

imposes direct costs on applicants.⁵⁴ The new rule and amendments will benefit funds, their shareholders, and their affiliated persons by eliminating these costs.

The application process also produces indirect costs, because funds and their affiliated persons forego beneficial transactions rather than undertake to obtain an exemptive order. Funds and their affiliated persons may forego transactions either because the anticipated benefit of the transaction does not exceed the cost of obtaining an exemptive order, or because the transaction is time-sensitive, and it is not feasible to obtain an exemptive order quickly enough to permit the transaction to occur.⁵⁵ Encouraging beneficial transactions by eliminating these potentially significant costs and delays will likely be a benefit resulting from these changes. As discussed in the Proposing Release, eliminating direct and indirect costs of filing applications may also reduce factors that discriminate against smaller funds and smaller transactions.⁵⁶

2. Portfolio Affiliates

The amendments to rules 17a-6 and 17d-1(d)(5) regarding transactions and joint arrangements with portfolio affiliates may expand the range of possible partners with which funds may enter into transactions and joint arrangements. Funds, their second-tier portfolio affiliates, and their shareholders each may benefit from the transactions and arrangements made possible by the amendments.⁵⁷ Similarly, amending rules 17a-6 and 17d-1(d)(5), to provide that the term "financial interest" does not include interests that the fund's board of directors finds to be not material, may expand the range of possible partners for transactions and joint arrangements with funds by making the rules' exemptions more widely available.⁵⁸ A

similar benefit may result from the removal of rule 17d-1(d)(5)'s condition limiting a fund to committing no more than five percent of its assets in any particular joint enterprise.

3. Subadviser Affiliates

Principal Transactions

Rule 17a-10 may benefit subadvisers and funds by allowing subadviser affiliates to enter into principal transactions with (i) affiliated funds of the subadvised fund and (ii) those portions of the subadvised fund for which the subadviser does not provide investment advice. By broadening the markets available to both buyers and sellers, rule 17a-10 may permit sellers to obtain more favorable pricing, and may make a wider range of investment options available to buyers.

Brokerage Transactions

Rule 17e-1 will, under certain circumstances, permit subadvisers and their affiliated persons to receive remuneration when acting as broker for an affiliated fund, without complying with all of the rule's recordkeeping and transaction review requirements. Our staff estimates that boards of directors of funds that employ affiliated brokers currently spend approximately 12.5 hours per year per fund conducting the required review. Our staff further estimates that a fund that uses in-house counsel to assist fund directors in reviewing these transactions incurs a cost of \$775 per year for counsel, based on an hourly cost for in-house counsel of \$62 per hour.⁵⁹ Funds incur the additional incremental cost of maintaining records of the transaction. The amendments to rule 17e-1 may benefit funds and their shareholders by allowing funds to avoid these burdens.

Purchases During Primary Offerings Underwritten by Affiliated Subadvisers

The amendments to rule 10f-3 may benefit funds by broadening their investment options. The Act prohibits a series of a series company from purchasing securities during an underwriting or selling syndicate of which an adviser to any of the series (or affiliated person of such adviser) is a member. By providing that, for purposes of section 10(f) and rule 10f-3, a series of a series company is a separate investment company, the proposed amendments to rule 10f-3 could broaden (i) the investment opportunities available to such funds and (ii) the range of possible purchasers when a

subadviser participates in an underwriting syndicate. Funds, fund shareholders, and subadvisers all may benefit from this change.

The Act also does not distinguish between a fund with multiple subadvisers that manage discrete portions of its portfolio, and a fund whose subadvisers manage the portfolio in its entirety. The amendments to rule 10f-3 that deem separately managed portions of a fund's portfolio to be separate investment companies for purposes of section 10(f) and rule 10f-3 may increase the investment opportunities of that type of fund. Quantifying the potential magnitude of these benefits may not be possible.

The amendment to the percentage limit of rule 10f-3 also may broaden the investment options available to funds. The Act does not distinguish between purchases by funds or portions of funds that are recommended by a subadviser that is (or is an affiliated person of) a participant in the underwriting or selling syndicate, and purchases by funds or portions of funds for which other subadvisers provide investment advice. By providing that the percentage limit of rule 10f-3 applies only to purchases by funds, portions of funds, and accounts for which participants provide investment advice, the amendments to rule 10f-3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio.

The amendments to the percentage limit may reduce the cost of complying with rule 10f-3 because purchases made by funds that are *not* advised by participants in the underwriting or selling syndicate will no longer need to be aggregated with purchases made by funds that *are* advised by advisers that are participants in the underwriting. Because multiple advisers will no longer be required to coordinate their actions, the amendment may make it easier to ensure compliance with the rule, and less expensive to collect and compile the relevant information.

Ownership of Securities Issued by Subadvisers

Similarly, the amendments to rule 12d3-1 may also benefit funds by broadening their investment options. Amending rule 12d3-1 to permit a fund to acquire securities issued by one of its subadvisers, or an affiliated person of one of its subadvisers, when the subadviser is not in a position to influence the decision by the fund to purchase the securities, may increase the investment opportunities of these funds.

⁵⁴ See Proposing Release, *supra* note 6, at section III.A.1. (estimating the cost of applying for an order exempting affiliated persons from the prohibitions of sections 17(a), 17(d), 17(e), 10(f), and 12(d)(3) to be between \$20,000 and \$80,000, depending on the complexity of the application).

⁵⁵ See Proposing Release, *supra* note 6, at nn. 79-80 (estimating the length of time between filing of applications and granting of exemptive orders to be between 4 to 17 months, depending on the complexity of the application).

⁵⁶ See Proposing Release, *supra* note 6, at section III.A.1.

⁵⁷ It has not been possible to quantify this benefit, which varies on a case-by-case basis depending on the characteristics of individual transactions and joint arrangements and on the extent to which funds involved in such transactions have second-tier portfolio affiliates.

⁵⁸ Expansion of the exemption in this manner may also impose costs by eliminating what has been

a "bright line" prohibition and expanding the opportunities for harmful transactions.

⁵⁹ See notes 85-87 *infra*, and accompanying text.