

consultation concerning financial accounting and reporting standards.

We also believe it is appropriate to add transparency regarding a second category of fees: "Tax Fees." The review of a registrant's tax returns and reserves is a task that often requires extensive knowledge about the audit client. In many public companies, the fee for tax services is substantial in relation to other services. We believe that investors will benefit from being able to consider those fees separately from the "All Other Fees" category. The "Tax Fees" category would capture all services performed by professional staff in the independent accountant's tax division except those services related to the audit as discussed previously. Typically, it would include fees for tax compliance, tax planning, and tax advice. Tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment-planning services. Tax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals,²³⁴ tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.

The category of "All Other Fees" would remain unchanged from the existing rule, except that to the extent that financial information systems implementation and design exist they would be disclosed as a component of "All Other Fees."

Consistent with our proposal, we also are requiring that the information be provided for two periods so that investors will have comparative information about the fees paid to the independent accountant by the issuer.

As noted in our previous discussion about audit committee pre-approval requirements, we have clarified the guidance on audit committee pre-approval of services provided by the independent accountant. Accordingly, the issuer must provide disclosure of the audit committee's pre-approval policies and procedures. Additionally, to the extent that the audit committee has applied the *de minimis* exception discussed previously, the issuer must disclose the percentage of the total fees paid to the independent accountant where the *de minimis* exception was used. This information should be provided by category.

We expect registrants to provide clear, concise and understandable

descriptions of the policies and procedures. Alternatively, registrants could include a copy of those policies and procedures with the information delivered to investors and filed with the Commission. Either method should allow shareholders to obtain a complete and accurate understanding of the audit committee's policies and procedures. We expect the policies and procedures would address auditor independence oversight functions in a prudent and responsible manner. Additionally, these procedures would describe, if applicable, the specific processes in place that monitor activities where the *de minimis* exception is invoked.

Consistent with our proposal, we are requiring that the disclosures be included in a company's annual report. However, because we believe that this information is relevant to a decision to vote for a particular director or to elect, approve or ratify the choice of an independent public accountant, we are requiring that this disclosure be included in a company's proxy statement on Schedule 14A or information statement on Schedule 14C. Since the information is included in Part III of annual reports on Forms 10-K and 10-KSB, domestic companies are able to incorporate the required disclosures from the proxy or information statement into the annual report.

Our intent is that this information be made available to investors of all registrants. However, not all registrants are required to file proxy statements. Thus, consistent with the provisions in the Act, registrants that do not issue proxy statements are required to include appropriate disclosures in their annual filing included in Form 10-K, Form 10-KSB, 20-F, Form 40-F and Form N-CSR²³⁵ as appropriate. For the reasons noted previously in this release, we are exempting asset-backed issuers and unit investment trusts from these disclosure requirements.

With respect to investment companies, we proposed to require investment companies to make disclosure that is similar to the disclosure proposed for operating companies filing with the Commission. The proposed rule required an investment company to disclose the audit fees paid by the investment company to its accountant and the aggregate fees paid for audit related, tax services, and other services to the investment company's accountant by

the investment company and its investment adviser and any entity controlling, controlled by or under common control with the adviser, that provides services to the investment company. The proposed rule also required the disclosure of the percentage, for each category presented, of fees which were subject to: (1) Direct pre-approval; (2) pre-approval pursuant to policies and procedures; and (3) pre-approval pursuant to the *de minimis* exception. Lastly, the proposed rule would require these disclosures in the annual report on proposed Form N-CSR and proxy and information statements.

Commenters²³⁶ generally raised several significant issues related to the disclosure that would be required for investment companies. Many commenters²³⁷ believed the fee disclosures should only be required to be made for the services provided by the accountant to the investment company registrant. One commenter²³⁸ suggested the fees presented should be disclosed separately for those services provided to the investment company directly and those provided to the other entities in the investment company complex. Some commenters²³⁹ believed that only those fees required to be pre-approved by the investment company's audit committee should be disclosed. Lastly, one commenter²⁴⁰ expressed concern that providing percentage disclosure by type of pre-approval method (*i.e.*, direct, pursuant to policy and procedures, or the *de minimis* exception) would imply that some of these methodologies were improper.

After considering the comments, we do not believe that the fee disclosures should be limited to only those fees paid directly by the investment company registrant. We believe the fees paid by other entities in the investment company complex can have a bearing on the investment company accountant's independence. However, we are concerned that the disclosures provide meaningful information to investors. Consequently, we have determined to modify the proposed requirements.

Our final rule requires the investment company to disclose separately those

²³⁶ See, e.g., letter from Investment Company Institute, dated January 13, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003.

²³⁷ See, e.g., letter from KPMG, dated January 9, 2003; letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Ernst & Young, dated January 6, 2003.

²³⁸ See, letter from Ernst & Young, dated January 6, 2003.

²³⁹ See, letter from PricewaterhouseCoopers, dated January 8, 2003; letter from Deloitte & Touche, dated January 10, 2003.

²⁴⁰ See, letter from Investment Company Institute, dated January 13, 2003.

²³⁴ As discussed previously in this release an accountant's independence is deemed to be impaired when representing the audit client before a tax court, district court and U.S. federal court of claims.

²³⁵ We recently adopted Form N-CSR to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.