

information relating to the registrant is made known to senior management, and also to certify that they have evaluated these procedures within 90 days of the filing date of the report. The amendments may increase the costs associated with compliance with investment companies' reporting obligations. However, this cost increase is expected to be limited, because most management investment companies are currently required to provide a similar certification with respect to their reports on Form N-SAR.

In addition, the amendments will require registered management investment companies to disclose information regarding whether an audit committee financial expert serves on the investment company's audit committee and whether the investment company has adopted a code of ethics that applies to the investment company's principal executive officer and senior financial officers. All registered management investment companies, including those that are not required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, will be subject to these amendments. Because the disclosure requirements of these amendments will be new, management investment companies may need to hire outside counsel or other third parties to prepare the new disclosure. We expect that reporting information in response to these new disclosure items will increase costs incurred by small entities because the new disclosure items will require these entities to compile and report more information. For purposes of the PRA and our cost-benefit analysis,<sup>121</sup> with respect to Form N-SAR, we further estimate that the removal of the certification requirement will remove an incremental 41,010 hours from the current total burden hours, equivalent to a cost of \$6,151,500<sup>122</sup> and the disclosure of the code of ethics and audit committee financial experts will add an incremental 2 burden hours to the current total burden hours, equivalent to a cost of \$259.<sup>123</sup> With respect to Form N-CSR, all respondents will incur an incremental increase of 35,139 burden hours,<sup>124</sup> equivalent to internal costs of \$5,152,782<sup>125</sup> and

\$3,513,900 in outside legal costs<sup>126</sup> to comply with the amendments. The current total burden hours of Form 12b-25 will incrementally increase by 420 hours or \$15,468<sup>127</sup> as a result of the amendments.

#### *E. Agency Action to Minimize Effect on Small Entities*

As required by Section 603 of the RFA, and with respect to Sections 302, 406, and 407 of the Sarbanes-Oxley Act, the Commission has considered the following alternatives to minimize the economic impact of the proposed rules and rule amendments on small entities: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; and (iii) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The rules we are adopting are intended to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act, and should help ensure that information about an investment company's business and financial condition, specifically its financial statements, is adequately reviewed by an investment company's senior executives, thereby enhancing investor confidence in the quality of its disclosure. In addition, the rules we are adopting implement Sections 406 and 407 of the Sarbanes-Oxley Act by requiring disclosure with respect to codes of ethics and audit committee financial experts to provide investors better understanding of the ethical principles and background and affiliations of the executives and directors of the investment company.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The designation of certified shareholder reports on Form N-CSR as reporting forms that must contain the certification required by Section 302 of the Sarbanes-Oxley Act is intended to improve investor confidence in the quality of an investment company's disclosure to investors in its shareholder

reports, particularly the financial statements contained in these reports. We believe it is important that the benefits resulting from the certification of shareholder reports as required by the new rules be provided to investors in all management investment companies, not just investors in management investment companies that are not considered small entities. The Commission also notes that Section 302 of the Sarbanes-Oxley Act does not distinguish between small entities and other investment companies. Similarly, Sections 406 and 407 of the Sarbanes-Oxley Act do not distinguish between small entities and other investment companies.

We believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of increasing transparency of corporate activities and internal procedures. We generally believe that an exemption for small entities from coverage of the new rules is not appropriate and is inconsistent with the policies underlying the Sarbanes-Oxley Act. We also think that the disclosure requirements relating to the audit committee financial experts and codes of ethics are clear and straightforward. In addition, we are not aware of any way to clarify or simplify compliance for small entities.

#### **VIII. Statutory Authority**

The rules and rule and form amendments contained in this release are being adopted pursuant to Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-6(c), 80a-8, 80a-24(a), 80a-29, and 80a-37], and Sections 3(a), 302, 406, and 407 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204, 116 Stat. 745].

#### **List of Subjects**

*17 CFR Parts 240 and 249*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

#### **Text of Amendments**

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

<sup>121</sup> See Sections IV and V above.

<sup>122</sup> 41,010 hours × \$150 = \$6,151,500. See *supra* note 109 (explaining the wage rate).

<sup>123</sup> 2 hours × \$129.81 = \$259. See *supra* note (explaining the wage rate).

<sup>124</sup> 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .75 = 35,139 hours.

<sup>125</sup> 35,139 hours × \$146.64 = \$5,152,782. See *supra* note 112 (explaining the wage rate).

<sup>126</sup> 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .25 of outside counsel × \$300 per hour = \$3,513,900.

<sup>127</sup> 420 hours × \$36.83 = \$15,468. See *supra* note 114 (explaining the wage rate).