

and to designate these certified shareholder reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act.<sup>87</sup> As we noted in that release, we believe that the certification requirement of Section 302 of the Sarbanes-Oxley Act was intended to improve the quality of the disclosure that a company provides regarding its financial condition in its reports to investors.<sup>88</sup> For registered management investment companies, the required reports to shareholders, rather than reports on Form N-SAR, are the primary vehicle for providing financial information to investors. We believe that the information in these reports to shareholders should be certified, and we are adopting amendments to our forms and rules to require this certification.

We are adopting an amendment to rule 30b2-1 under the Investment Company Act, which will require a registered management investment company to file a report with the Commission on new Form N-CSR containing (i) a copy of any required shareholder report, (ii) additional information regarding disclosure controls and procedures, and (iii) the certification required by the Sarbanes-Oxley Act.<sup>89</sup> New rule 30d-1 designates certified shareholder reports on Form N-CSR as periodic reports under Section 13(a) or 15(d) of the Exchange Act.<sup>90</sup> New rule 30a-3 requires all registered management investment

companies to maintain, and regularly evaluate the effectiveness of, disclosure controls and procedures designed to ensure that the information required in filings under the Exchange Act is recorded, processed, summarized, and reported on a timely basis. 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 all registered management investment companies regardless of whether they are required to file reports on Form N-CSR under the Exchange Act, and that they do not apply to SBICs and UITs filing Exchange Act reports on Form N-SAR.<sup>91</sup> Amendments to Exchange Act rules 13a-15 and 15d-15 will exclude SBICs and UITs from the requirements to maintain disclosure controls and procedures for purposes of the evaluation conducted as part of the required certification.<sup>92</sup> We are also removing the requirement that Form N-SAR be certified by a registered investment company's principal executive and financial officers. This shifts the information collection burden relating to the certification specified by Section 302 of the Sarbanes-Oxley Act, for registered management investment companies, from Form N-SAR to Form N-CSR.

Finally, we are requiring registered management investment companies to include new disclosures on Form N-CSR or Form N-SAR, as appropriate, in order to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. First, the rules require a 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. A management investment company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a 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, or persons performing similar functions, regardless of whether they are employed by the management investment company or a third party. A management investment company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A

management investment company also will be required to disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

All of these new rules and rule amendments are part of the collection of information of new Form N-CSR or Form N-SAR (in the case of SBICs) because Form N-CSR contains the requirement that each registered management investment company filing reports on this form has to certify the contents of the report, and Form N-CSR and Form N-SAR contain the requirement that management investment companies must provide the appropriate audit committee financial expert and code of ethics disclosures.

We are amending our rules and forms to provide that, for registered management investment companies other than small business investment companies, Form N-SAR will be filed under the Investment Company Act only and not the Exchange Act.<sup>93</sup> Also, we have amended Form N-SAR to eliminate the requirement that UITs and SBICs certify their reports on Form N-SAR.<sup>94</sup> 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.<sup>95</sup>

#### B. Reporting and Cost Burden Estimates Certification of Form N-CSR

The reporting burden associated with the certification requirement requires the principal executive and financial officer to review and analyze each periodic report to be filed by an investment company in order to make the required certification. In the release proposing Form N-CSR, we estimated a total of five burden hours per respondent for the certification and asked for comment on this estimate.<sup>96</sup> We received three comment letters specifically discussing our estimate of the burden for filing and certifying Form

<sup>87</sup> See Form N-CSR Proposing Release, *supra* note 5.

A management investment company is an investment company other than a unit investment trust or face-amount certificate company. See Section 4 of the Investment Company Act [15 U.S.C. 80a-4]. Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. See T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4-5 (2002).

<sup>88</sup> Form N-CSR Proposing Release, *supra* note 5, 67 FR at 57299.

<sup>89</sup> Rule 30b2-1(a) under the Investment Company Act [17 CFR 270.30b2-1(a)]; Items 1, 9, and 10(b). In addition, we are amending rule 30a-2 under the Investment Company Act [17 CFR 270.30a-2] to require Form N-CSR to include the certification required by Section 302 of the Sarbanes-Oxley Act.

<sup>90</sup> 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.

<sup>91</sup> Rule 30a-2(c) under the Investment Company Act [17 CFR 270.30a-2].

<sup>92</sup> 17 CFR 240.13a-15(a); 17 CFR 240.15d-15(a).

<sup>93</sup> See Rule 30b1-1 under the Investment Company Act [17 CFR 270.30b1-1]; and General Instruction A to Form N-SAR [17 CFR 274.101]. In addition, we are adopting technical conforming amendments to rule 30b1-3 [17 CFR 270.30b1-3] to remove the reference to Form N-SAR.

<sup>94</sup> Instruction 102P3 of Form N-SAR; Instruction to Item 133 of Form N-SAR.

<sup>95</sup> 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]. There is no collection of information for the amendments to rule 12b-25 because they are attributed to Form 12b-25.

<sup>96</sup> This estimate is based on the estimate of the burden of certification with respect to operating companies. See Investment Company Act Release No. 25722, *supra* note, 67 FR at 57284 (estimating PRA burden of certification of Forms 10-K, 10-KSB, 10-Q, 10-QSB, 20-F, and 40-F at five hours per form).