

have therefore concluded that requiring UITs and SBICs to certify their reports on Form N-SAR does not produce any meaningful benefit to investors.

While certification of Form N-SAR will no longer be required, UITs and SBICs will continue to file Form N-SAR under both the Exchange Act and the Investment Company Act.<sup>36</sup> UITs and SBICs generally are not required to transmit reports to shareholders containing their financial statements, and UITs and SBICs will not be required to file certified shareholder reports under the Exchange Act.<sup>37</sup> We do not believe that it would be appropriate to remove UITs and SBICs from Exchange Act reporting status by making Form N-SAR an Investment Company Act-only form.

#### 4. Disclosure Controls and Procedures

We are adopting, with modifications to address commenters' concerns, new rule 30a-3, which requires registered management investment companies to maintain, and regularly evaluate the effectiveness of, controls and procedures designed to ensure that the information required in filings on Form N-CSR is recorded, processed, summarized, and reported on a timely basis.<sup>38</sup> Investment companies filing reports under Section 13(a) or 15(d) of the Exchange Act are currently required to maintain disclosure controls and procedures with respect to Exchange Act reports.<sup>39</sup> Rule 30a-3 applies this requirement uniformly to all registered management investment companies, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act.<sup>40</sup> We believe that registered management investment companies filing Form N-CSR should maintain effective disclosure controls and procedures, regardless of whether they fall within the periodic reporting requirements of the Exchange Act. We

are also amending the definition of "disclosure controls and procedures" in rule 30a-2(c) to make clear that such controls and procedures apply to registered management investment companies regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act, and that they do not apply to SBICs and UITs filing Exchange Act reports on Form N-SAR that are not required to be certified.<sup>41</sup>

We are also adopting, as proposed, the requirement of rule 30a-3(b) that a registered management investment company, under the supervision and with the participation of the principal executive and financial officers, conduct an evaluation of its disclosure controls and procedures within the 90-day period prior to the filing date of each Form N-CSR requiring certification under Investment Company Act rule 30a-2.<sup>42</sup> We expect that this evaluation will be carried out in a manner that will form the basis for the certification required by Section 302 of the Sarbanes-Oxley Act regarding disclosure controls and procedures required by Investment Company Act rule 30a-2(b)(4).<sup>43</sup>

As proposed, rule 30a-3 would have extended the requirement to maintain and evaluate disclosure controls and procedures to filings under the Securities Act of 1933 ("Securities Act") and the Investment Company Act.<sup>44</sup> Commenters argued that this extension would impose a larger burden on investment companies than on operating companies, which are only required to maintain disclosure controls and procedures with respect to their Exchange Act reports. Commenters pointed out that under the rule, as proposed, investment companies would have to establish and maintain, and conduct evaluations of the effectiveness of, disclosure controls and procedures on at least a semi-annual basis, with respect to all of the updates of their registration statements, as well as with

respect to other filings required under the Securities Act and the Investment Company Act, including advertisements and sales literature.<sup>45</sup> According to commenters, these periodic evaluations would add substantially to the workload of fund officers, but would not result in a discernible benefit to fund shareholders or further the intent of the Sarbanes-Oxley Act.

Section 302 of the Sarbanes-Oxley Act does not require evaluations of disclosure controls and procedures with respect to non-Exchange Act filings, and we have determined that it would not be appropriate to extend this requirement to Securities Act and Investment Company Act filings at this time. We are concerned that the evaluation process could be unduly burdensome, relative to its benefits, when applied to these other filings. Therefore, we are limiting the requirement to maintain and evaluate disclosure controls and procedures to Form N-CSR, the Exchange Act document that will be subject to the Sarbanes-Oxley Act certification requirements.

We wish to emphasize that effective disclosure controls and procedures are essential for an investment company to meet its disclosure obligations under all of the securities laws, including the Securities Act and the Investment Company Act. Our limitation of the definition of disclosure controls and procedures to Form N-CSR in the rules we adopt today in no way diminishes the importance of disclosure controls and procedures designed to ensure that the information required in other filings made by an investment company, including prospectuses and prospectus amendments, advertisements and sales literature, and Form N-SAR, is recorded, processed, summarized, and reported on a timely basis. Our determination to limit the scope of disclosure controls and procedures in these rules rests on our concern that the burdens of the specific evaluation

<sup>36</sup> Rules 30a-1, 30b1-1, and 30d-1 under the Investment Company Act [17 CFR 270.30a-1; 17 CFR 270.30b1-1; 17 CFR 270.30d-1]; 17 CFR 249.330; 17 CFR 274.101; General Instruction A to Form N-SAR.

<sup>37</sup> Rules 30b2-1(a) and 30d-1 under the Investment Company Act [17 CFR 270.30b2-1(a); 17 CFR 270.30d-1] and General Instruction A to Form N-CSR [17 CFR 249.331; 17 CFR 274.128]. SBICs are not required under rule 30e-1(a) [17 CFR 270.30e-1(a)] to transmit reports to shareholders containing their financial statements, because Form N-5 [17 CFR 239.24; 17 CFR 274.5], the registration form for SBICs, does not prescribe requirements for reports to shareholders by SBICs.

<sup>38</sup> 17 CFR 270.30a-3. SBICs will not be required to maintain disclosure controls and procedures as required by rule 30a-3 because they do not file reports on Form N-CSR. See *supra* note 37.

<sup>39</sup> Rules 13a-15 and 15d-15 under the Exchange Act [17 CFR 240.13a-15; 17 CFR 15d-15].

<sup>40</sup> See *supra* note 2 (description of Exchange Act reporting requirements).

<sup>41</sup> Rule 30a-2(c) under the Investment Company Act [17 CFR 270.30a-2(c)]. We are also adopting conforming amendments to rules 13a-15 and 15d-15 under the Exchange Act [17 CFR 240.13a-15; 17 CFR 240.15d-15] to exclude SBICs and UITs from the requirements to maintain disclosure controls and procedures under those rules.

<sup>42</sup> 17 CFR 270.30a-3(b).

<sup>43</sup> We recognize that, in the case of a series fund or family of investment companies, the disclosure controls and procedures for each fund in the series or family may be the same. Therefore, for purposes of Rule 30a-2(b)(4)(ii) and (iii), a single evaluation of the effectiveness of the disclosure controls and procedures for the series or family could be used in multiple certifications for the funds in the series or family, as long as the evaluation has been performed within 90 days of the date of the report on Form N-CSR.

<sup>44</sup> Form N-CSR Proposing Release, *supra* note, 67 FR at 57306 (proposed rules 30a-2(c) and 30a-3 under the Investment Company Act).

<sup>45</sup> Section 24(b) of the Investment Company Act [15 U.S.C. 80a-24(b)] requires investment companies to file "any advertisement, pamphlet, circular, form letter, or other sales literature" with the Commission. Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3] permits investment companies to satisfy this requirement by filing sales literature with the National Association of Securities Dealers, Inc. ("NASD") or another national securities association registered under Section 15A of the Exchange Act [15 U.S.C. 78o]. Rule 497(a)(1) under the Securities Act [17 CFR 230.497(a)(1)] requires an investment company advertisement pursuant to rule 482 under the Securities Act [17 CFR 230.482] to be filed with the Commission, and rule 497(i) under the Securities Act [17 CFR 230.497(i)] permits a rule 482 advertisement to be considered filed with the Commission if it is filed with the NASD or another national securities association registered under Section 15A of the Exchange Act.