

We are adopting, substantially as proposed, a test for whether an audit committee financial expert may be considered to be “independent” that differs from the test we have adopted for operating companies. The definition of “independence” adopted for operating companies refers to the definition of “independent” used in Item 7(d)(3)(iv) of Schedule 14A, which generally is not applicable to investment companies.⁷⁹ Under the rules we are adopting, in order to be considered “independent,” a member of an audit committee of a registered management investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (i) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or (ii) be an “interested person” of the investment company, as defined in Section 2(a)(19) of the Investment Company Act.⁸⁰

III. Transition Provisions and Compliance Dates

Except as provided in the following sentence, the effective date of the rules, rule and form amendments, and Form N-CSR is March 1, 2003. The effective date of the removal of the certification requirement from Form N-SAR for registered management investment companies other than SBICs is May 1, 2003.

A registered management investment company other than an SBIC that has a fiscal annual or semi-annual period ending on or before March 31, 2003, may choose either to file Form N-CSR or to continue to comply with the certification requirements of Form N-SAR. A registered management investment company that elects to file Form N-CSR for a fiscal annual or semi-annual period ending on or before March 31, 2003, is not required to comply with paragraphs (b)(4), (5), and (6) of Investment Company Act Rule 30a-2, Item 9(a) of Form N-CSR, or paragraph (b) of Exchange Act Rules 13a-15 and 15d-15 and Investment Company Act Rule 30a-3 with respect to that Form N-CSR. A registered management investment company that elects to certify Form N-SAR for a fiscal annual or semi-annual period ending on or before March 31, 2003, must file its report to shareholders for that period as currently required. This transition is

designed so that each such registered management investment company other than an SBIC will be required to provide a certification of its financial statements and financial information, while providing the flexibility to each company to determine whether to certify Form N-SAR or Form N-CSR during the transition period and sufficient time to establish and evaluate disclosure controls and procedures for Form N-CSR. A registered management investment company other than an SBIC that has a fiscal annual or semi-annual period ending on or after April 1, 2003, is required to file Form N-CSR for that period. Beginning immediately, a unit investment trust or an SBIC may omit the certification from Form N-SAR.

Registered management investment companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports on Form N-CSR or N-SAR for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report on Form N-CSR or N-SAR in which disclosure of their code of ethics is required. Registered management investment companies similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports on Form N-CSR or N-SAR for fiscal years ending on or after July 15, 2003.

IV. Paperwork Reduction Act

The new rules and rule and form amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁸¹ We published notice requesting comment on the collection of information requirements in the release proposing Form N-CSR,⁸² submitted these requirements to the Office of Management and Budget (“OMB”) for review in accordance with the PRA,⁸³ and received approval by OMB for this collection of information. In addition, we published notice requesting comment on the collection of information requirements in the proposing release implementing Sections 406 and 407 of the Sarbanes-Oxley Act⁸⁴ and submitted these

requirements to OMB for review. This request is pending before OMB.

The titles for the collection of information are “Form N-CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report;” “Form N-SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies;” and “Form 12b-25 under the Securities Exchange Act of 1934, Notification of Late Filing.”

Form N-SAR (OMB Control No. 3235-0330) under the Exchange Act and the Investment Company Act [17 CFR 249.330; 17 CFR 274.101] is used by registered investment companies to file periodic reports with the Commission. Form N-CSR (OMB Control No. 3235-0570) under the Exchange Act and the Investment Company Act [17 CFR 249.331; 17 CFR 274.128] will be used by registered management investment companies to file certified shareholder reports. Form 12b-25 (OMB Control No. 3235-0058) under the Exchange Act [17 CFR 249.322] provides notice to the Commission and the marketplace that a company will be unable to file a required report in a timely manner.

Compliance with the new rules and rule and form amendments is mandatory and the information provided will not be kept confidential. Under our rules for retention of manual signatures, registered investment companies have to maintain the certifications for five years.⁸⁵ An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of New Rules

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.⁸⁶ 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 include the certification specified by Section 302 in those periodic reports.

In a companion release, we also proposed to require registered management investment companies to file certified shareholder reports with the Commission on new Form N-CSR

⁷⁹ See Item 7(d)(3)(vii) of Schedule 14A [17 CFR 240.14a-101] (providing that a registered investment company, other than a closed-end investment company, need not provide the information required by Item 7(d)(3) about its audit committee).

⁸⁰ Item 3(a)(2) of Form N-CSR; Instruction 102P3(b)(2) of Form N-SAR.

⁸¹ 44 U.S.C. 3501 *et seq.*

⁸² Form N-CSR Proposing Release, *supra* note 5.

⁸³ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

⁸⁴ Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)].

⁸⁵ See Rule 302(b) of Regulation S-T [17 CFR 232.302(b)].

⁸⁶ Investment Company Act Release No. 25722 (Aug. 28, 2002) [67 FR 57276 (Sept. 9, 2002)].