

do would not result in a significant burden being placed on the funds.⁹⁸

The IRFA explains that the proposed amendments would impose reporting requirements on funds, but would not impose recordkeeping or compliance requirements. The proposed amendments would require any fund that is authorized to hire one or more subadvisers without shareholder approval pursuant to proposed rule 15a-5, to disclose this ability in its prospectus.⁹⁹ Compliance with these amendments would require little time, involve no extra costs to funds, and

⁹⁸ The requirements regarding prohibited relationships between the subadviser and the fund or principal adviser (or their affiliates) do not involve any costs or burdens. The requirements regarding board composition and the selection and nomination of independent directors would not impose any new costs or burdens. Under our current manager of managers orders, funds are required to comply with the same board composition and selection and nomination requirements. The independent legal counsel requirement does not require independent directors to retain legal counsel, but those who are represented by counsel that does not meet the definition of "independent legal counsel" would be required to retain different counsel if their fund chooses to rely on the proposed rule. The manager of managers orders that also include relief from our disclosure rules require independent directors to retain independent counsel. Moreover, the amendments we made to a number of exemptive rules in January 2001, *see supra* notes 38 and 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.

Requiring funds to furnish shareholders with an information statement (and file such statement with the Commission) following the retention of a new subadviser or a change in the fee paid to a wholly-owned subadviser would not impose any new costs on funds. Currently, funds either have to provide shareholders with a proxy statement in connection with seeking shareholder approval of the subadvisory contract or, if operating under a manager of managers exemptive order, have to provide shareholders with an information statement (and file such statement with the Commission). In the absence of the proposed rule, therefore, the fund still would be required to provide shareholders with the same information. Similarly, requiring the shareholders or the board of the fund to authorize the principal advisers to enter into subadvisory contracts without shareholder approval would not impose any new costs on the fund. Currently, a fund either has to receive shareholder approval of all subadvisory contracts or, if operating under a manager of managers exemptive order, obtain shareholder authorization for entering into subadvisory contracts without shareholder approval. In the absence of the proposed rule, therefore, the fund would still incur the same or greater costs in obtaining shareholder approval or operating under an order.

⁹⁹ Proposed Instruction 3 to Item 4(b)(1) of Form N-1A would require a fund to disclose if it is authorized to use the services of subadvisers without shareholder approval. Proposed Item 6(a)(1)(i) of Form N-1A would require a fund in its identification and description of its investment advisers to explain for each subadviser that serves the fund without shareholder approval that such subadviser may be replaced, and additional subadvisers may be retained, without shareholder approval.

should not impose a significant burden, if any, on funds, including small entities. Shareholders of funds would benefit by being fully informed of the fund's ability to replace subadvisers without shareholder approval.

The proposed amendments also would allow a fund that complies with the requirements of proposed rule 15a-5 to decide not to disclose the individual fee paid to each unaffiliated subadviser of the principal adviser.¹⁰⁰ For purposes of fee disclosure in the fund's Statement of Additional Information, the fund would be required to disclose in place of the individual fee paid to each subadviser (both as a dollar amount and as a percentage of its net assets) (i) the individual fees paid to the principal adviser and to each of its affiliated subadvisers (including its wholly-owned subadvisers), (ii) the net advisory fee retained by the principal adviser after payment of fees to all subadvisers, and (iii) the aggregate fees paid to all subadvisers that are not affiliated persons of the principal adviser.¹⁰¹ These amendments would benefit funds, including small entities, by reducing the disclosure burden on funds that qualify for relief under the proposed rule and by allowing the principal adviser to negotiate a lower advisory fee with each unaffiliated subadviser than the fee normally charged by each such subadviser.¹⁰²

The IRFA explains that the Commission has considered significant alternatives to the proposed rule and amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The Commission believes that no alternative could carry out these objectives as effectively as the proposed rule and amendments.

The Commission encourages the submission of comments on matters discussed in the IRFA. Specifically, comment is requested on the effects the proposed rule and amendments would have on small entities, and the number of small entities that would be affected. Commenters are asked to describe the nature of any effect and provide

¹⁰⁰ Proposed rule 6-07(2)(d) of Regulation S-X, proposed Instruction 2 to Item 22(c) of Schedule 14A, and proposed Instruction 5 to Item 15(a)(3) of Form N-1A. In the absence of these amendments, funds would be required to disclose the individual fee paid to each subadviser.

¹⁰¹ Proposed Instruction 5 to Item 15(a)(3) of Form N-1A.

¹⁰² By allowing funds to disclose only the aggregate fee paid to all unaffiliated subadvisers, each unaffiliated subadviser would be more likely to accept a lower fee than the fee it charges to its other clients, because a subadviser's other clients would not be aware of the exact fee paid to each subadviser.

empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule and amendments themselves. A copy of the IRFA may be obtained by contacting Adam B. Glazer, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0506.

VIII. Statutory Authority

The Commission is proposing to adopt new rule 15a-5 pursuant to the authority set forth in sections 6(c) and 38(a) [15 U.S.C. 80a-6(c) and 80a-37(a)] of the Investment Company Act. The Commission is proposing amendments to rule 6-07 of Regulation S-X pursuant to authority set forth in section 7 of the Securities Act [15 U.S.C. 77g] and sections 8 and 38(a) of the Investment Company Act [15 U.S.C. 80a-8, 80a-37(a)]. We are proposing amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [15 U.S.C. 78n, 78w(a)(1)] and sections 20(a) and 38 of the Investment Company Act [15 U.S.C. 80a-20(a), 80a-37]. We are proposing amendments to Form N-1A pursuant to authority set forth in sections 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77j, 77s(a)] and sections 8, 24(a), and 30 of the Investment Company Act [15 U.S.C. 80a-8, 80a-24(a), and 80a-29].

List of Subjects

17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form Amendments

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows: