

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249, 270 and 274

[Release Nos. 34-47262; IC-25914; File Nos. S7-33-02; S7-40-02]

RIN 3235-AI63; RIN 3235-AI66

Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting rule and form amendments that require registered management investment companies to file certified shareholder reports on Form N-CSR with the Commission, and designating these certified reports as reports that are required under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 and Section 30 of the Investment Company Act of 1940. The amendments require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner specified by Section 302 of the Sarbanes-Oxley Act of 2002. We are providing that, for registered management investment companies other than small business investment companies, Form N-SAR will be filed under the Investment Company Act of 1940 only and not the Securities Exchange Act of 1934. We are also removing the requirement that Form N-SAR be certified by a registered investment company's principal executive and financial officers. We are also adopting a new rule to require registered management investment companies to maintain disclosure controls and procedures designed to ensure that the information required in reports on Form N-CSR is recorded, processed, summarized, and reported on a timely basis.

In addition, we are adopting forms and amendments that require registered management investment companies to include new disclosures on Form N-CSR or Form N-SAR in order to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. First, the rules require a registered management investment company to disclose whether it has adopted a code of ethics that applies to

the company's principal executive officer and senior financial officers. An investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. An investment company also will be required to disclose amendments to, and waivers from, the code of ethics relating to any of those officers. Second, the rules require a registered management investment company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. An investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert.

DATES: *Effective Date:* March 1, 2003, except that the effective date of the removal of the certification requirement from Form N-SAR for registered management investment companies other than small business investment companies is May 1, 2003.

Compliance Date: See Section III of this release for information on Transition Provisions and Compliance Dates.

FOR FURTHER INFORMATION CONTACT: John M. Faust, Attorney, Katy Mobedshahi, Senior Counsel, Tara L. Royal, Attorney, 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 ("Commission") is adopting new rules 30a-3 [17 CFR 270.30a-3] and 30d-1 [17 CFR 270.30d-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("Investment Company Act"); amendments to rules 8b-15 [17 CFR 270.8b-15], 30a-1 [17 CFR 270.30a-1], 30a-2 [17 CFR 270.30a-2], 30b1-1 [17 CFR 270.30b1-1], 30b1-3 [17 CFR 270.30b1-3], and 30b2-1 [17 CFR 270.30b2-1] under the Investment Company Act; and amendments to rules 12b-25 [17 CFR 240.12b-25], 13a-15 [17 CFR 240.13a-15], and 15d-15 [17 CFR 240.15d-15], and Form 12b-25 [17 CFR 249.322] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("Exchange Act"). The Commission also is adopting amendments to Form N-SAR [17 CFR 249.330; 17 CFR 274.101] under the Exchange Act and the Investment Company Act. Finally, the Commission is adopting new Form N-CSR [17 CFR 249.331; 17 CFR 274.128] under the

Exchange Act and the Investment Company Act.

I. Introduction and Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") was enacted.¹ Section 302 of the Sarbanes-Oxley Act, entitled "Corporate Responsibility for Financial Reports," required the Commission to adopt final rules to be effective by August 29, 2002, 30 days after the date of enactment, under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of an issuer each must certify the information contained in the issuer's quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act.² Form N-SAR currently is the form designated for registered investment companies to comply with their reporting requirements under Sections 13(a) and 15(d) of the Exchange Act, as well as periodic reporting requirements under Sections 30(a) and 30(b)(1) of the Investment Company Act.³

On August 28, 2002, the Commission implemented the certification requirement of Section 302 of the Sarbanes-Oxley Act with respect to registered investment companies by adopting new rule 30a-2 under the Investment Company Act and the Sarbanes-Oxley Act.⁴ Rule 30a-2 requires a registered investment company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act, *i.e.*, Form N-SAR, to

¹ Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. 15 U.S.C. 78m(a). Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 ("Securities Act") to file such supplementary and periodic information, documents, and reports as may be required pursuant to Section 13 of the Exchange Act in respect of a security registered pursuant to Section 12. 15 U.S.C. 78o(d). The duty of an issuer to file under Section 15(d) is automatically suspended for any fiscal year, other than a fiscal year in which its registration statement becomes effective, if an issuer's securities are held of record by less than 300 persons. 15 U.S.C. 78o(d).

² General Instruction A to current Form N-SAR; current Rule 30a-1 under the Investment Company Act [17 CFR 270.30a-1]. See Investment Company Act Release No. 14299 (Jan. 4, 1985) [50 FR 1442 (Jan. 11, 1985)] (release adopting Form N-SAR). Face-amount certificate companies do not file reports on Form N-SAR, but rather file periodic reports on Forms 10-K and 10-Q. See Investment Company Act Release No. 14080 (Aug. 6, 1984) [49 FR 32370, 32372 (Aug. 14, 1984)] (face-amount certificate companies are required to file reports on other forms prescribed under the Exchange Act rather than Form N-SAR).

³ Investment Company Act Release No. 25722 (Aug. 28, 2002) [67 FR 57276 (Sept. 9, 2002)].