

adviser that is in merger or acquisition talks with the fund's current adviser, disclosure to a newly hired investment adviser or sub-adviser prior to commencing its duties, or disclosure to a rating agency for use in developing a rating.

Our proposals would require a mutual fund's SAI to describe the fund's policies and procedures with respect to the disclosure of its portfolio securities.⁵⁴ The mutual fund's prospectus would be required to state that a description of its policies and procedures is available in its SAI and, if applicable, on its Web site.⁵⁵ The SAI description of the mutual fund's policies and procedures with respect to the disclosure of its portfolio securities would be required to include:

- How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that distribute the fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the fund;⁵⁶

- Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;⁵⁷

- The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;⁵⁸

- Any policies and procedures with respect to the receipt of compensation or other consideration by the fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;⁵⁹

- The persons who may authorize disclosure of the fund's portfolio securities;⁶⁰

- The procedures that the fund uses to ensure that disclosure of information about portfolio securities is in the best interests of fund shareholders, including procedures to address conflicts between the interests of fund shareholders, on the one hand, and those of the fund's investment adviser; principal underwriter; or any affiliated person of the fund, its investment adviser, or its principal underwriter, on the other;⁶¹ and

- The manner in which the board of directors exercises oversight of disclosure of the fund's portfolio securities.⁶²

A mutual fund's disclosure of its policies and procedures with respect to the disclosure of its portfolio securities would be required to include any policies and procedures of the fund's investment adviser, or any other third party, that the fund uses or that are used on the fund's behalf.⁶³

We are also proposing to require a mutual fund to describe in its SAI any ongoing arrangements to make available information about the fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements and any compensation or other consideration received by the fund, its investment adviser, or any other party in connection with such arrangements.⁶⁴ A proposed instruction would clarify that the consideration required to be disclosed would include any agreement to maintain assets in the fund or in other investment companies

or accounts managed by the investment adviser or by any affiliated person of the investment adviser.⁶⁵ As indicated above, however, divulging portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so, and legitimate business purposes generally would not include the receipt of consideration by the fund's investment adviser or its affiliates. With respect to these ongoing arrangements, funds would also be required to describe:

- Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

- The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed; and

- The persons who may authorize disclosure of the fund's portfolio securities.⁶⁶

We request comment generally on the proposed disclosure requirements regarding disclosure of a fund's portfolio securities and specifically on the following issues:

- Should we require mutual funds and insurance company managed separate accounts to disclose their policies and procedures with respect to the disclosure of portfolio securities to any person? If so, what information should they be required to disclose?

- Are there any types of arrangements that should be excluded from the requirement to disclose ongoing arrangements to make available information about portfolio securities, such as arrangements where the information that is disclosed is subject to a confidentiality requirement or a prohibition on trading based on the information?

- What is the appropriate location for any disclosure about a mutual fund's or separate account's disclosure of its portfolio securities (e.g., prospectus,

⁵⁴ Proposed Item 12(f)(1) of Form N-1A; proposed Item 19(e)(i) of Form N-3.

⁵⁵ Proposed Item 4(d) of Form N-1A; proposed Item 5(f) of Form N-3.

⁵⁶ Proposed Item 12(f)(1)(i) of Form N-1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N-3, the categories would include contractowners, participants, annuitants, and beneficiaries. Proposed Item 19(e)(i)(A) of Form N-3.

⁵⁷ Proposed Item 12(f)(1)(ii) of Form N-1A; proposed Item 19(e)(i)(B) of Form N-3.

⁵⁸ Proposed Item 12(f)(1)(iii) of Form N-1A; proposed Item 19(e)(i)(C) of Form N-3.

⁵⁹ Proposed Item 12(f)(1)(iv) of Form N-1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N-3, this description would also be required to include any policies and procedures with respect to the receipt of compensation or other consideration by the sponsoring insurance company. Proposed Item 19(e)(i)(D) of Form N-3.

⁶⁰ Proposed Item 12(f)(1)(v) of Form N-1A; proposed Item 19(e)(i)(E) of Form N-3.

⁶¹ Proposed Item 12(f)(1)(vi) of Form N-1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N-3, this description would be required to include the procedures that are used to ensure that disclosure of information about portfolio securities is in the best interests of contractowners, participants, annuitants, and beneficiaries, including procedures to address conflicts between the interests of such persons, on the one hand, and those of the separate account's investment adviser or principal underwriter; the sponsoring insurance company; or any affiliated person of the separate account, its investment adviser or principal underwriter, or the sponsoring insurance company, on the other. Proposed Item 19(e)(i)(F) of Form N-3.

⁶² Proposed Item 12(f)(1)(vii) of Form N-1A; proposed Item 19(e)(i)(G) of Form N-3.

⁶³ Proposed Instruction to Item 12(f)(1) of Form N-1A; proposed Instruction to Item 19(e)(i) of Form N-3.

⁶⁴ Proposed Item 12(f)(2) of Form N-1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N-3, disclosure of any compensation or other consideration received by the sponsoring insurance company would also be required. Proposed Item 19(e)(ii) of Form N-3.

⁶⁵ Proposed Instruction to Item 12(f)(2) of Form N-1A. With respect to managed separate accounts issuing variable annuity contracts registered on Form N-3, the consideration required to be disclosed would also include any agreement to maintain assets in other investment companies or accounts managed or sponsored by the sponsoring insurance company of the registrant or by an affiliated person of such sponsoring insurance company. Proposed Instruction to Item 19(e)(ii) of Form N-3.

⁶⁶ Proposed Item 12(f)(2) of Form N-1A; proposed Item 19(e)(ii) of Form N-3.