

within 90 days of the entry into a subadvisory contract or a material change to a wholly-owned subadviser's contract, with an information statement that contains the information that would have been provided to shareholders in a proxy statement if a shareholder vote had been held.⁶⁰ Second, the proposed rule would require funds to obtain shareholder authorization for a principal adviser to enter into subadvisory contracts without shareholder approval.⁶¹ Third, the proposed rule would require that disinterested directors comprise a majority of the fund board, and that the disinterested directors select and nominate any other disinterested directors.⁶² Fourth, the proposed rule would require independent directors, if they hire legal counsel, to hire an independent legal counsel.⁶³ All of these conditions (or their substantial equivalent) are typically included in manager of managers exemptive orders, and therefore would not result in any new costs to funds, their advisers, or investors.⁶⁴

Although the proposed rule would alter the relationship between the principal adviser and shareholders (by allowing the principal adviser to hire and terminate subadvisers without shareholder approval) and the principal adviser and its subadvisers, the effects of such alterations would be minimal because shareholders have the right to terminate subadvisers⁶⁵ and principal advisers have a contractual duty to supervise their subadvisers.⁶⁶

C. Request for Comment

The Commission requests comment on the potential costs and benefits of the proposed rule and amendments and any suggested alternatives to the proposals. We encourage commenters to identify,

discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,⁶⁷ the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide data to support their views.

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

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.⁶⁸ The Commission anticipates that the proposed amendments would not adversely affect efficiency, competition, or capital formation.

The proposed amendments are intended to allow funds to enter into subadvisory contracts without shareholder approval, which would eliminate the need for funds to hold a shareholder meeting or obtain specific exemptive relief, either of which can be costly and time consuming. We anticipate that the proposed amendments would enhance efficiency by significantly reducing the time period needed for selecting subadvisers, while also reducing the fund's costs associated with the hiring of a new subadviser.⁶⁹ Adoption of the proposed rule and rescission of the exemptive orders would subject all funds and advisers to the same conditions, and enable them to compete under more uniform conditions. The Commission does not expect the proposed amendments to have a material effect on competition or capital formation.⁷⁰

The Commission requests comments on whether the proposed rule and

proposed form and rule amendments, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and sections 3(f) and 23(a)(2) of the Exchange Act.

VI. Paperwork Reduction Act

Certain provisions of proposed rule 15a-5 and certain provisions of the proposed amendments to Form N-1A would result in new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.⁷¹ The Commission is submitting these proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information associated with the proposed rule is "Rule 15a-5 under the Investment Company Act of 1940, 'Exemption from shareholder approval for certain subadvisory contracts.'" The title for the collection of information associated with the proposed amendments is "Form N-1A under the Investment Company Act of 1940 and Securities Act of 1933, 'Registration Statement of Open-End Management Investment Companies.'" An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The approved collection of information associated with Form N-1A, which would be revised by the proposed amendments, displays control number 3235-0307.

Proposed rule 15a-5 and the proposed amendments to Form N-1A would permit manager of managers funds to operate without obtaining shareholder approval when the fund's principal adviser hires a new subadviser or replaces an existing subadviser subject to certain conditions. The rule and amendments would largely codify numerous exemptive orders issued by the Commission. We believe that the information collection requirements of the proposed rule and amendments ensure that only manager of managers funds are eligible for relief, that shareholders are provided with information on the identity of the fund's subadvisers, and that shareholders are aware of a fund's and a principal adviser's ability to hire and fire subadvisers without shareholder approval. The provision of information in accordance with the proposed rule and amendments would be voluntary,

⁶⁰ Proposed rule 15a-5(a)(5).

⁶¹ Proposed rule 15a-5(a)(3).

⁶² Proposed rule 15a-5(a)(7)(i).

⁶³ Proposed rule 15a-5(a)(7)(ii).

⁶⁴ The manager of managers orders that also include relief from our disclosure rules require independent directors to retain independent counsel. The proposed rule would require that the independent directors have independent counsel only if they choose to retain counsel. Moreover, the amendments we made to a number of exemptive rules in January 2001, *see supra* notes 38-39 and accompanying text, make it likely that most funds that would use the exemptive relief provided by the proposed rule would already have independent counsel or would not retain legal counsel.

⁶⁵ Section 15(a)(3) of the Act [15 U.S.C. 80a-15(a)(3)] provides that any advisory contract must be terminable at any time by vote of a majority of the outstanding voting securities of the fund.

⁶⁶ The proposed rule would require the principal adviser's contract with the fund to include a provision requiring the principal adviser to supervise its subadvisers. *See* proposed rule 15a-5(a)(4).

⁶⁷ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁶⁸ 15 U.S.C. 80a-2(c), 15 U.S.C. 77b(b), and 15 U.S.C. 78c(f). Section 23(a)(2) of the Exchange Act also requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rule it adopts. 15 U.S.C. 78w(a)(2).

⁶⁹ The proposed amendments permitting a fund to disclose only the aggregate fees paid to all of the fund's unaffiliated subadvisers also could enhance efficiency by allowing funds to negotiate fees lower than the subadviser's usual fee. *See supra* Section II.A.1.

⁷⁰ Similarly, the Commission does not expect the adoption of the proposed rule and amendments to have any anticompetitive effects. *See supra* note 68.

⁷¹ 44 U.S.C. 3501.