

aggregate annual reporting burden associated with the proposed rule's requirements is 500 hours. The Commission estimated that of the 500 R&D companies that may take advantage of the proposed rule, the reporting burden imposed by rule 3a-8 is one hour per company, for a total aggregate reporting burden of 500 hours. No commenters addressed these burden estimates for the collection of information requirements and we continue to believe they are appropriate.

The rule we are adopting today contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company wishing to rely on the safe harbor under rule 3a-8, must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements. We believe that many of the companies that will seek to rely on the rule already have written investment guidelines. For those that do not, we expect the board of directors to adopt the guidelines simultaneously with the resolution. Furthermore, like the required board resolution, the investment guidelines will generally need to be adopted only once (unless relevant circumstances change). The Commission therefore believes this additional collection of information will not create additional time burdens, but can be accounted for in the current burden hour estimate of 500 hours.

## VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 regarding the adoption of new rule 3a-8 under the Act. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The Commission received no comments on the IRFA. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the new rule. The FRFA explains that the rule provides a nonexclusive safe harbor to allow R&D companies more investment flexibility and the ability to hold and invest more capital without becoming subject to the Act. The FRFA also explains that in order to be eligible for the safe harbor provided by the rule, an R&D company

must have research and development expenses that are a substantial percentage of its total expenses and that equal at least half of its net income derived from investments for its last four fiscal quarters combined, have relatively small investment-related expenses, make its investments to conserve capital and liquidity until it uses the funds in its primary business, subject to certain exceptions, and be primarily engaged, directly or through a company or companies that it controls primarily, in a noninvestment business.

The FRFA states that rule 3a-8 is designed to clarify, and provide greater certainty concerning, the status of an R&D company under the Act. Rule 3a-8 has no reporting requirements, but the board of directors of a company seeking to rely on the rule would need to adopt a board resolution, record that resolution contemporaneously in its minute books or comparable documents and adopt written investment guidelines related to its capital preservation investments. The FRFA states that the only significant alternative to the rule would be for an R&D company to engage in its own analysis and application of existing statutory provisions, Commission orders and interpretations to determine the R&D company's status under the Act. The Commission therefore concluded that the rule, although it could affect small entities, would be less burdensome than this alternative and, thus, should minimize any impact upon, or cost to, small businesses. Any company with net assets of \$50 million or less would be a small entity for purposes of the rule.

The FRFA is available for public inspection in File No. S7-47-02, and a copy may be obtained by contacting Karen L. Goldstein, Office of Investment Company Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington DC 20549-0506.

## VII. Statutory Authority

We are adopting rule 3a-8 pursuant to our authority set forth in section 6(c) and 38(a) of the Act [15 U.S.C. 80a-6(c) and 80a-38(a)].

### List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

### Text of Rule

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

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

■ 1. The authority citation of 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;

\* \* \* \* \*

■ 2. Section 270.3a-8 is added to read as follows:

### § 270.3a-8 Certain research and development companies.

(a) Notwithstanding sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(A) and 80a-3(a)(1)(C)), an issuer will be deemed not to be an investment company if:

(1) Its research and development expenses, for the last four fiscal quarters combined, are a substantial percentage of its total expense for the same period;

(2) Its net income derived from investments in securities, for the last four fiscal quarters combined, does not exceed twice the amount of its research and development expenses for the same period;

(3) Its expenses for investment advisory and management activities, investment research and custody, for the last four fiscal quarters, combined, do not exceed five percent of its total expenses for the same period;

(4) Its investments in securities are capital preservation investments, except that:

(i) No more than 10 percent of the issuer's total assets may consist of other investments, or

(ii) No more than 25 percent of the issuer's total assets may consist of other investments, provided that at least 75 percent of such other investments are investments made pursuant to a collaborative research and development arrangement;

(5) It does not hold itself out as being engaged in the business of investing, reinvesting or trading in securities, and it is not a special situation investment company;

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

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

(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of directors, which resolution or action has been recorded