopted pursuant to section 30 of the Investment Company Act (15 U.S.C. 80a-29) and sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). Rule 30b1-5 under the Investment Company Act is being adopted pursuant to section 30(b)(1) of the Investment Company Act (15 U.S.C. 80a-29(b)(1)).

We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.<sup>100</sup> OMB approved these collection requirements. We received no comments on the collection of information requirements.

The amendments adopted in this release will:

- Require a mutual fund to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders;
- Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on Form N-CSR semi-annually and is provided to shareholders upon request, free of charge;
- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new Form N-Q, which will be filed under the Investment Company Act and the Exchange Act and certified by the fund's principal executive and financial officers; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

These amendments are intended to provide better information to investors about fund costs, investments, and performance.

<sup>100</sup> See Proposing Release, *supra* note 16, 68 FR at 170-73.

#### Forms N-1A, N-2, and N-3

The purposes of Forms N-1A, N-2, and N-3 are to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to provide investors with information necessary to evaluate an investment in a fund. Forms N-1A, N-2, and N-3 contain collection of information requirements. The likely respondents to the information collection in Form N-1A are open-end funds registering with the Commission. The likely respondents to the information collection in Form N-2 are closed-end funds registering with the Commission. The likely respondents to the information collection in Form N-3 are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission. Compliance with the disclosure requirements of Forms N-1A, N-2, and N-3 is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the amendments to Forms N-1A, N-2, and N-3 will have no impact on the hour burden for filing registration statements on these forms. The amendments to Forms N-1A, N-2, and N-3 relate solely to the contents of shareholder reports for funds registered on these forms, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e-1 under the Investment Company Act.

#### Form N-CSR

Form N-CSR, including the amendments, contains collection of information requirements. The respondents to this information collection are funds subject to rule 30e-1 under the Investment Company Act of 1940 registering with the Commission on Form N-1A, N-2, or N-3. Compliance with the disclosure requirements of Form N-CSR is mandatory. Responses to the disclosure requirements are not confidential.

The amendments will require a fund that has used a summary portfolio schedule in its reports to shareholders, in lieu of including a complete schedule of investments in securities of unaffiliated issuers, or a money market fund that has omitted its schedule of investments in securities of unaffiliated issuers from its reports to shareholders, to file its complete schedule of investments in securities of unaffiliated issuers pursuant to Item 6 of Form N-CSR. As described in the Proposing Release, we continue to estimate that

the hour burden associated with the requirements of Item 6 of Form N-CSR will increase the burden of filing Form N-CSR by 5 hours per portfolio per filing. Since the Proposing Release, however, our estimate of the number of portfolios that will file Form N-CSR has changed. We now estimate that 3,800 funds file reports on Form N-CSR, representing 9,706 portfolios, including 1,000 money market portfolios.<sup>101</sup> Of these, we estimate that 7,094 portfolios will file complete schedules of investments in securities of unaffiliated issuers pursuant to Item 6 of Form N-CSR.<sup>102</sup>

Based on these estimates, the total estimated increase in burden hours associated with the change to Form N-CSR is 70,940 hours (7,094 portfolios × 5 hours per portfolio × 2 filings per year). This represents an estimate that is 1,010 hours lower than the 71,950 hours estimate in the Proposing Release. The current total hour burden associated with Form N-CSR before these amendments is 142,619 hours and the per filing burden is 19.27 hours.<sup>103</sup> Thus, we now estimate that the total hour burden for filing Form N-CSR, as amended, would be 141,609 hours (142,619 hours—1,010 hours reduction) and that the weighted average burden per filing on Form N-CSR would be approximately 18.63 hours (141,609 hours / (3,800 filers × 2 filings per year)).

#### Shareholder Reports

Rule 30e-1, which requires funds to include in the shareholder reports the information that is required by the fund's registration statement form, contains collection of information

<sup>101</sup> The total number of portfolios is comprised of 8,938 portfolios of mutual funds registered on Form N-1A, 733 portfolios of closed-end funds registered on Form N-2, and 35 sub-accounts of managed separate accounts registered on Form N-3. The estimates of the total number of funds, the number of mutual fund portfolios registered on Form N-1A, the number of money market portfolios, and the number of closed-end funds registered on Form N-2 are based on the Commission staff's analysis of reports filed on Form N-SAR in 2003. The estimate of the number of sub-accounts of managed separate accounts registered on Form N-3 is based on the staff's analysis of reports filed on Form N-SAR in 2003.

<sup>102</sup> We calculate this number assuming that all 1,000 money market portfolios will omit portfolio schedules from their shareholder reports and that 70% of the remaining 8,706 portfolios will include a summary schedule in lieu of the complete schedule. As a result 1,000 money market portfolios and 6,094 (8,706 portfolios × .70) other portfolios would be required to complete Item 6 of Form N-CSR, for a total of 7,094.

<sup>103</sup> The current OMB approved burden associated with Form N-CSR is 142,498 hours. The Commission has submitted a request to increase the approved burden to 142,619 hours. This request is still pending.

requirements.<sup>104</sup> The respondents to this collection of information requirement are funds registered on Forms N-1A, N-2, and N-3. Compliance with the disclosure requirements of rule 30e-1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

We estimate that approximately 3,800 funds are subject to rule 30e-1.<sup>105</sup> The current hour burden for preparing and filing semi-annual or annual shareholder reports in compliance with rule 30e-1 is 125.18 hours per report per fund, for a total of 926,350 hours (125.18 × 2 × 3,800 funds). As a result of an increase in the number of registered investment companies required to prepare and file these reports, the burden has increased to 951,368 annual burden hours (125.18 hours per report × 2 reports × 3,800 funds). We estimate that the 3,800 funds filing annual and semi-annual shareholder reports pursuant to rule 30e-1 include 9,706 portfolios, including 8,938 portfolios of mutual funds registered on Form N-1A, 733 closed-end funds registered on Form N-2, and 35 sub-accounts of managed separate accounts registered on Form N-3.<sup>106</sup>

We estimate, as we did in the Proposing Release, that there are 1,000 money market fund portfolios that will take advantage of the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers from its shareholder reports. This will decrease the hour burden of complying with rule 30e-1 for these funds by 5 hours per portfolio per filing, or 10,000 hours (1,000 portfolios × 5 hours × 2 filings per year). We estimate that, of the remaining 8,706 portfolios of funds filing shareholder reports, 70%, or 6,094 portfolios, will choose to take advantage of the provisions permitting use of a summary portfolio schedule.<sup>107</sup> However, as we discussed in the Proposing Release, we continue to estimate that use of the summary portfolio schedule provisions will have no net effect on the burden hours of

complying with rule 30e-1. The estimated time necessary to prepare a summary portfolio schedule is equivalent to the time currently required to prepare a complete portfolio schedule, because a fund will still need to evaluate the size of each of its investments in securities of unaffiliated issuers in order to prepare the summary portfolio schedule. Further, we continue to estimate that the requirement to include a tabular or graphic presentation in shareholder reports, which will apply to all funds, will increase the estimated burden hours for complying with rule 30e-1 by 3 hours per portfolio per filing. Due to the change in the number of portfolios, we now estimate that the annual burden associated with this requirement is 58,236 hours (9,706 portfolios × 3 hours × 2 filings per year). We estimate that the requirement to disclose in shareholder reports the dollar cost of investing in the fund over the reporting period, which would apply only to mutual funds, will increase the estimated burden hours for complying with rule 30e-1 by 5 hours per portfolio per filing. We estimate that the modifications that we are adopting that will require the expense example to include the ending account values for an initial investment of \$1,000, and the fund's expense ratio expressed as a percentage, will not increase this burden, because the annualized expense ratio will be based on information required elsewhere in the shareholder report as part of the financial highlights table, and funds will be calculating ending account value for an initial investment of \$1,000 in order to calculate expenses paid on that investment. Due to the change in the number of portfolios, we now estimate that the associated annual burden associated with this requirement is 89,380 hours (8,938 mutual fund portfolios × 5 hours × 2 filings per year). Finally, we continue to estimate that the requirement for mutual funds to include MDFFP in annual reports to shareholders would have a negligible effect on the estimated burden hours for complying with rule 30e-1, because, in the staff's experience, over 90% of mutual funds already include MDFFP in annual reports to shareholders.

Thus, taking into account the change in the number of portfolios, we estimate that the amendments will have a net increase on the burden hours of complying with rule 30e-1 of 137,616 hours (- 10,000 hours + 58,236 hours + 89,380 hours), for a new total burden of 1,088,984 hours (951,368 total hours + 137,616 hours increase).

#### Rule 30b1-5

The purpose of Rule 30b1-5 is to improve transparency of information about funds' portfolio holdings. Rule 30b1-5 will require funds to file a quarterly report via the Commission's EDGAR system on Form N-Q, not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings. The likely respondents to Rule 30b1-5 will be registered management investment companies, other than small business investment companies registered with the Commission on Form N-5.

We estimate that Rule 30b1-5 will affect approximately 3,800 portfolios, each of which will be required to file a complete portfolio holdings schedule via EDGAR on Form N-Q. However, for purposes of this Paperwork Reduction Act analysis, the burden associated with the requirements of Rule 30b1-5 has been included in the collection of information requirements of Form N-Q, rather than the new rule.

Compliance with rule 30b1-5 is mandatory for every registered fund. Responses to the disclosure requirements will not be kept confidential.

#### Form N-Q

The purpose of Form N-Q is to meet the disclosure requirement of the Investment Company Act and the Exchange Act and to provide investors with information necessary to evaluate an investment in the fund. Form N-Q contains collection of information requirements. The respondents to this information collection will be management investment companies subject to rule 30e-1 under the Investment Company Act registering with the Commission on Forms N-1A, N-2, or N-3. Compliance with the disclosure requirements of Form N-Q will be mandatory. Responses to the disclosure requirements will not be kept confidential.

Every registered management investment company, other than a small business investment company registered on Form N-5, will be required to file a quarterly report on Form N-Q disclosing the information required therein, not more than sixty calendar days after the close of the first and third quarters of each fiscal year. In the Proposing Release, we estimated that for each of those funds the disclosure of their portfolio holdings schedules in filings on Form N-Q as of the end of each first and third fiscal quarter would require, on average, 10 hours per

<sup>104</sup> The amendments being adopted are to the shareholder reports requirements in Forms N-1A, N-2, and N-3. Rule 30e-1(a) under the Investment Company Act of 1940 [17 CFR 270.30e-1(a)] requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

<sup>105</sup> See *supra* note .

<sup>106</sup> *Id.*

<sup>107</sup> This is based on the Commission staff's estimate that more than 70% of funds had more than 50 securities in their portfolios, according to the staff's analysis of data from the *Morningstar Principia Pro* database.

portfolio per filing.<sup>108</sup> We have, however, modified Form N-Q since the proposal to require that the form be certified by the fund's principal executive and financial officers, similar to the present requirement in Form N-CSR. We estimate that the increase in hour burden associated with the new requirement for certification of Form N-Q will be 1 hour per registered investment company plus 0.25 hours for every additional portfolio in the company beyond the first portfolio.<sup>109</sup> We currently estimate that Form N-Q will affect approximately 3,800 funds, which include 9,706 portfolios. Taking into account the change in the number of portfolios, the annual hours associated with filing Form N-Q, absent the certification requirement, would be 194,120 hours (9,706 portfolios  $\times$  2 reports per year  $\times$  10 hours per portfolio). We estimate that the annual hour burden increase attributable to the requirement to certify Form N-Q will equal 10,554 hours ((3,800 funds  $\times$  1 hour per fund) + (5,906 additional portfolios  $\times$  .25 hour per additional portfolio))  $\times$  2 filings per year). The total hour burden estimate associated with Form N-Q, including compliance with the certification requirement, is 204,674 hours (194,120 hours + 10,554 hours attributable to certification).

#### IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our amendments are intended to improve the periodic disclosure provided by funds about their costs, portfolio investments, and past performance. The amendments:

- Require mutual funds to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders;
- Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission

<sup>108</sup> This estimate was based on a review of the estimated hour burdens associated with other rules and forms under the Investment Company Act that impose similar disclosure requirements.

<sup>109</sup> Our estimate of the burden hours associated with the Form N-Q certification requirement is based on the staff's experience reviewing financial statements, including portfolio schedules, and the staff's previous estimate of the hour burden associated with certification under Form N-CSR. Investment Company Release No. 25914 (Jan. 27, 2003) [68 FR 5348, 5357-58 (Feb. 3, 2003)] (estimating the hour burden for certification of Form N-CSR to be 5 hours per registrant plus 0.5 hours per additional portfolio.)

on Form N-CSR semi-annually and is provided to shareholders upon request, free of charge;

- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file and certify its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new Form N-Q under the Investment Company Act and the Exchange Act; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

These amendments are intended to significantly improve the periodic disclosure that fund investors receive, particularly with respect to portfolio holdings and expenses, while reducing the costs of printing and delivering funds' annual and semi-annual reports to shareholders.

In the Proposing Release, we provided an analysis of the costs and benefits of the proposed amendments, and we requested comments.<sup>110</sup> Seven commenters commented directly on this cost/benefit analysis, while others raised cost and benefit issues with regard to specific substantive provisions without specifically mentioning the cost/benefit analysis. These comments are discussed in further detail below.

##### A. Benefits

*Disclosure of Fund Expenses in Shareholder Reports.* The requirement for mutual funds to disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period should benefit investors by increasing their awareness and understanding of the fees that they pay on an ongoing basis for investing in a mutual fund. The benefits of the improved transparency of funds' ongoing fees and expenses are difficult to quantify, however.

*Use of Summary Portfolio Schedule and Exemption of Money Market Funds from Portfolio Schedule Requirements in Shareholder Reports.* The Commission estimates that more than 70% of all non-money market funds may realize at least some cost savings, through reduced printing and mailing expenses, by use of a summary portfolio holdings schedule in their shareholder reports.<sup>111</sup> Similar benefits would be available to all money market funds, which will be exempt from the requirement to include the schedule of

investments in securities of unaffiliated issuers in their reports to shareholders. For funds with large numbers of holdings, such as index funds, the cost savings in printing and mailing could be substantial.

As of year-end 2002, there were approximately 257 million shareholder accounts invested in funds affected by the amendments.<sup>112</sup> For each account, funds are required to provide an annual and semi-annual shareholder report, although our rules allow the delivery of a single shareholder report to investors who share an address ("householding") under certain conditions.<sup>113</sup> Assuming that the use of householding would reduce the number of shareholder reports by at least 10%, we estimate that, as a result, funds currently print and deliver approximately 462.4 million (257 million accounts  $\times$  2 reports  $\times$  .9 (using 10% savings estimate)) shareholder reports per year.<sup>114</sup> Estimating that 70% of these reports will include summary schedules in lieu of complete ones, 323.82 million (462.4 million shareholder reports  $\times$  .7) shareholder reports may be streamlined, reducing the associated printing and mailing costs.<sup>115</sup> If funds reduce their printing and distribution expenses by only one page per shareholder report, at an estimated cost of 2¢ per page, funds could save approximately \$6.48 million per year (323.82 million shareholder reports  $\times$  \$.02 per page).<sup>116</sup> The Commission believes, however, that some funds may be able to reduce the length of their shareholder reports by more than a single printed page, and we therefore expect that the cost savings to funds may exceed these estimates. These potential savings may be passed on to fund shareholders.<sup>117</sup>

<sup>112</sup> The estimate is based on the staff's review of N-SAR filings and information from the Investment Company Institute. Investment Company Institute, Mutual Fund Fact Book 65 (43rd ed. 2003).

<sup>113</sup> See Investment Company Act Release No. 24123 (Nov. 4, 1999) [64 FR 62540, 62543 (Nov. 16, 1999)] (estimating that householding rules would produce a decline in the number of shareholder reports required to be delivered of between 10 and 30 percent) ("Householding Release").

<sup>114</sup> *Id.*

<sup>115</sup> These calculations are based on the estimate that 70% of funds that will use a summary portfolio schedule and hence may benefit from reduced printing costs. See text accompanying note, *supra*.

<sup>116</sup> This cost per page is based on an estimate that the typical shareholder report is approximately 25 pages long and costs \$.52 to print and deliver. See Householding Release, *supra*, note, 64 FR at 62543.

<sup>117</sup> The provision permitting use of a summary portfolio schedule in shareholder reports, and the exemption for money market funds from the requirement to include in shareholder reports a complete schedule of investments in securities of unaffiliated issuers, are not expected to result in any reduction in internal costs for funds, because

<sup>110</sup> See Section V, "Cost/Benefit Analysis," of the Proposing Release, *supra* note 16, 68 FR at 173-176.

<sup>111</sup> See *supra* note 107.

Apart from savings in printing and distribution costs, use of a summary portfolio schedule may benefit investors by helping them focus on a fund's principal holdings, and thereby better evaluate a fund's risk profile and investment strategy. These benefits to investors are difficult to quantify, however.<sup>118</sup>

The estimated cost savings is derived from the estimated reduction in burden hours, and an estimated hourly wage rate for professional and non-professional staff of \$78.48. This estimated wage rate is a blended rate, based on published hourly wage rates for compliance attorneys (\$74.22) and programmers (\$42.05) in New York City, and the estimate that professional and non-professional staff will divide time equally on compliance with the disclosure requirements, yielding a weighted wage rate of \$58.135 ( $(\$74.22 \times .50) + (\$42.05 \times .50) = \$58.135$ ). See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001) (for most current rate for compliance attorneys in New York City); Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (Sep. 2002) (for most current rate for programmers in New York City). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of \$78.48 ( $\$58.135 \times 1.35 = \$78.48$ ).

A number of commenters addressed the benefits of allowing the use of the summary portfolio schedule. These commenters supported the conclusion that summary schedules should reduce costs associated with printing and mailing shareholder reports and provide more meaningful information to shareholders, although they did not specifically mention the cost-benefit analysis or provide any quantitative analysis.

*Tabular or Graphic Presentation of Portfolio Holdings.* The requirements for funds to provide a tabular or graphic

presentation of their portfolio holdings in their annual and semi-annual reports to shareholders should benefit fund investors by illustrating, in a concise and user-friendly format, the allocation of a fund's investments across asset classes. This presentation, coupled with a summary portfolio schedule, could be significantly more useful to many investors than the fund's complete portfolio schedule standing alone, particularly in the case of funds with large numbers of holdings. These benefits to investors resulting from the use of a tabular or graphic presentation are difficult to quantify, however.

*Quarterly Filing of Complete Portfolio Schedule.* The requirement for a fund to file its complete portfolio schedule on new Form N-Q via EDGAR, within 60 days after the end of the first and third fiscal quarters, should benefit investors by providing them with greater information about whether, and how, a fund is complying with its stated investment objective. These requirements will allow investors, and their advisers or other investment professionals, to better monitor the extent to which the portfolios of the funds that investors hold overlap, and hence should promote more informed asset allocation decisions. In addition, quarterly disclosure of a fund's portfolio holdings may expose instances of "style drift," when the actual portfolio holdings of a fund deviate from its stated investment objective.

The increased transparency resulting from quarterly disclosure may also deter several forms of portfolio manipulation by portfolio managers, including "window dressing" (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and "portfolio pumping" (buying shares of stocks the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results). Any of these forms of portfolio manipulation enhance the appearance of the portfolio at the expense of portfolio returns. By increasing the frequency of reporting, engaging in these activities becomes more expensive in terms of returns. Therefore, we expect fewer funds to engage in these activities. To the extent that portfolio managers currently engage in these activities, shareholders will be better off as a result of the amendments. More broadly, the increased frequency of disclosure will permit investors to

better link the composition of a fund portfolio to fund performance.

In addition, the requirement that reports on Form N-Q be signed and certified by a fund's principal executive and financial officers, consistent with section 302 of the Sarbanes-Oxley Act, will benefit investors. A fund's portfolio schedule constitutes financial information of great significance to investors. Requiring certification of this financial information should help to enhance investor confidence in this disclosure, and is consistent with the intent of the certification requirement of section 302.

*Inclusion of MDFP in Annual Reports to Shareholders by Mutual Funds.* The requirement that funds include MDFP in their annual reports to shareholders should assist investors in assessing the fund's performance over the prior year. Requiring MDFP in the annual report, as opposed to the fund's prospectus, may benefit shareholders by enabling them to assess information provided in the MDFP together with other "backward looking" information contained in the annual report. We note, however, that to the extent that, based on the staff's experience, over 90% of mutual funds already include this information in their annual reports to shareholders, these benefits are already being realized.

#### B. Costs

The amendments may lead to some additional costs for funds, which could be passed on to fund shareholders. In the case of the additional disclosure requirements being adopted, these costs will include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure).

*Disclosure of Fund Expenses in Shareholder Reports.* We estimate that in order for mutual funds to comply with the requirement to include in annual and semi-annual reports disclosure of the dollar cost associated with investing a standardized amount in a fund, a typical mutual fund will need to add one additional page to each of its annual and semi-annual reports, at a cost of \$0.02 per page.<sup>119</sup> We estimate that there are approximately 251 million shareholder accounts associated with mutual fund companies, which will send out 451.8 million reports to shareholders annually.<sup>120</sup> Therefore,

funds that utilize these provisions will still be required to file their complete portfolio schedules on Item 6 of Form N-CSR.

<sup>118</sup> We note that, for purposes of the Paperwork Reduction Act, we have estimated that the exemption for money market funds from the requirement to include complete portfolio schedules in their reports to shareholders will reduce the internal burden hours for compliance with shareholder reports requirements by 10,000 hours, translating into a cost savings of \$689,400 annually. However, this cost savings is offset by an equal increase in the burden associated with the requirement for money market funds to file a complete portfolio schedule in Item 6 of Form N-CSR.

<sup>119</sup> See *supra* note 116.

<sup>120</sup> Investment Company Institute, *Mutual Fund Fact Book*, at 63 (43rd ed. 2003) (estimating approximately 251 million shareholder accounts

this additional disclosure in shareholder reports will cost approximately \$9,036,000 ((451.8 million shareholder reports  $\times$  \$0.02 per page) in external costs per mutual fund annually.

In addition, we estimate for purposes of the Paperwork Reduction Act that these disclosure requirements will add 89,730 burden hours for mutual funds required to transmit shareholder reports, equal to internal costs of \$7,042,010 for the industry annually.<sup>121</sup> Thus, we estimate that the total cost of this requirement would be approximately \$16 million annually. We estimate that the modifications that we are adopting that will require the expense example to include the ending account values for an initial investment of \$1,000, and the fund's expense ratio expressed as a percentage, will not increase this cost estimate, because the annualized expense ratio will be based on information required elsewhere in the shareholder report as part of the financial highlights table, and funds will be calculating ending account value for an initial investment of \$1,000 in order to calculate expenses paid on that investment.

As the Commission considered how to best disclose to investors the fees and expenses that they incur with investment in a fund, it considered the costs and benefits of various alternatives, including providing fund shareholders with individualized cost information (in dollars) as to the fees and expenses that they paid in quarterly account statements. We estimate that the cost of providing this individualized cost disclosure would greatly exceed the cost of our amendments. According to a report of the U.S. General Accounting Office which recommended requiring individualized cost disclosure in account statements, one broker-dealer with approximately 6.5 million customer accounts estimated that for it to develop the systems necessary to produce such statements might cost as much as \$4 million, with additional annual costs of \$5 million.<sup>122</sup> Given that

associated with mutual funds). We estimated the number of shareholder reports by multiplying the number of accounts by 2 to reflect the requirement that each fund must deliver an annual and a semi-annual report to each account-holder, and then reducing that number by 10% to reflect an estimated 10% savings in the number of reports that must be delivered to shareholders due to householding rules, arriving at 451.8 million shareholder reports annually (251 million shareholder accounts  $\times$  2 reports per year  $\times$  .9 reduction due to householding). See *supra* note 113.

<sup>121</sup> This figure is based on an estimated hourly wage rate of \$78.48. See *supra* note 118.

<sup>122</sup> U.S. General Accounting Office, *Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition* 79 (June 7, 2000).

as of year-end 2002, there were approximately 251 million shareholder accounts invested in mutual funds, estimated industry-wide costs could easily exceed \$100 million annually.<sup>123</sup>

Several commenters addressed the cost of including individualized expense information in quarterly account statements, and agreed with the cost/benefit analysis provided in the Proposing Release that such a requirement would involve significant costs and logistical challenges. One commenter who supported requiring individualized cost disclosure acknowledged that the alternative might impose large costs on funds, but recommended that the Commission consider whether the additional costs truly would outweigh the potential benefits that improved fee disclosure and the attendant increase in price competition would provide.

*Use of Summary Portfolio Schedule and Exemption of Money Market Funds From Portfolio Schedule Requirements in Shareholder Reports.* Our amendments that will allow funds to include summary portfolio schedules in reports to shareholders may result in some costs to funds.<sup>124</sup> For purposes of the Paperwork Reduction Act, we estimate that these amendments will not increase the hour burden for completing a shareholder report in compliance with rule 30e-1 under the Investment Company Act. However, we estimate that use of either the provision permitting use of a summary portfolio schedule or the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers will increase the hour burden for filing Form N-CSR by 5 hours per portfolio per filing, or 70,940 hours (7,094 portfolios  $\times$  5 hours per portfolio  $\times$  2 filings per year), resulting in an additional cost of filing Form N-CSR of \$5,567,371.<sup>125</sup>

Further, to the extent that investors want to see a complete portfolio schedule, investors will incur search costs to gather this information (*i.e.*, requesting the information from the fund). However, since funds will be

<sup>123</sup> See Investment Company Institute, *Mutual Fund Fact Book*, *supra* note 112, at 63 (estimating number of shareholder accounts in mutual funds).

<sup>124</sup> The amendments would have no net impact on the hour burden of compliance for money market funds, for purposes of the Paperwork Reduction Act, because the increase in burden hours associated with filing the complete portfolio schedule pursuant to Item 6 of Form N-CSR would be offset by a decrease in the burden associated with the exemption allowing money market funds to omit this schedule from their shareholder reports. See *supra* note 118.

<sup>125</sup> These figures are based on an estimated hourly wage rate of \$78.48. See *supra* note 118 (explaining calculation of wage rate).

required to deliver the complete portfolio schedule within three days and free of charge to all investors who request it, we expect these costs to be minimal.

*Tabular or Graphic Presentation of Portfolio Holdings.* The amendments will require funds to provide one or more tables, charts, or graphs depicting the securities holdings of the fund by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. We estimate that these costs will be limited, however, because a fund will have the flexibility to select categories and format the presentation in a manner reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives, and because a majority of funds, according to the staff's estimate, already provide some type of tabular or graphic depiction of their holdings in shareholder reports. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements will add 3 hours per portfolio to the burden of completing each annual and semi-annual report to shareholders, or 58,236 hours total (3 hours per portfolio  $\times$  2 reports per year  $\times$  9,706 portfolios of funds required to provide reports to shareholders). We estimate that this additional burden will equal total internal costs of \$4,570,361 annually.<sup>126</sup> Further, because most funds already include a similar type of presentation voluntarily in shareholder reports, we estimate that this new disclosure requirement will not increase printing and mailing costs of shareholder reports for most funds, and hence the external costs to funds of this requirement will be minimal.

*Quarterly Filing of Complete Portfolio Schedule.* Our requirement for funds to certify and file with the Commission for the first and third fiscal quarters of each fiscal year their complete portfolio holdings schedule on Form N-Q, and to disclose the availability of the filing on the Commission's Web site, will impose certain costs on funds. We estimate that, for purposes of the Paperwork Reduction Act, these disclosure requirements will impose 10 burden hours per portfolio per filing on Form N-Q, plus an additional 1 hour per fund and 0.25 hours for every additional portfolio in a fund beyond the first. We estimate that the total burden will

<sup>126</sup> These figures are based on an estimated hourly wage rate of \$78.48. See *supra* note 118 (explaining calculation of wage rate).

therefore be 204,674 hours, or \$16,062,816 in total internal costs annually, based on an estimate of 3,800 funds filing reports on Form N-Q for 9,706 fund portfolios.<sup>127</sup> Because this quarterly disclosure will only be required to be filed on EDGAR, and not actually delivered to shareholders, we estimate that the external costs per fund, for typesetting, printing, and mailing, of this additional disclosure will be negligible.

Mandating quarterly portfolio disclosure may impose other costs on funds and their shareholders. We received several comments on this issue. In the Proposing Release, we addressed the possibility that more frequent disclosure of portfolio holdings may expand the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called "front-running," and thereby increasing funds' costs which ultimately are borne by shareholders. However, we noted that, in order for "front-running" to significantly decrease investment returns under the quarterly reporting requirements, it appears that several conditions may have to be present, and we indicated that these conditions may rarely be met, and hence the resulting costs of front-running may be minimal.<sup>128</sup>

The Commission's cost-benefit analysis in the Proposing Release also addressed the possibility that more frequent portfolio disclosure may facilitate the ability of outside investors to "free ride" on a mutual fund's investment strategies, by obtaining for free the benefits of fund research and investment strategies that are paid for by fund shareholders. The Commission's analysis noted that the extent to which the quarterly disclosure requirement, with a 60-day lag, will result in these types of costs is difficult to quantify, and may depend on a number of assumptions and conditions. The Commission's analysis concluded that these conditions may not often simultaneously hold, although when they do, funds may be adversely impacted. The Commission's analysis also noted, however, that once the fund adviser has completed its trading strategy, it may hope that other traders will follow it because the price impacts of their trading will make the fund's

trades profitable. The net effect of "free riding" therefore is not necessarily negative.<sup>129</sup>

One commenter supported the Commission's analysis, arguing that it thoroughly rebutted any arguments that front-running and other predatory trading practices would occur with more frequent portfolio disclosure. Other commenters disagreed with aspects of the Commission's analysis. One such commenter argued that more frequent disclosure of fund portfolio holdings would add to the mix of information that is currently available about the individual portfolio securities of funds (including information from reports filed by institutional investment managers on Form 13F) and thus could be expected to compound the risk of front-running of fund trades that already exists. The commenter also argued that evidence indicates that free-riding based on fund portfolio holdings disclosure can be achieved, and will be facilitated by more frequent portfolio disclosure.

*Inclusion of MDFP in Annual Reports to Shareholders by Mutual Funds.* We estimate that the requirement that mutual funds include MDFP in their annual reports to shareholders will not impose any costs on funds or shareholders. The staff estimates that over 90 percent of mutual funds already include MDFP in their annual reports to shareholders. Further, a fund that does not include MDFP in its annual reports must include MDFP in its prospectus. Thus, this amendment will not impose any new disclosure requirement on funds, but rather will only mandate a change in the location of the required disclosure for the minority of funds that do not already include MDFP in their annual reports. To the extent, however, that a fund does not already include MDFP in its annual report to shareholders, the fund may incur additional printing and mailing costs.

#### **V. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation**

Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>130</sup> In addition, section 2(c) of the Investment Company Act, section 2(b)

of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.<sup>131</sup> In the Proposing Release, we requested comments on whether the proposed amendments would promote efficiency, competition, and capital formation. We received no comments on this section of the proposals.

The amendments are intended to provide greater transparency for fund shareholders regarding their investments in funds. These amendments may improve efficiency. The enhanced disclosure requirements will provide shareholders with more frequent access to portfolio holdings of the funds in which they invest, which may promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. We believe that the rule amendments may also improve competition, as enhanced disclosure will lead to better-informed investors and will prompt funds to seek to provide better-informed investors with improved products and services. In addition, permitting funds to deliver summary portfolio schedules in shareholder reports may provide a significant reduction in printing and delivery costs ultimately borne by shareholders. Finally, the effects of the rule amendments on capital formation are unclear. Although, as noted above, we believe that the rule amendments will benefit investors, the magnitude of the effect of the rule amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that many funds do not currently provide the type of disclosure contemplated by the rule amendments.

#### **VI. Final Regulatory Flexibility Analysis**

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to improve the quality of periodic disclosure provided by funds about their costs, portfolio investments, and past performance. These rule amendments are intended to enable funds to provide

<sup>127</sup> This estimate is based on data from the Commission's EDGAR system of the number of registered management investment companies, and an estimated hourly wage rate of \$78.48. See *supra* note 118.

<sup>128</sup> See Proposing Release, *supra* note 16, 68 FR at 175-176.

<sup>129</sup> Proposing Release, *supra* note 16, 68 FR at 176.

<sup>130</sup> 15 U.S.C. 78w(a)(2).

<sup>131</sup> 15 U.S.C. 77(b), 78c(f), and 80a-2(c).

more meaningful information to shareholders while reducing the costs of producing and delivering annual and semi-annual reports to shareholders. An Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the release proposing these amendments.

#### A. Need for, and Objectives of, Amendments

Shareholder reports are one of the principal means by which funds provide periodic information to their investors. Fund shareholder reports historically have served primarily as a vehicle to provide financial statements and other financial information to shareholders. The Commission believes that, with some modifications, fund shareholder reports could become a more effective vehicle for communicating information to investors. The amendments adopted by the Commission principally address disclosure of fund portfolio holdings and expenses, two significant areas for improvement that have been identified by investor groups, members of the fund industry, and others.

#### B. Significant Issues Raised by Public Comment

In the IRFA for the proposed amendments, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the likely impact of the proposal on small entities, the nature of any impact, and providing any empirical data supporting the extent of the impact. We received no comment letters on this section.

#### C. Small Entities Subject to the Rule

The amendments adopted by the Commission will affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, 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.<sup>132</sup> Approximately 205 out of 3700 investment companies that will be affected by these amendments meet this definition.<sup>133</sup>

<sup>132</sup> 17 CFR 270.0-10.

<sup>133</sup> This estimate is based on figures compiled by Division of Investment Management staff regarding investment companies registered on Form N-1A, Form N-2, and Form N-3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts

#### D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments will:

- Require mutual funds to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders;
- Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on Form N-CSR semi-annually and is provided to shareholders upon request, free of charge;
- Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;
- Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new Form N-Q which will be filed under the Investment Company Act and the Exchange Act and certified by the fund's principal executive and financial officers; and
- Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

The amendments will apply equally to funds that are small entities and to other funds. The Commission estimates that the amendments will result in some one-time formatting and ongoing costs and burdens that would be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing the dollar cost associated with investing a standardized amount in a fund and the requirement that funds file their complete portfolio schedules with the Commission on a quarterly basis, in filings that would be certified by a fund's principal executive and financial officers. These costs also could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe that the benefits that will result to shareholders through better information about their funds' costs, portfolio investments, and past performance justify these potential costs.

are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0-10(b) [17 CFR 270.0-10(b)].

#### E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the rule amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, will not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency regarding a fund's investments, costs, and performance. Different disclosure requirements for small entities may create the risk that shareholders of those small entities will not have access to sufficient information to make informed evaluations. For example, requiring less frequent filing of portfolio holdings reports by small entities will make it more difficult for the shareholders of small entities to determine whether the fund is complying with its stated investment objective. Likewise, reducing the disclosure requirements in the shareholder reports of small entities would, for example, leave the shareholders of small funds less able to assess the amount of fees and charges that they pay. We believe it is important that the disclosure that will be required by the rule amendments be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored throughout these rule amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. For example, we have modified our proposal to extend the compliance date an additional 60 days. We also note that some of the amendments contained in this release, such as the exemption for money market funds from the requirement to include a complete schedule in their shareholder reports,

work to lessen the regulatory burden on all funds. Small entities should benefit from the Commission's reasoned approach to the rule amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

**VII. Statutory Authority**

The Commission is adopting amendments to Regulation S-X pursuant to authority set forth in sections 5, 6, 7, 8, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77h, and 77s(a)); sections 12, 13, 15(d), and 23(a) of the Exchange Act (15 U.S.C. 78l, 78m, 78o(d), and 78w(a)); and sections 8, 24(a), 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a-8, 80a-24(a), 80a-29, 80a-30, and 80a-37). The Commission is adopting new rule 30b1-5 and new Form N-Q pursuant to authority set forth in sections 10(b), 13, 15(d), and 23(a) of the Exchange Act (15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm) and sections 8, 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37). The Commission is adopting amendments to Forms N-1A, N-2, and N-3 pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z-3) and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a-6(c), 80a-8, 80a-24(a), 80a-29, and 80a-37). The Commission is adopting amendments to Form N-CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act (15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm) and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a-6(c), 80a-8, 80a-24(a), 80a-29, and 80a-37).

**List of Subjects**

17 CFR Parts 210, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

**Text of Rule and Form Amendments**

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

**PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

■ 1. The authority citation for part 210 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

■ 2. Paragraph (c) of § 210.6-10 is revised to read as follows:

**§ 210.6-10 What schedules are to be filed.**

\* \* \* \* \*

(c) *Management investment companies.*

(1) Except as otherwise provided in the applicable form, the schedules specified in this paragraph shall be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

*Schedule I—Investments in securities of unaffiliated issuers.* The schedule prescribed by § 210.12-12 shall be filed in support of caption 1 of each balance sheet.

*Schedule II—Investments—other than securities.* The schedule prescribed by § 210.12-13 shall be filed in support of caption 3 of each balance sheet. This schedule may be omitted if the investments, other than securities, at both the beginning and end of the period amount to less than one percent of the value of total investments (§ 210.6-04.4).

*Schedule III—Investments in and advances to affiliates.* The schedule prescribed by § 210.12-14 shall be filed

in support of caption 2 of each balance sheet.

*Schedule IV—Investments—securities sold short.* The schedule prescribed by § 210.12-12A shall be filed in support of caption 10(a) of each balance sheet.

*Schedule V—Open option contracts written.* The schedule prescribed by § 210.12-12B shall be filed in support of caption 10(b) of each balance sheet.

(2) When permitted by the applicable form, the schedule specified in this paragraph may be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

*Schedule VI—Summary schedule of investments in securities of unaffiliated issuers.* The schedule prescribed by § 210.12-12C may be filed in support of caption 1 of each balance sheet.

\* \* \* \* \*

■ 3. Section 210.12-12 is amended by:

- a. Adding a sentence to the end of footnote 1 to the table; and
- b. Revising the first three sentences of footnote 2 to the table.

The addition and revision would read as follows:

**§ 210.12-12 Investments in securities of unaffiliated issuers.**

<sup>1</sup> \* \* \* If any securities are listed as "Miscellaneous securities," briefly explain in a footnote what the term represents.

<sup>2</sup> Categorize the schedule by (i) the type of investment (such as common stocks, preferred stocks, convertible securities, fixed income securities, government securities, options purchased, warrants, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, other investment companies, and so forth); and (ii) the related industry, country, or geographic region of the investment. Short-term debt instruments (*i.e.*, debt instruments whose maturities or expiration dates at the time of acquisition are one year or less) of the same issuer may be aggregated, in which case the range of interest rates and maturity dates shall be indicated. \* \* \*

\* \* \* \* \*

■ 4. Section 210.12-12C is added to read as follows:

**§ 210.12-12C Summary schedule of investments in securities of unaffiliated issuers.**

Column A	Column B	Column C	Column D
Name of issuer and title of issue <sup>1 3 4 5 6</sup> .	Balance held at close of period. Number of shares—principal amount of bonds and notes <sup>8</sup> .	Value of each item at close of period <sup>2 7 9 10 11</sup> .	Percentage value compared to net assets.

<sup>1</sup> Categorize the schedule by (a) the type of investment (such as common stocks, preferred stocks, convertible securities, fixed income securities, government securities, options purchased, warrants, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, other investment companies, and so forth); and (b) the related industry, country, or geographic region of the investment.

<sup>2</sup> The subtotals for each category of investments, subdivided by industry, country, or geographic region, shall be shown together with their percentage value compared to net assets.

<sup>3</sup> Except as provided in note 5, list separately the 50 largest issues and any other issue the value of which exceeded one percent of net asset value of the registrant as of the close of the period. For purposes of the list (including, in the case of short-term debt instruments, the first sentence of note 4), aggregate and treat as a single issue, respectively, (a) short-term debt instruments (*i.e.*, debt instruments whose maturities or expiration dates at the time of acquisition are one year or less) of the same issuer (indicating the range of interest rates and maturity dates); and (b) fully collateralized repurchase agreements (indicate in a footnote the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon repurchase, the range of repurchase dates, and description of securities subject to the repurchase agreements). Restricted and unrestricted securities of the same issue should be aggregated for purposes of determining whether the issue is among the 50 largest issues, but should not be combined in the schedule. For purposes of determining whether the value of an issue exceeds one percent of net asset value, aggregate and treat as a single issue all securities of any one issuer, except that all fully collateralized repurchase agreements shall be aggregated and treated as a single issue. The U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities is a separate issuer.

<sup>4</sup> If multiple securities of an issuer aggregate to greater than one percent of net asset value, list each issue of the issuer separately (including separate listing of restricted and unrestricted securities of the same issue) except that the following may be aggregated and listed as a single issue: (a) Fixed-income securities of the same issuer which are not among the 50 largest issues and whose value does not exceed one percent of net asset value of the registrant as of the close of the period (indicating the range of interest rates and maturity dates); and (b) U.S. government securities of a single agency, instrumentality, or corporation, which are not among the 50 largest issues and whose value does not exceed one percent of net asset value of the registrant as of the close of the period (indicating the range of interest rates and maturity dates). For each category identified pursuant to note 1, group all issues that are neither separately listed nor included in a group of securities that is listed in the aggregate as a single issue in a sub-category labeled "Other securities," and provide the information for Columns C and D.

<sup>5</sup> Any securities that would be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue may be listed in one amount as "Miscellaneous securities," provided the securities so listed are eligible to be, and are, categorized as "Miscellaneous securities" in the registrant's Schedule of Investments in Securities of Unaffiliated Issuers required under § 210.12-12. However, if any security that is included in "Miscellaneous securities" would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue, the remaining securities of that group must nonetheless be listed as required by notes 3 and 4 even if the remaining securities alone would not otherwise be required to be listed in this manner (*e.g.*, because the combined value of the security listed in "Miscellaneous securities" and the remaining securities of the same issuer exceeds one percent of net asset value, but the value of the remaining securities alone does not exceed one percent of net asset value).

<sup>6</sup> If any securities are listed as "Miscellaneous securities" pursuant to note 5 or "Other securities" pursuant to note 4, briefly explain in a footnote what those terms represent.

<sup>7</sup> Total Column C. The total of column C should equal the total shown on the related balance sheet for investments in securities of unaffiliated issuers.

<sup>8</sup> Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.

<sup>9</sup> Indicate by an appropriate symbol each issue of restricted securities. State the following in a footnote: (a) as to each such issue: (1) Acquisition date, (2) carrying value per unit of investment at date of related balance sheet, *e.g.*, a percentage of current market value of unrestricted securities of the same issuer, etc., and (3) the cost of such securities; (b) as to each issue acquired during the year preceding the date of the related balance sheet, the carrying value per unit of investment of unrestricted securities of the same issuer at: (1) The day the purchase price was agreed to; and (2) the day on which an enforceable right to acquire such securities was obtained; and (c) the aggregate value of all restricted securities and the percentage which the aggregate value bears to net assets.

<sup>10</sup> Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts or loans for short sales.

<sup>11</sup> State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

■ 5. The general authority citation for Part 239 is revised to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 77sss, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

■ 6. The authority citation for part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 7. Section 249.332 is added to read as follows:

**§ 249.332 Form N-Q, quarterly schedule of portfolio holdings of registered management investment company.**

This form shall be used by 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 reports pursuant to § 270.30b1-5 of this chapter not later than 60 days after the close of the first and third quarters of each fiscal year.

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

■ 8. The authority citation for part 270 continues to read, in part, as follows:

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

\* \* \* \* \*

■ 9. Section 270.30a-2 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 270.30a-2 Certification of Form N-CSR and Form N-Q.**

(a) Each report filed on Form N-CSR (§§ 249.331 and 274.128 of this chapter) or Form N-Q (§§ 249.332 and 274.130 of this chapter) by a registered management investment company must include certifications in the form specified in Item 11(a)(2) of Form N-CSR or Item 3 of Form N-Q, as applicable, 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.

\* \* \* \* \*

■ 10. Section 270.30a-3 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 270.30a-3 Controls and procedures.**

\* \* \* \* \*

(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 (§§ 249.331 and 274.128 of this chapter) and Form N-Q (§§ 249.332 and 274.130 of this chapter).

(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 (§§ 249.331 and 274.128 of this chapter) and Form N-Q (§§ 249.332 and 274.130 of this chapter) 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 and Form N-Q 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.

\* \* \* \* \*

■ 11. Section 270.30b1-5 is added to read as follows:

**§ 270.30b1-5 Quarterly report.**

Every registered management investment company, other than a small business investment company registered on Form N-5 (§§ 239.24 and 274.5 of this chapter), shall file a quarterly report on Form N-Q (§§ 249.332 and 274.130 of this chapter) not more than 60 days after the close of the first and third quarters of each fiscal year. A registered management 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.

■ 12. Section 270.30d-1 is revised to read as follows:

**§ 270.30d-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 (§§ 239.24 and 274.5 of this chapter), that is required to file annual and quarterly reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) 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 (§§ 249.331 and 274.128 of this chapter) and Form N-Q (§§ 249.332 and 274.130 of this chapter). 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-SAR (§§ 249.330 and 274.101 of this chapter).

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

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

■ 13. The authority citation for part 274 is amended by adding the following citation in numerical order to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

\* \* \* \* \*

Section 274.130 is also issued under 15 U.S.C. 7202 and 7241.

■ 14. Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by:

- a. Removing Item 5 and redesignating Items 6 through 30 as Items 5 through 29;
- b. In paragraph B.2(b) of the General Instructions, revising the phrase “(except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)—(k))” to read “(except Items 1, 2, 3, and 8), B, and C (except Items 22(e) and (i)—(k))”;
- c. In paragraph C.3(a) of the General Instructions, revising the reference “Item 8” to read “Item 7”;
- d. In paragraph C.3(d)(i), introductory text, of the General Instructions and in newly redesignated Item 6, the introductory text of paragraph (f), revising the reference “Items 7(b)—(d) and 8(a)(2)” to read “Items 6(b)—(d) and 7(a)(2)”;
- e. In paragraph (b)(1) of Item 1, removing the phrase “, if required by Item 5”;
- f. In Instruction 6 to Item 1(b)(1) and paragraph (a)(2) of newly redesignated Item 7, revising the reference “Item 7(f)” to read “Item 6(f)”;
- g. In Instruction 6 to Item 1(b)(1), revising the reference “Item 7(f)(3)” to read “Item 6(f)(3)”;
- h. In Item 2(c)(2)(iii), revising the phrase “Instruction 5 to Item 5(b)” to read “Instruction 5 to Item 21(b)(7)”;
- i. In Instruction 1(a) to Item 2(c)(2), revising the reference “Item 9(a)” to read “Item 8(a)”;
- j. In Instruction 2(a) to Item 2(c)(2), revising the references “Item 21(a)”, “Item 21(b)(1)”, and “Items 21(b)(2) and (3)” to read “Item 20(a)”, “Item 20(b)(1)”, and “Items 20(b)(2) and (3)”, respectively;
- k. In Instruction 2(b) to Item 2(c)(2), revising the phrase “Instruction 6 to Item 5(b)” to read “Instruction 6 to Item 21(b)(7)”;
- l. In Instruction 2(d) to Item 2(c)(2), revising the references “Item 21(b)(2)” and “Item 21” to read “Item 20(b)(2)” and “Item 20”, respectively;
- m. In Instruction 4 to Item 2(c)(2), revising the phrase “Instruction 11 of

Item 5(b)” to read “Instruction 11 to Item 21(b)(7)”;

■ n. In Instruction 2(a)(i) to Item 3, revising the reference “Item 8(a)” to read “Item 7(a)”;

■ o. In Instruction 5 to Item 4(b)(1), revising the reference “Item 12(c)(1)” to read “Item 11(c)(1)”;

■ p. In paragraph (e) of newly redesignated Item 11, revising the reference “Item 9” to read “Item 8”;

■ q. Revising the reference “Item 13” to read “Item 12” in the following places:

■ i. Instruction 1 to newly redesignated Item 12;

■ ii. Paragraph (a)(2) of newly redesignated Item 12;

■ iii. Paragraph (b)(3) of newly redesignated Item 12;

■ iv. Paragraph (b)(6) of newly redesignated Item 12;

■ v. Instructions 6, 8, and 10 to newly redesignated Item 12(b)(7) each time it appears;

■ vi. Paragraph (b)(8) of newly redesignated Item 12 each time it appears;

■ vii. Instructions 2, 4, 6, 7, and 8 to newly redesignated Item 12(b)(8) each time it appears; and

■ viii. Paragraph (b)(9)(iii) of newly redesignated Item 12.

■ r. In Instruction to paragraph (a) of newly redesignated Item 17, revising the reference “Item 18(a)” to read “Item 17(a)”;

■ s. In Instruction 4 to paragraph (c) of newly redesignated Item 17 and paragraph (k) of newly redesignated Item 22, revising the reference “Item 22” to read “Item 21”;

■ t. In Instruction 1 to paragraph (c) of newly redesignated Item 19, revising the references “Item 8(b)(2)”, “Item 15(d)”, and “Item 30” to read “Item 7(b)(2)”, “Item 14(d)”, and “Item 29”, respectively;

■ u. In paragraph (b) of newly redesignated Item 26, revising the reference “Item 20” to read “Item 19”;

■ v. In Instruction 2 to paragraph (c) of newly redesignated Item 26, revising the reference “Item 20(c)” to read “Item 19(c)”;

■ w. In Instruction 1 to newly redesignated Item 28, revising the reference “Item 15” to read “Item 14”;

■ x. Revising Instruction 5 to Item 1(b)(1) and newly redesignated Item 21. The revisions read as follows:

**Note:** The text of Form N-1A does not and this amendment will not appear in the *Code of Federal Regulations*.

#### Form N-1A

\* \* \* \* \*

#### Item 1. Front and Back Cover Pages

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

#### Instructions

\* \* \* \* \*

5. A Money Market Fund may omit the sentence indicating that a reader will find in the Fund’s annual report a discussion of the market conditions and investment strategies that significantly affect the Fund’s performance during its last fiscal year.

\* \* \* \* \*

#### Item 21. Financial Statements

(a) *Registration Statement.* Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S-X. The specimen price-make-up sheet required by Instruction 4 to Item 17(c) may be provided as a continuation of the balance sheet specified by Regulation S-X.

#### Instructions

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S-X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3-18 of Regulation S-X [17 CFR 210.3-18], any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(b) *Annual Report.* Every annual report to shareholders required by rule 30e-1 must contain the following:

(1) *Financial Statements.* The audited financial statements required, and for the periods specified, by Regulation S-X.

#### Instructions

1. *Schedule VI “Summary schedule of investments in securities of unaffiliated issuers* [17 CFR 210.12-12C] may be included in the financial statements in lieu of *Schedule I—Investments in securities of unaffiliated issuers* [17 CFR 210.12-12] if: (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 (or collect) telephone number; (ii) on the Fund’s Web site, if applicable; and (iii) on the Commission’s Web site at <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.

2. In the case of a Money Market Fund, *Schedule I “Investments in securities of unaffiliated issuers* (17 CFR 210.12-12C) 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 (or collect) telephone number; (ii) on the Fund’s Web site, if applicable; and (iii) on the Commission’s Web site at <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.

(2) *Condensed Financial Information.* The condensed financial information required by Item 8(a) with at least the most recent fiscal year audited.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) *Changes in and Disagreements with Accountants.* 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].

(5) *Management Information.* The management information required by Item 12(a)(1).

(6) *Availability of Additional Information about Fund Directors.* A statement that the SAI includes additional information about Fund directors and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

(7) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund:

(i) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(ii)(A) Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a \$10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 20(b)(1). Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.

#### Instructions

##### 1. Line Graph Computation.

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last

calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds \$10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial \$10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume that the deduction is in the amount(s) and at the time(s) that the sales load actually would have been deducted.

##### 3. Dividends and Distributions.

Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a \$10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an "appropriate broad-based securities market index" is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly

based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A New Fund (as defined in Instruction 5 to Item 3) is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N-1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in "control" of the previous adviser under section 2(a)(9) [15 U.S.C. 80a-2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(iii) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30e-1 must contain the following (which need not be audited):

(1) *Financial Statements.* The financial statements required by

Regulation S–X for the period commencing either with:

(i) The beginning of the Fund’s fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30e–1 and the most recent preceding fiscal year.

**Instruction.** Instructions 1 and 2 to Item 21(b)(1) also apply to this Item 21(c)(1).

(2) **Condensed Financial Information.** The condensed financial information required by Item 8(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) **Remuneration Paid to Directors, Officers, and Others.** Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) **Changes in and Disagreements with Accountants.** 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].

(d) **Annual and Semi-Annual Reports.** Every annual and semi-annual report to shareholders required by rule 30e–1 must contain the following:

(1) **Expense Example.** The following information regarding expenses for the period:

**Example**

As a shareholder of the Fund, you incur two types of costs: (1) transaction costs, including sales charges (loads) on purchase payments, reinvested dividends, or other distributions; redemption fees; and exchange fees; and (2) ongoing costs, including management fees; distribution [and/or service] (12b–1) fees; and other Fund expenses. This Example is intended to help you understand your ongoing costs (in dollars) of investing in the Fund and to compare these costs with the ongoing costs of investing in other mutual funds.

The Example is based on an investment of \$1,000 invested at the beginning of the period and held for the entire period [insert dates].

**Actual Expenses**

The first line of the table below provides information about actual account values and actual expenses. You may use the information in this line, together with the amount you invested, to estimate the expenses that you paid over the period. Simply divide your account value by \$1,000 (for example, an \$8,600 account value divided by \$1,000 = 8.6), then multiply the result by the number in the first line under the heading entitled “Expenses Paid During Period” to estimate the expenses you paid on your account during this period. [If the Fund charges any account fees or other recurring fees that are not included in the expenses shown in the table, for example, because they are not charged to all investors, disclose the amounts of these fees, describe the accounts that are charged these fees, and explain how

an investor would use this information to estimate the total ongoing expenses paid over the period and the impact of these fees on ending account value.]

**Hypothetical Example for Comparison Purposes**

The second line of the table below provides information about hypothetical account values and hypothetical expenses based on the Fund’s actual expense ratio and an assumed rate of return of 5% per year before expenses, which is not the Fund’s actual return. The hypothetical account values and expenses may not be used to estimate the actual ending account balance or expenses you paid for the period. You may use this information to compare the ongoing costs of investing in the Fund and other funds. To do so, compare this 5% hypothetical example with the 5% hypothetical examples that appear in the shareholder reports of the other funds. [If the Fund charges any account fees or other recurring fees that are not included in the expenses shown in the table, for example, because they are not charged to all investors, disclose the amounts of these fees, describe the accounts that are charged these fees, and explain how an investor would use this information in making the foregoing comparison.]

Please note that the expenses shown in the table are meant to highlight your ongoing costs only and do not reflect any transactional costs, such as sales charges (loads), redemption fees, or exchange fees. Therefore, the second line of the table is useful in comparing ongoing costs only, and will not help you determine the relative total costs of owning different funds. In addition, if these transactional costs were included, your costs would have been higher.

	Beginning account value [date]	Ending account value [date]	Expenses paid during period * [dates]
Actual .....	\$1,000	.....	.....
Hypothetical (5% return before expenses) .....	1,000	.....	.....

\* Expenses are equal to the Fund’s annualized expense ratio of [ \_ %], multiplied by the average account value over the period, multiplied by [number of days in most recent fiscal half-year/365 [or 366]] (to reflect the one-half year period).

**Instructions**

**1. General.**

(a) Round all dollar figures to the nearest dollar.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown, and is required to make any modifications necessary to reflect accurately the Fund’s circumstances. A Fund may eliminate any parts of the narrative explanations that are inapplicable. For example, a Fund that does not charge loads need not include the statement that the Example does not reflect loads

or that costs would be higher if loads were included.

(c) The Fund’s expense ratio shown in the footnote to the table should be calculated in the manner required by Instruction 4(b) to Item 8(a) using the expenses for the Fund’s most recent fiscal half-year (the Fund’s second fiscal half-year in the case of an annual report). Express the expense ratio on an annualized basis.

(d)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund. In a footnote to the Example, state that the Example reflects the expenses of both the Feeder and Master Funds.

(ii) If the report covers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate Example for each Class or Feeder Fund.

**2. Computation.**

(a)(i) In determining the Fund’s “actual expenses” for purposes of this example, include all expenses that are deducted from the Fund’s assets or charged to all shareholder accounts, including “Management Fees,” “Distribution [and/or Service] (12b–1) Fees,” and “Other Expenses” as those terms are defined in Instruction 3 to Item 3 of this form as modified by Instructions 2(a)(ii) and (c)(i) to this Item. Reflect recurring and non-

recurring fees charged to all investors other than any exchange fees, sales charges (loads), or fees charged upon redemption of the Fund's shares. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X [17 CFR 210.6-07]).

(ii) For purposes of this Item 21(d)(1), "Other Expenses" include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," the Fund may disclose in a footnote to the Example what "actual expenses" would have been had the extraordinary expenses not been included.

(b) Assume reinvestment of all dividends and distributions.

(c)(i) Base the percentages of "actual expenses" on amounts incurred during the Fund's most recent fiscal half-year (the Fund's second fiscal half-year in the case of an annual report). "Actual expenses" should reflect actual expenses after expense reimbursement or fee waiver arrangements that reduced expenses during the most recent fiscal half-year.

(ii) If there have been any increases or decreases in Fund expenses that occurred during the Fund's most recent fiscal half-year (or that have occurred or are expected to occur during the current fiscal year) that would have materially affected the information in the Example had those changes been in place throughout the most recent fiscal half-year, restate in a footnote to the Example the expense information using the current fees as if they had been in effect throughout the entire most recent fiscal half-year. A change in Fund expenses does not include a decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(d) Reflect any shareholder account fees collected by more than one Fund by allocating the total amount of the fees collected during the Fund's most recent fiscal half-year (the Fund's second fiscal half-year in the case of an annual report) for all such Funds to each Fund in proportion to the relative average net assets of the Fund. A Fund that charges account fees based on a minimum account requirement exceeding \$1,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(2) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the portfolio holdings of the Fund by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (*e.g.*, net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3-1 under the Exchange Act (17 CFR 240.15c3-1(c)(2)(vi)(E), (F), and (H)). The fund should use ratings of only one NRSRO.

(3) *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (ii) the Fund's Forms N-Q are available on the Commission's Web site at <http://www.sec.gov>; (iii) the Fund's Forms N-Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1-800-SEC-0330; and (iv) if the Fund makes the information on Form N-Q available to shareholders on its Web site or upon request, a description of how the information may be obtained from the Fund.

(4) *Statement Regarding Availability of Proxy Voting Policies and Procedures.* A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at <http://www.sec.gov>.

*Instruction.* When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 12(f) of this Form, within three business days of receipt of the request, by first-class mail or other means

designed to ensure equally prompt delivery.

(5) *Statement Regarding Availability of Proxy Voting Record.* A statement that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at <http://www.sec.gov>.

#### *Instructions*

1. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

2. If a Fund discloses that the Fund's proxy voting record is available on or through its Web site, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's Web site for as long as the Fund remains subject to the requirements of Rule 30b1-4 (17 CFR 270.30b1-4) and discloses that the Fund's proxy voting record is available on or through its Web site.

\* \* \* \* \*

- 15. Form N-2 (referenced in §§ 239.14 and 274.11a-1) is amended by:
  - a. Revising the fourth paragraph and subparagraph 2 of General Instruction F;
  - b. Revising Instructions 4.a. and 5.a. to Item 23;
  - c. Removing Instructions 4.g., 4.h., 5.e., and 5.f. to Item 23;
  - d. Adding "and" at the end of Instruction 4.e. to Item 23;
  - e. Removing the semi-colon from the end of Instruction 4.f. to Item 23 and in its place adding a period;
  - f. Adding "and" at the end of Instruction 5.c. to Item 23;
  - g. Removing the semi-colon from the end of Instruction 5.d. to Item 23 and in its place adding a period;

- h. Redesignating Instructions 6 and 7 to Item 23 as Instructions 8 and 9; and
- i. Adding new Instructions 6 and 7 to Item 23.

The additions and revisions read as follows:

**Note:** The text of Form N-2 does not and this amendment will not appear in the *Code of Federal Regulations*.

**Form N-2**

\* \* \* \* \*

**General Instructions**

\* \* \* \* \*

**F. Incorporation by Reference**

\* \* \* \* \*

A Registrant may incorporate by reference into the prospectus or the SAI in response to Item 4.1 or 23 of this form the information contained in Form N-CSR (17 CFR 249.331 and 274.128) or any report to shareholders meeting the requirements of section 30(e) of the 1940 Act (15 U.S.C. 80a-29(e)) and Rule 30e-1 (17 CFR 270.30e-1) thereunder (and a Registrant that has elected to be regulated as a business development company may so incorporate into Items 4.2, 8.6.c., or 23 of this form the information contained in its annual report under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act")), provided:

\* \* \* \* \*

2. the Registrant states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c., or 23 of this form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N-CSR. (The Registrant also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 24.1) those portions of the report to shareholders or report on Form N-CSR that are not incorporated by reference and are not a part of the registration statement.); and

\* \* \* \* \*

**Item 23. Financial Statements**

\* \* \* \* \*

**Instructions**

\* \* \* \* \*

4. \* \* \*

a. the audited financial statements required by Regulation S-X for the periods specified by Regulation S-X, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration

statement by Instruction 2 above and as permitted by Instruction 7 below;

\* \* \* \* \*

5. \* \* \*

a. the financial statements required by Regulation S-X for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized); or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e-1 and the most recent preceding fiscal year, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

\* \* \* \* \*

6. Every annual and semi-annual report to shareholders required by Section 30(e) of the 1940 Act and Rule 30e-1 thereunder shall contain the following information:

a. one or more tables, charts, or graphs depicting the portfolio holdings of the Registrant by reasonably identifiable categories (e.g., type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (e.g., net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Registrant, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3-1 under the Exchange Act [17 CFR 240.15c3-1(c)(2)(vi)(E), (F) and (H)]. The Registrant should use ratings of only one NRSRO;

b. a statement that: (i) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (ii) the Registrant's Forms N-Q are available on the Commission's Web site at <http://www.sec.gov>; (iii) the Registrant's Forms N-Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1-800-SEC-0330; and (iv) if the Registrant makes the information on Form N-Q available to shareholders on its Web site or upon request, a description of how

the information may be obtained from the Registrant.

c. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at <http://www.sec.gov>; and

d. a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (2) on the Commission's Web site at <http://www.sec.gov>.

7. *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12-12C) may be included in the financial statements required under Instructions 4.a. and 5.a. of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12-12) if: (a) The Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Registrant's Web site, if applicable; and (iii) on the Commission's Web site at <http://www.sec.gov>; and (b) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (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.

\* \* \* \* \*

- 16. Form N-3 (referenced in §§ 239.17 and 274.11b) is amended by:
  - a. Revising the fourth paragraph and subparagraph 2 of General Instruction G;
  - b. Revising Instructions 4(i) and 5(i) to Item 27(a);
  - c. Removing Instructions 4(vii), 4(viii), 5(v), and 5(vi) to Item 27(a);
  - d. Adding "and" at the end of Instruction 4(v) to Item 27(a);
  - e. Removing the semi-colon from the end of Instruction 4(vi) to Item 27(a) and in its place adding a period;

- f. Adding “and” at the end of Instruction 5(iii) to Item 27(a);
- g. Removing the semi-colon from the end of Instruction 5(iv) to Item 27(a) and in its place adding a period;
- h. Redesignating Instructions 6 and 7 to Item 27(a) as Instructions 8 and 9 to Item 27(a);
- i. Adding new Instructions 6 and 7 to Item 27(a); and
- j. Revising newly redesignated Instruction 9 to Item 27(a).

The additions and revisions read as follows.

**Note:** The text of Form N-3 does not and this amendment will not appear in the *Code of Federal Regulations*.

**Form N-3**

\* \* \* \* \*

**General Instructions**

\* \* \* \* \*

**G. Incorporation by Reference**

Subject to these rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 4(a) or 27 of Form N-3 the information in Form N-CSR (17 CFR 249.331 and 274.128) or any report to contractowners meeting the requirements of section 30(e) of the 1940 Act (15 U.S.C. 80a-29(e)) and Rule 30e-1 (17 CFR 270.30e-1) provided:

\* \* \* \* \*

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information would normally appear, that the information is incorporated by reference from a report to securityholders or a report on Form N-CSR. The Registrant may also describe, in either the prospectus, the Statement of Additional Information, or Part C of the Registration Statement (in response to Item 28(a)), any parts of the report to securityholders or the report on Form N-CSR that are not incorporated by reference and are not a part of the Registration Statement; and

\* \* \* \* \*

**Item 27. Financial Statements**

(a) \* \* \*

*Instructions*

\* \* \* \* \*

4. \* \* \*

(i) the audited financial statements required by Regulation S-X for the periods specified by Regulation S-X, as modified by Instruction 2 above and as permitted by Instruction 7 below;

\* \* \* \* \*

5. \* \* \*

(i) the financial statements required by Regulation S-X for the period commencing either with (A) the beginning of the separate account’s fiscal year (or date of organization, if newly organized); or (B) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e-1 and the most recent preceding fiscal year, as modified by Instruction 2 above and as permitted by Instruction 7 below;

\* \* \* \* \*

6. Every report required by section 30(e) of the 1940 Act and Rule 30e-1 under it (17 CFR 270.30e-1) shall contain the following information:

(i) One or more tables, charts, or graphs depicting the portfolio holdings of the Registrant by reasonably identifiable categories (e.g., type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. If the Registrant has sub-accounts, provide the information separately for each sub-account. The categories and the basis of presentation (e.g., net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Registrant, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization (“NRSRO”), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3-1 of Rule 15c3-1 under the Exchange Act (17 CFR 240.15c3-1(c)(2)(vi)(E), (F), and (H)). The Registrant should use ratings of only one NRSRO;

(ii) a statement that: (A) the Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (B) the Registrant’s Forms N-Q are available on the Commission’s Web site at <http://www.sec.gov>; (C) the Registrant’s Forms N-Q may be reviewed and copied at the Commission’s Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1-800-SEC-0330; and (D) if the Registrant makes the information on Form N-Q available to contractowners on its Web site or upon request, a description of how the information may be obtained from the Registrant;

(iii) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote

proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant’s Web site, if applicable; and (C) on the Commission’s Web site at <http://www.sec.gov>; and

(iv) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant’s Web site at a specified Internet address; or both; and (B) on the Commission’s Web site at <http://www.sec.gov>.

7. (i) *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12-12C) may be included in the financial statements required under Instructions 4.(i) and 5.(i) of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12-12) if: (A) the Registrant states in the report that the Registrant’s complete schedule of investments in securities of unaffiliated issuers is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant’s Web site, if applicable; and (3) on the Commission’s Web site at <http://www.sec.gov>; and (B) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant’s schedule of investments in securities of unaffiliated issuers, the Registrant (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.

(ii) In the case of a Registrant or sub-account of a Registrant that holds itself out as a money market account or sub-account and meets the maturity, quality, and diversification requirements of rule 2a-7 (17 CFR 270.2a-7) under the 1940 Act, *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12-12C) may be omitted from the financial statements required under Instructions 4.(i) and 5.(i) of this Item, provided that: (A) the Registrant states in the report that the Registrant’s complete schedule of investments in securities of unaffiliated issuers is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant’s Web site, if applicable; and (3) on the Commission’s Web site at

*http://www.sec.gov*; and (B) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (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.

\* \* \* \* \*

9. See General Instruction G regarding incorporation by reference.

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

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

- 17. Form N-CSR (referenced in §§ 249.331 and 274.128) is amended by:
  - a. Adding new Item 6;
  - b. Revising paragraph (b) of Item 10;
  - c. Adding an Instruction to paragraph (b) of Item 10;
  - d. Revising paragraph 4(d) of the Certification in Item 11(a)(2); and
  - e. Adding an Instruction to paragraph (a)(2) of Item 11.

The additions and revisions read as follows:

**Note:** The text of Form N-CSR does not and this amendment will not appear in the *Code of Federal Regulations*.

**Form N-CSR**

\* \* \* \* \*

**Item 6. Schedule of Investments**

File *Schedule I—Investments in securities of unaffiliated issuers* as of the close of the reporting period as set forth in § 210.12-12 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.

*Instruction*

*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.

\* \* \* \* \*

**Item 10. Controls and Procedures**

\* \* \* \* \*

(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 second fiscal quarter of 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 earlier of June 30, 2005, or the date that the registrant has filed its first report on Form N-Q (17 CFR 249.332; 17 CFR 274.130), the registrant must disclose, pursuant to paragraph (b) of this Item, any change in the registrant's internal control over financial reporting that occurred during the registrant's last fiscal half-year (the registrant's second fiscal half-year in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

**Item 11. Exhibits**

- (a) \* \* \*
- (2) \* \* \*

**Certifications**

I, [Identify the certifying individual], certify that:

\* \* \* \* \*

- 4. \* \* \*

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the second fiscal quarter of 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

\* \* \* \* \*

*Instruction to paragraph (a)(2).*

Until the earlier of June 30, 2005, or the date that the registrant has filed its first report on Form N-Q (17 CFR 249.332; 17 CFR 274.130), in paragraph 4(d) of the certification required by Item 11(a)(2), 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 half-year (the registrant's second fiscal half-year in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

\* \* \* \* \*

- 18. Section 274.130 and Form N-Q (referenced in § 249.332 and § 274.130) are added to read as follows:

**§ 274.130 Form N-Q, quarterly schedule of portfolio holdings of registered management investment company.**

This form shall be used by 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 reports pursuant to § 270.30b1-5 of this chapter not later than 60 days after the close of the first and third quarters of each fiscal year.

**Note:** The text of Form N-Q will not appear in the *Code of Federal Regulations*.

**OMB Approval**

OMB Number: 3235-0578  
 Expires: February 28, 2006  
 Estimated average burden hours per response: 20.00

**Securities and Exchange Commission, Washington, DC 20549**

Form N-Q: Quarterly Schedule of Portfolio Holdings 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-Q is to be used by management investment companies, other than small business investment companies registered on Form N-5 (§§ 239.24 and 274.5 of this chapter), to file reports with the Commission, not later than 60 days after the close of the first and third fiscal quarters, pursuant to rule 30b1-5 under the Investment Company Act of 1940 (17 CFR 270.30b1-5). The Commission may use the information provided on Form N-Q in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N-Q, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N-Q 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-Q

Form N-Q is a combined reporting form that is to be used for reports of registered management investment companies, other than small business investment companies registered on Form N-5 (§§ 239.24 and 274.5 of this chapter), under section 30(b) 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 30b1-5 under the Act (17 CFR 270.30b1-5). Registered management investment companies, other than small business investment companies registered on Form N-5, shall file their complete portfolio holdings on Form N-Q as of the close of the first and third quarters of each fiscal year. A report on this form shall be filed not later than 60 days after the close of the first and third quarters of each fiscal year.

#### 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."

#### D. Incorporation by Reference

A registrant may incorporate by reference information required by the Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S-K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S-T (17 CFR 232.303) (specific requirements for electronically filed documents); Rules 12b-23 and 12b-32 under the Exchange Act (17 CFR 240.12b-23 and 12b-32) (additional rules on incorporation by reference for reports filed pursuant to sections 13 and 15(d) of the Exchange Act); and Rules 0-4, 8b-23, and 8b-32 under the Act (17 CFR 270.0-4, 270.8b-23, and 270.8b-32) (additional rules on incorporation by reference for investment companies).

#### E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N-Q 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. Schedule of Investments

File the schedules as of the close of the reporting period as set forth in §§ 210.12-12—12-14 of Regulation S-X [17 CFR 210.12-12—12-14]. The schedules need not be audited.

#### Item 2. 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 Rule 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 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 3. Exhibits

File as exhibits as part of this Form a separate certification for each principal executive officer 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-Q 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 schedules of investments included in

this report fairly present in all material respects the investments of the registrant as of the end of the fiscal quarter for which the report is filed;

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 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; 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]

#### 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.

By the Commission.

Dated: February 27, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4829 Filed 3-8-04; 8:45 am]

BILLING CODE 8010-01-P