

process mandated by the rules may outweigh its benefits when extended to these other filings.

5. Extension of Time for Filing Form N-CSR

We are also adopting amendments to require an investment company to file a Form 12b-25 if it will not be able to file a report on Form N-CSR in a timely manner.⁴⁶ Filing of a Form 12b-25 would provide the investment company with an automatic extension of time to file Form N-CSR of up to 15 calendar days following the prescribed due date. Form 12b-25 currently may be used for reports on Form N-SAR, and we note that the form will continue to be available to all filers on Form N-SAR, including registered management investment companies filing exclusively under the Investment Company Act.

B. Section 406 of the Sarbanes-Oxley Act—Code of Ethics

We are adopting, with modifications to address commenters' concerns, our proposed amendments that implement Section 406 of the Sarbanes-Oxley Act with respect to registered management investment companies. These requirements are similar to those we recently adopted for operating companies, and we direct investment companies to that release for information concerning these requirements.⁴⁷ The amendments we are adopting will require a registered management investment company to:

- Disclose annually whether the investment company has adopted a code of ethics that applies to the investment company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the investment company or a third party;⁴⁸

- If the investment company has not adopted a code of ethics, explain why it has not done so;⁴⁹

- Describe briefly the nature of any amendment to, or waiver from a provision of, the investment company's code of ethics in its report on Form N-CSR or Form N-SAR, as applicable. In the alternative, the investment company may disclose this information on its Internet website within five business days following the date of the

amendment or waiver, if the investment company has disclosed in its most recently filed report on Form N-CSR or Form N-SAR its intention to provide disclosure in this manner and its Internet address, it makes the information available on its website for a 12-month period, and it retains the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred.⁵⁰

The rules, as adopted, reflect modifications that are similar to those we recently made to the proposed code of ethics disclosure requirements for operating companies, for the reasons described in the release adopting these disclosure requirements for operating companies. These modifications include:

- Elimination of the component of the definition of a code of ethics requiring the code to promote the avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;⁵¹

- Addition of an instruction to indicate that a company may have separate codes of ethics for different types of officers and that the provisions of the company's code of ethics that address the elements listed in the definition and apply to those officers may be part of a broader code that addresses additional issues and applies to additional persons;⁵²

- Allowing a company to choose among three alternative methods of making their ethics codes publicly available, including:

- (i) Filing a copy of the code as an exhibit to its annual report on Form N-CSR or Form N-SAR;

- (ii) Posting the text of the code on the company's Internet website and disclosing, in its most recent report on Form N-CSR or Form N-SAR, its Internet address and the fact that it has posted the code of ethics on its Internet website; or

- (iii) Providing an undertaking in the company's most recent report on Form N-CSR or Form N-SAR to provide a copy of the code to any person without charge upon request, and explaining the

manner in which such a request may be made;⁵³

- Extension of the deadline for disclosing any amendments to, or waivers from, the company's code of ethics on its Internet website from two business days to five business days after the amendment or waiver;⁵⁴

- Clarification that only amendments to, and waivers from, a company's code relating to specified elements of the code and specified officers must be disclosed;⁵⁵

- Addition of a definition of the terms "waiver" and "implicit waiver";⁵⁶ and

- Clarification that a company does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.⁵⁷

These disclosure requirements will apply to all registered management investment companies, regardless of whether they are required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Management investment companies other than SBICs will provide the required disclosure in Item 2 of Form N-CSR, and SBICs will provide the required disclosure as an exhibit to Form N-SAR.⁵⁸

Several commenters suggested that the code of ethics requirements should not apply to any registered investment companies. These commenters argued that the proposed amendments were unnecessary and potentially duplicative, noting that investment companies are already required to disclose whether they have a code of

⁵³ Item 2(f) of Form N-CSR; Instruction 102P3(a)(6) of Form N-SAR; Section II.B.3, "Filing of Ethics Code as an Exhibit," in Section 406/407 Adopting Release, *supra* note 8. Because Forms N-CSR and N-SAR are filed semi-annually, unlike Forms 10-K and 10-KSB for operating companies, our rules require disclosure of the intention to provide Internet disclosure of the code of ethics, or the undertaking to provide a copy of the code of ethics to any person upon written request, in the investment company's most recently filed semi-annual report on Form N-CSR or N-SAR.

⁵⁴ Instruction 3 to Item 2 of Form N-CSR; Instruction 102P3(a)(9) of Form N-SAR; Section II.B.5, "Form 8-K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

⁵⁵ Items 2(c) and 2(d) of Form N-CSR; Instructions 102P3(a)(3) and (a)(4) of Form N-SAR; Section II.B.5, "Form 8-K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note.

⁵⁶ Instruction 5 to Item 2 of Form N-CSR; Instruction 102P3(a)(11) of Form N-SAR; Section II.B.5, "Form 8-K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

⁵⁷ Instruction 4 to Item 2 of Form N-CSR; Instruction 102P3(a)(10) of Form N-SAR; "Form 8-K or Internet Disclosure Regarding Changes to, or Waivers from, the Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

⁵⁸ Item 2 of Form N-CSR; Instruction 102P3(a) of Form N-SAR.

⁴⁶ Rule 12b-25(a) and (b)(2)(ii) under the Exchange Act [17 CFR 240.12b-25(a) and (b)(2)(ii)] and Exchange Act Form 12b-25 [17 CFR 249.322].

⁴⁷ See Section II.B., "Code of Ethics," in Section 406/407 Adopting Release, *supra* note 8.

⁴⁸ Item 2(a) of Form N-CSR; Instruction 102P3(a)(1) of Form N-SAR.

⁴⁹ *Id.*

⁵⁰ Items 2(c), 2(d), and 2(e), and Instruction 3 to Item 2, of Form N-CSR; Instructions 102P3(a)(3), (a)(4), (a)(5), and (a)(9) of Form N-SAR.

⁵¹ Item 2(b) of Form N-CSR; Instruction 102P3(a)(2) of Form N-SAR; Section II.B.2.c., "Final Definition of 'Code of Ethics,'" in Section 406/407 Adopting Release, *supra* note.

⁵² Instruction 1 to Item 2 of Form N-CSR; Instruction 102P3(a)(7) of Form N-SAR; Section II.B.2.c., "Final Definition of 'Code of Ethics,'" in Section 406/407 Adopting Release, *supra* note 8.