

disclosure in this area. We expect that the external costs of providing the new disclosure relating to a mutual fund's or insurance company managed separate account's policies and procedures with respect to disclosure of portfolio holdings information would be minimal, because the required description of a fund's policies and procedures with respect to the disclosure of the fund's portfolio securities to any person and any ongoing arrangements to make available information about the fund's portfolio securities will be required in the fund's SAI, which is delivered to investors upon request.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

#### *E. Duplicative, Overlapping or Conflicting Federal Rules*

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

#### *F. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency of mutual funds' policies and procedures with respect to frequent purchases and redemptions of fund shares (and, with respect to insurance company separate accounts that issue variable insurance contracts, frequent transfers among sub-accounts) and mutual funds' and insurance company managed separate accounts' policies and procedures with respect to selective disclosure of their portfolio holdings.

Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to assess a fund's risks, policies, and procedures with respect to frequent purchases and redemptions of fund shares, as well as a fund's practices with respect to the disclosure of its portfolio holdings. We believe it is important for the disclosure that would be required by the proposed amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

#### *G. Solicitation of Comments*

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. S7-26-03; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0102. Electronically submitted

comment letters also will be posted on the Commission's Internet Web site (<http://www.sec.gov>).<sup>82</sup>

#### **VIII. Consideration of Impact on the Economy**

For purposes of the Small Business Enforcement Fairness Act of 1996,<sup>83</sup> a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

#### **IX. Statutory Authority**

The Commission is proposing amendments to Forms N-1A, N-3, N-4, and N-6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 22, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-22, 80a-24(a), 80a-29, and 80a-37].

#### **List of Subjects**

##### *17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

#### **Text of Proposed Rule and Form Amendments**

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

#### **PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

1. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

<sup>82</sup> We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

<sup>83</sup> Pub. L. 104-21, Title II, 110 Stat. 857 (1996).