

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 240, 270 and 274

[Release Nos. 33–8312, 34–48683, IC–26230; File No. S7–20–03]

RIN 3235–AH80

Exemption From Shareholder Approval for Certain Subadvisory Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is proposing a new rule under the Investment Company Act of 1940 that would, under certain conditions, permit an adviser to serve as a subadviser to an investment company (“fund”) without approval by the shareholders of the fund. The rule is designed to reduce burdens on investment companies by eliminating the need to obtain from the Commission exemptive orders that facilitate so-called “manager of managers” arrangements, under which one or more subadvisers manage a fund’s assets subject to the supervision of an investment adviser whose advisory contract has been approved by fund shareholders.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Comments in electronic format may be submitted at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–20–03; if e-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission’s Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission’s Internet web site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT:

Adam B. Glazer, Attorney, or C. Hunter Jones, Assistant Director, Office of

Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is proposing for public comment new rule 15a–5 [17 CFR 270.15a–5] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the “Investment Company Act” or “Act”); amendments to rule 6–07 [17 CFR 210.6–07] of Regulation S–X [17 CFR part 210] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a–aa] (the “Securities Act”); amendments to Form N–1A [17 CFR 274.11A] under the Investment Company Act and the Securities Act; and amendments to Schedule 14A [17 CFR 240.14a–101] under the Securities Exchange Act of 1934 [15 U.S.C. 78a–mm] (the “Exchange Act”).

Table of Contents

Executive Summary

I. Background

II. Discussion

A. Conditions of the Proposed Rule

1. Terms of the Subadvisory Contracts; Subadvisory Fees
2. Obligation to Supervise
3. Arm’s Length Relationship Between Principal Adviser and Subadvisers
4. Board Oversight
5. Expectation of Investors
6. Number of Subadvisers

B. Rescission of Previously Issued Exemptive Orders

III. General Request for Comment

IV. Cost-Benefit Analysis

V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

VI. Paperwork Reduction Act

VII. Summary of Initial Regulatory Flexibility Analysis

VIII. Statutory Authority

Text of Proposed Rules and Form Amendments

Executive Summary

The Commission is proposing new rule 15a–5 under the Investment Company Act. The rule would permit manager of managers funds to operate without obtaining shareholder approval when the fund’s principal investment adviser hires a new subadviser or replaces an existing subadviser. The rule would eliminate the need for a fund to obtain an exemptive order permitting these arrangements. A fund that relied on the proposed rule would be required to inform investors of the identity of the current subadviser(s) managing their portfolio and the ability of the fund to add or replace the subadviser(s) without shareholder approval. The rule also would require that the fund’s investment adviser supervise and

oversee the fund’s subadvisers, and that the hiring of a new or different subadviser not increase the fees charged to the fund.

I. Background

A growing number of investment companies (“funds”)² are now offered whose investment advisers do not directly manage a portfolio of securities. Instead, the advisers supervise one or more subadvisers,³ which are themselves responsible for the day-to-day management of the funds’ portfolios. In these “manager of managers” funds, the investment adviser seeks to achieve the funds’ investment objectives by hiring, supervising and, when appropriate, discharging subadvisers, each of which is responsible for the management of a portion of a fund’s portfolio.⁴ In many cases, these funds also authorize the adviser to allocate and reallocate fund assets among subadvisers.

Since they were first introduced in the early 1990s, manager of managers funds have grown in popularity. Today more than 100 fund complexes offer these types of funds, which hold more than 400 billion dollars in assets.⁵ Many of these funds are sponsored by insurance companies and operate as funding vehicles for separate accounts offering variable annuity and variable

² In this Release and proposed rule 15a–5, we use the term “fund” to mean a registered open-end management investment company or a separate series of such a company. A series company (or series fund) is a registered open-end investment company which, in accordance with the provisions of section 18(f)(2) of the Act [15 U.S.C. 80a–18(f)(2)], issues two or more classes or series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series. See 17 CFR 270.18f–2(a).

³ In this Release and proposed rule 15a–5, we use the term “subadviser” to mean a party that contracts with a fund’s principal adviser to provide investment advisory services to the fund, and the term “principal adviser” to mean a party that contracts directly with a fund to provide investment advisory services to the fund. See proposed rule 15a–5(b)(2)–(3) (defining “principal adviser” and “subadviser” by reference to sections 2(a)(20)(A)–(B) of the Act [15 U.S.C. 80a–2(a)(20)(A) “(B)”).

⁴ In the case of a series fund, the adviser seeks to achieve the fund’s investment objectives by hiring, supervising and, when appropriate, discharging subadvisers for the management of all or a portion of the portfolio of a series.

⁵ Since 1995 we have issued over 100 orders allowing manager of managers funds to retain subadvisers (and materially amend subadvisory contracts) without shareholder approval. See, e.g., Hillview Investment Trust II and Hillview Capital Advisors, LLC, Investment Company Act Release Nos. 24853 (Feb. 6, 2001) [66 FR 10037 (Feb. 13, 2001)] (notice) and 25055 (June 29, 2001) [66 FR 35676 (July 6, 2001)] (order); Sun Capital Advisors Trust and Sun Capital Advisors, Inc., Investment Company Act Release Nos. 24368 (Mar. 27, 2000) [65 FR 17546 (Apr. 3, 2000)] (notice) and 24401 (Apr. 24, 2000) [72 SEC Docket 864 (May 23, 2000)] (order).

¹ We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.