

means designed to ensure equally prompt delivery.<sup>48</sup>

If a fund discloses that its proxy voting record is available on or through its Web site, it must make available free of charge the information disclosed in the fund's most recently filed report on Form N-PX on or through its Web site as soon as reasonably practicable after filing the report with the Commission.<sup>49</sup> We interpret the "as soon as reasonably practicable" standard to mean that the information would be available, barring unforeseen circumstances, on the same day as filing. We could revisit this requirement if posting on the same day does not generally occur.<sup>50</sup> A fund would not be required to continue to make available on or through its Web site any information from reports on Form N-PX that precede the most recently filed report on Form N-PX.

These rules require that a fund's proxy voting record be publicly available through filings with us. They also require that this information be readily available to fund shareholders from the fund itself and that shareholders be apprised of how this information may be obtained. We believe that these rules strike an appropriate balance—ensuring that a fund's proxy voting record is readily available to interested fund shareholders, while allowing funds the flexibility to choose how to make this information available in the most effective and cost-efficient manner.

Some commenters recommended other specific modifications to our proposed disclosure requirements, which we are not adopting. Several of these commenters suggested that we require funds to provide additional disclosure with respect to situations where the fund's investment adviser has

a conflict of interest, including, for example, disclosure of any business and financial relationship with the issuer and all fees received by the adviser or its affiliates from the issuer during a designated period of time.

We have determined not to require additional disclosure regarding conflict of interest situations at the present time. We believe that disclosure of a fund's complete voting record will enable shareholders to monitor how the fund voted in specific instances and whether the vote is in the shareholders' best interests. Further, requiring additional public disclosure with respect to conflicts of interest would significantly increase the complexity and cost of the proxy vote disclosure.

Several commenters argued that we should require a fund to provide its proxy vote disclosure in a uniform, web-accessible, downloadable format. Other commenters indicated that we should require a fund to disclose its proxy voting record on its Web site, if it has one. Commenters also suggested that we require funds to provide an executive summary of their votes, that might include, for example, the percentage of votes cast for and against management, sorted by the type of issue.

We have determined not to modify our proposals in order to add these requirements, in order to minimize the cost to funds and their shareholders of providing disclosure of fund proxy voting records. As adopted, our requirements will allow funds the flexibility to determine the best manner in which to make their proxy voting records available to shareholders. We continue to believe that our disclosure requirements strike an appropriate balance by ensuring that a fund's proxy voting record, as well as its policies and procedures, is readily available to interested fund shareholders without imposing undue costs. We would, however, encourage funds to use their Web sites and other available means to make their proxy voting records readily accessible to shareholders in a user-friendly format.

Other commenters, by contrast, requested that we limit the proposed disclosure regarding a fund's proxy voting record. For example, some commenters recommended that we require a fund to disclose information regarding only those proxy votes cast against management of the portfolio companies in which it invests, or where a conflict of interest exists.<sup>51</sup> In

addition, one commenter suggested that we require only a summary of all proxy votes in the aggregate arranged according to issue.<sup>52</sup> We believe, however, that limiting disclosure of the proxy voting record to specific votes, or to a general summary of all votes, would significantly undercut the intent of our proposals, which is to enable fund shareholders to determine how a fund voted with respect to any particular proxy vote.

#### Disclosure of Proxy Votes That Are Inconsistent With Fund's Policies and Procedures

The Commission has determined not to adopt the proposed requirement that a fund disclose in its annual and semi-annual reports to shareholders proxy votes (or failures to vote) that are inconsistent with the fund's proxy voting policies and procedures.<sup>53</sup> Many commenters, including both those who generally supported the disclosure of funds' proxy voting records and those who generally opposed this disclosure, expressed concerns regarding the proposed requirements for disclosure of inconsistent votes. Proponents of proxy voting record disclosure argued that a requirement to disclose inconsistent votes might lead funds to draft overly broad policies and procedures to avoid triggering the required disclosure. Opponents of proxy voting record disclosure argued that the disclosure of inconsistent votes would be burdensome because it would require funds to analyze a large volume of proxy votes to determine whether any vote triggered the disclosure and then to provide a lengthy explanation to shareholders regarding each inconsistent vote, which would be expensive to prepare and not meaningful to investors. We find these arguments persuasive and have therefore determined not to adopt the requirement that funds disclose information regarding votes that are inconsistent with the fund's policies and procedures.

#### III. Effective Date and Compliance Date

The effective date of these amendments is April 14, 2003.

(recommending proxy vote disclosure in instances of potential conflict of interest); Letter of Leslie L. Ogg, President, Board Services Corporation (Nov. 22, 2002) (recommending disclosure when a fund votes against the recommendation of management and where a conflict of interest exists).

<sup>52</sup> Letter of Peter C. Clapman, Teachers Insurance and Annuity Association of America/College Retirement Equities Fund (Dec. 6, 2002).

<sup>53</sup> Proposed Items 22(b)(8) & (c)(6) of Form N-1A; Proposed Instructions 4.h. & 5.f. to Item 23 of Form N-2; Proposed Instructions 4(viii) & 5(vi) to Item 27(a) of Form N-3.

<sup>48</sup> Instruction 2 to Item 13(f), Instruction 1 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N-1A; Instruction 2 to Item 18.16 and Instruction 6.b. to Item 23 of Form N-2; Instruction 2 to Item 20(o) and Instruction 6(ii) to Item 27(a) of Form N-3.

<sup>49</sup> Instruction 3 to Item 13(f), Instruction 2 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N-1A; Instruction 3 to Item 18.16 and Instruction 6.c. to Item 23 of Form N-2; Instruction 3 to Item 20(o) and Instruction 6(iii) to Item 27(a) of Form N-3.

A fund could satisfy this requirement through hyperlinking to a third-party service or our EDGAR Web site. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)]. We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking.

<sup>50</sup> *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)] (construing the "as soon as reasonably practicable" standard to mean the same day as filing, barring unforeseen circumstances, with respect to the requirement that issuers disclose whether they make reports on Forms 10-K, 10-Q, and 8-K available on their Web sites as soon as reasonably practicable after filing of these reports with the Commission).

<sup>51</sup> See Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Teachers Insurance and Annuity Association of America/College Retirement and Equities Fund (Dec. 6, 2002)