

Form N-CSR requires certified shareholder reports to contain the exact form of the certification prescribed by the form. The certification is required of each principal executive officer and financial officer, and the form of this certification parallels the form of the certification we have prescribed for other Exchange Act reporting forms, such as Forms 10-K and 10-Q. The certification must be filed as an exhibit to a report on Form N-CSR.¹⁴ In addition to the signature required on the certification, the report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers and its principal financial officer or officers.¹⁵ The certification requirement will also apply to amendments of certified shareholder reports on Form N-CSR.¹⁶ In addition, we are adopting new rule 30d-1 under the Investment Company Act, designating reports on Form N-CSR as periodic reports filed with the Commission under Section 13(a) or 15(d) of the Exchange Act.¹⁷

The requirement to file certified shareholder reports will apply to registered management investment companies, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.¹⁸ By its terms, Section 302 of the Sarbanes-Oxley Act directs the Commission to adopt rules that will apply to companies filing periodic reports under Section 13(a) or 15(d) of the Exchange Act.¹⁹ We believe, however, that it is important for the certification requirement, like our other

would be required with respect to a report to shareholders that is not required under rule 30e-1 under the Investment Company Act [17 CFR 270.30e-1], e.g., voluntary quarterly reports. These reports to shareholders would continue to be filed with the Commission as they are presently. Rule 30b2-1(b) under the Investment Company Act [17 CFR 270.30b2-1(b)].

¹⁴ See Item 10(b) of Form N-CSR. The EDGAR document type must be EX-99.CERT for an exhibit filed in response to Item 10(b). All certifications in a filing on Form N-CSR should be included in a single EDGAR exhibit document.

¹⁵ See General Instruction E to Form N-CSR.

¹⁶ Rule 8b-15 under the Investment Company Act [17 CFR 270.8b-15].

¹⁷ We are also adopting a technical conforming amendment that would delete the language in current rule 30a-1 [17 CFR 270.30a-1] stating that a registered management investment company required to file an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act and Section 30(a) of the Investment Company Act shall be deemed to have satisfied its requirement to file an annual report by the filing of semi-annual reports on Form N-SAR. The amendments rename rule 30a-1 in order to specify that it relates to annual reports by registered unit investment trusts, and rename rule 30b1-1 [17 CFR 270.30b1-1] in order to specify that it relates to semi-annual reports of registered management investment companies.

¹⁸ Rule 30b2-1(a) [17 CFR 270.30b2-1(a)].

¹⁹ See *supra* note (description of Exchange Act reporting requirements).

reporting rules, to apply consistently to all registered investment companies, regardless of whether they fall within the periodic reporting requirements of the Exchange Act.²⁰

In light of the adoption of Form N-CSR as an Exchange Act reporting form, we are amending our rules and forms to provide that, for registered management investment companies, Form N-SAR will be filed under the Investment Company Act only and not the Exchange Act.²¹ We were persuaded by commenters who argued that certification of both Form N-SAR and shareholder reports would impose an unjustified burden on management investment companies. These commenters noted that Form N-SAR does not contain financial statements; that although Form N-SAR is publicly available, it was developed primarily to elicit information for use by the Commission in its compliance and inspections program; and that the information in Form N-SAR is not generally relied upon by investors.²² In light of the fact that registered management investment companies will be filing Form N-CSR under the Exchange Act, we do not believe that it is necessary for these companies to continue to file Form N-SAR under the Exchange Act or to certify Form N-SAR under the Sarbanes-Oxley Act.²³ We believe that this is appropriate because, for registered management investment companies, the required reports to shareholders contained in Form N-CSR, rather than Form N-SAR, are the primary vehicle for providing financial statements and other information to investors.²⁴ The certification requirement was intended to improve the quality of the disclosure that a

²⁰ Cf. General Instruction A to Form N-SAR (Form N-SAR is to be used for semi-annual and annual reports by all registered investment companies that have filed a registration statement that has become effective pursuant to the Securities Act, with the exception of face amount certificate companies.).

²¹ See Rule 30b1-1 under the Investment Company Act [17 CFR 270.30b1-1]; 17 CFR 249.330; 17 CFR 274.101; General Instruction A to Form N-SAR.

²² See Investment Company Act Release No. 14299 (Jan. 4, 1985) [50 FR 1442 (Jan. 11, 1985)] (release adopting Form N-SAR); Investment Company Act Release No. 14080 (Aug. 6, 1984) [49 FR 32370 (Aug. 14, 1984)] (release proposing Form N-SAR).

²³ Instructions to item 77Q3 of Form N-SAR (amended to remove certification); rule 30b1-3 under the Investment Company Act [17 CFR 270.30b1-3] (removing the certification requirement from transition reports on Form N-SAR).

²⁴ Sections 30(e) and (f) of the Investment Company Act (15 U.S.C. 80a-29(e) and (f)) (requiring a registered investment company to transmit to its stockholders, at least semi-annually, reports containing financial statements and other information prescribed by the Commission).

company provides about its financial condition in its periodic reports to investors.²⁵

2. Scope of Certification Requirement

We are adopting, as proposed, the requirement that all of the information filed on Form N-CSR, including all of the information in a shareholder report filed as part of Form N-CSR, be certified. This would include information that is included voluntarily, as well as that required by Form N-CSR. In addition to financial statements, annual reports to shareholders of open-end management investment companies, or mutual funds, typically contain Management's Discussion of Fund Performance ("MDFP"), although, at present, they are not required to do so.²⁶ MDFP includes narrative disclosure of the factors that materially affected a fund's performance during the reporting period, a line graph comparing the fund's performance to that of an appropriate broad-based market index, and a table of average annual total returns for the fund. In addition, the annual report to shareholders of a management investment company must contain other information, including certain basic information about the investment company's directors.²⁷

²⁵ See, e.g., S. Rep. No. 107-205, at 2 (2002) ("The bill also requires steps to enhance the direct responsibility of senior corporate management for financial reporting and for the quality of financial disclosures made by public companies."); 148 Cong. Rec. S7355 (July 25, 2002) (statement of Sen. Enzi) ("With respect to section 302, the conference recognizes that results presented in financial statements often necessarily require accompanying disclosures in order to apprise investors of the company's true financial condition and results of operations. The supplemental information contained in these additional disclosures increases transparency for investors. Accordingly, the relevant officers must certify that the financial statements together with the disclosures contained in the periodic report, taken as a whole, are appropriate and fairly represent, in all material respects, the operations and financial condition of the issuer."); 148 Cong. Rec. S6760 (July 15, 2002) (statement of Sen. Akaka) ("The legislation also requires additional corporate governance procedures to make Chief Executive Officers and Chief Financial Officers more directly responsible for the quality of financial reporting made to investors.").

²⁶ Item 5 of Form N-1A. Management's Discussion of Fund Performance must be included in a fund's prospectus unless the fund is a money market fund or the information in the MDFP is included in the fund's annual report to shareholders under rule 30e-1 [17 CFR 270.30e-1]. A fund that includes MDFP in its annual report must disclose in its prospectus that its annual report contains additional performance information that will be made available upon request and without charge. Item 1(b)(1) of Form N-1A. We recently proposed to require the MDFP to be included in a mutual fund's annual report to shareholders. Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160, 170 (Jan. 2, 2003)].

²⁷ Items 13(a)(1) and 22(b)(5) of Form N-1A; Item 18.1 and Instruction 4.e. to Item 23 of Form N-2;