

## **SECURITIES AND EXCHANGE COMMISSION**

17 CFR Chapter II

[Release Nos. 33-9694, 34-73891, 39-2500, IC-31389; IA- 3986; File No. S7-13-14]

### **List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of list of rules scheduled for review.

**SUMMARY:** The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities.

**DATES:** Comments should be submitted by [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-13-14 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

*Paper comments:*

- Send paper comments to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. S7-13-14. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Anne Sullivan, Office of the General Counsel, 202-551-5019.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600-611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;

- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the Act in 1980, it stated that it “intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.” Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.<sup>1</sup> The rules and forms listed below are scheduled for review by staff of the Commission during the next 12 months. The list includes 25 rules adopted by the Commission in 2003.

Title: **Transactions of Investment Companies With Portfolio and**

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<sup>1</sup> Several of the rulemakings identified below included non-substantive rule amendments, such as conforming cross references. The Commission requests that commenters focus on the substantive aspects of the rulemakings indicated in the list.

## **Subadviser Affiliates**

Citation: 17 CFR 270.10f-3; 17 CFR 270.12d3-1; 17 CFR 270.17a-6; 17 CFR 270.17a-10; 17 CFR 270.17d-1; 17 CFR 270.17e-1

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39.

Description: The rule and rule amendments (i) expand the exemptions for investment companies ("funds") to engage in transactions with "portfolio affiliates" - companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities and (ii) permit funds to engage in transactions with subadvisers of affiliated funds.

Prior Commission  
Determination  
Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-25888 (January 14, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC-25557 (Apr. 30, 2002) at that time.

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Title: **Conditions for Use of Non-GAAP Financial Measures**

Citation: 17 CFR 244.100, 17 CFR 244.101, 17 CFR 244.102, and 17 CFR 229.10.

Authority: 15 U.S.C. 77b(b), 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77s(a), 15 U.S.C. 77z-3, 15 U.S.C. 78c, 15 U.S.C. 78d, 15 U.S.C. 78j, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78o, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 7202(a), and 15 U.S.C. 7261.

Description: The Commission adopted rules and amendments requiring public companies that disclose or release financial information that is calculated or presented on the basis of methodologies other than in accordance with Generally Accepted Accounting Principles (GAAP) to include, in that disclosure or release, a presentation of the most directly comparable GAAP financial measure and a reconciliation of the disclosed non-GAAP financial measure to that measure. The amendments also provide additional guidance to

registrants that include non-GAAP financial measures in Commission filings and require registrants to furnish to the Commission earnings releases or similar announcements on Form 8-K.

Prior Commission  
Determination Under  
5 U.S.C. 610

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission certified that the rules and amendments would not have a significant economic impact on a substantial number of small entities in Release No. 33-8145 (November 5, 2002). The Commission solicited comments concerning the impact on small entities and the RFA certification, but received no comments. The final rule was adopted by the Commission in Release No. 33-8176 (January 22, 2003).

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Title:

**Insider Trades During Pension Fund Blackout Periods**

Citation:

17 CFR 240.13a-11, 17 CFR 240.15d-11, 17 CFR 245.100, 17 CFR 245.101, 17 CFR 245.102, 17 CFR 245.103, and 17 CFR 245.104.

Authority:

15 U.S.C. 78c, 15 U.S.C. 78m, 15 U.S.C. 78w(a), 15 U.S.C. 78mm, 15 U.S.C. 80a-29, 15 U.S.C. 80a-37, 15 U.S.C. 7202(a), and 15 U.S.C. 7244(a).

Description:

The Commission adopted rules and amendments to clarify the application and prevent the evasion of Section 306(a) of the Sarbanes-Oxley Act of 2002, which prohibits any director or executive officer of an equity security issuer from acquiring or transferring any equity security of the issuer during a pension plan blackout period that temporarily prevents plan participants or beneficiaries from engaging in equity securities transactions through their plan accounts, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. In addition, the rules specify the content and timing of the notice that issuers must provide to their directors and executive officers, and to the Commission about the imposition of a pension plan blackout period.

Prior Commission  
Determination Under  
5 U.S.C. 610:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34-47225 (January 22, 2003). The Commission considered comments

received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 34-46778 (November 6, 2002) at that time.

\* \* \* \* \*

Title: **Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002.**

Citation: 17 CFR 229.401 and 17 CFR 229.406.

Authority: 15 U.S.C. 77e, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77q, 15 U.S.C. 77s, 15 U.S.C. 77z-3, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78o, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 7202(a), 15 U.S.C. 7264, and 15 U.S.C. 7265.

Description: The Commission adopted amendments to require companies, other than registered investment companies, to disclose information relating to whether an audit committee financial expert serves on the company's audit committee and the adoption and implementation of a code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33-8177 (January 23, 2003). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 33-8138 (October 22, 2002) at that time.

\* \* \* \* \*

Title: **Retention of Records Relevant to Audits and Reviews**

Citation: 17 CFR 210 2-06

Authority: 15 U.S.C. 7202(a), 18 U.S.C. 1519, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 77z-3, 15 U.S.C. 78c 15 U.S.C. 78j-1, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78q, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 80a-8, 15 U.S.C. 80a-29, 15 U.S.C. 80a-30, 15 U.S.C. 80a-31, and 15 U.S.C. 80a-37.

Description: The rules were adopted pursuant to Section 802 of the Sarbanes-

Oxley Act of 2002 to require accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Act Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33-8189 (January 24, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. 33-8151 (November 21, 2002) at that time.

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Title: **Certification of Management Investment Company  
Shareholder Reports and Designation of Certified Shareholder  
Reports as Exchange Act Periodic Reporting Forms;  
Disclosure Required by Sections 406 and 407 of the Sarbanes-  
Oxley Act of 2002**

Citation: 17 CFR 270.8b-15; 17 CFR 270.30a-1; 17 CFR 270.30a-2; 17 CFR 270.30a-3; 17 CFR 270.30b1-1; 17 CFR 270.30b1-3; 17 CFR 270.30b2-1; 17 CFR 270.30d-1; 17 CFR 274.101; 17 CFR 274.128

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-1 et seq., 80a-8, 80a-24, 80a-26, 80a-29, 80a-34(d), 80a-37, 80a-39, secs. 3(a) and 302, Pub. L. No. 107-204, 116 Stat. 745.

Description: The Commission adopted rule and form amendments to require registered management investment companies to file certified shareholder reports on new Form N-CSR in accordance with Section 302 of the Sarbanes-Oxley Act. The Commission also adopted new rules to require registered investment management companies to maintain disclosure controls and procedures, to disclose whether they had adopted a code of ethics for their principal executive and senior financial officers, and to disclose whether they have at least one "audit committee financial expert" serving on their audit committees, as required by that Act.

Determination  
Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Act Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in

conjunction with the adoption of Release No. IC-25914 (January 27, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release Nos. IC- 25723 (Aug. 30, 2002) and 25775 (Oct. 22, 2002) at that time.

\* \* \* \* \*

Title: **Disclosure in Management’s Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations**

Citation: 17 CFR 229.303.

Authority: 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 77z-2, 15 U.S.C. 77z-3, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78u-5, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 7202(a), and 15 U.S.C. 7261(a).

Description: The Commission adopted the amendments to require disclosure of off-balance sheet arrangements in a separately captioned subsection of the Management’s Discussion and Analysis section of a registrant’s disclosure documents. The amendments also require registrants, other than smaller reporting companies, to provide tabular disclosure of aggregate contractual obligations as of the latest fiscal year-end balance sheet date.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33-8182 (January 28, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 33-8144 (November 4, 2002), but received no comments

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Title: **Implementation of Standards of Professional Conduct for Attorneys**

Citation: 17 CFR Part 205

Authority: 15 U.S.C. 7202, 7245, 7262.

Description: The Commission adopted a rule establishing standards of professional conduct for attorneys who appear and practice before

the Commission on behalf of issuers. Section 307 of the Sarbanes-Oxley Act of 2002 requires the Commission to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers. The rule requires an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the issuer up-the-ladder within the company.

Prior Commission  
Determination Under  
5 U.S.C. 610:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33-8185 (January 29, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 33-8150 (Nov. 21, 2002), but received no comments.

\* \* \* \* \*

Title:

**Proxy Voting by Investment Advisers**

Citation:

17 CFR 275.204-2; 17 CFR 275.206(4)-6

Authority:

15 U.S.C. 80b-2(a)(11)(F), 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11

Description:

The rule and rule amendments require investment advisers that exercise voting authority over client securities to adopt written policies and procedures that are reasonably designed to ensure the adviser votes proxies in the best interest of clients, disclose to clients information about those policies and procedures and how clients may obtain information on how the adviser has voted their proxies, and retain certain records relating to proxy voting.

Prior Commission  
Determination  
Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act regarding rule 206(4)-6 and rule 204-2 under the Investment Advisers Act of 1940 in conjunction with the adoption of Release No. IA-2106 (January 31, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IA-2059 (September 20, 2002) at that time.

\* \* \* \* \*

Title: **Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies**

Citation: 17 CFR 270.30b1-4; 17 CFR 274.11A; 17 CFR 274.11a-1; 17 CFR 274.11b; 17 CFR 274.128; 17 CFR 274.130

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-1 et seq., 80a-24, 80a-26, and 80a-29, 80a-34(d), 80a-37, 80a-39.

Description: The rule and rule amendments require registered management investment companies (i) to provide disclosure about how they vote proxies relating to portfolio securities they hold, (ii) to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities, and (iii) to file with the Commission and to make available to shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities.

Determination Under 5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-25922 (January 31, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC- 25739 (Sept. 20, 2002) at that time.

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Title: **Custody of Investment Company Assets with a Securities Depository**

Citation: 17 CFR 270.17f-4

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39.

Description: The rule amendments expand the types of investment companies that may maintain assets with a depository, and update the conditions they must follow to use a depository. The amendments respond to developments in securities depository practices and commercial law since the rule was adopted.

Prior Commission Determination

Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-25934 (February 13, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC-25266 (Nov. 15, 2001) at that time.

\* \* \* \* \*

Title:

**Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934**

Citation:

17 CFR 240.3a5-1, 17 CFR 240.3b-18, 17 CFR 240.15a-8, and 17 CFR 240.15a-11

Authority:

15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11.

Description:

The Commission adopted amendments to its rule granting an exemption to banks from dealer registration for a de minimis number of riskless principal transactions, and to its rule that defines terms used in the bank exception to dealer registration for asset-backed transactions. The Commission also adopted a new exemption for banks from the definition of broker and dealer under the Securities Exchange Act of 1934 for certain securities lending transactions. In addition, the Commission extended the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a dealer capacity before March 31, 2005. These rules addressed certain of the exceptions for banks from the definitions of "broker" and "dealer" that were added to the Securities Exchange Act by the Gramm-Leach-Bliley Act.

Prior Commission  
Determination  
Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the amendment to the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34-46745 (November 5, 2002).

As stated in the adopting release, No. 34-47364 (February 14, 2003), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

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Title: **Regulation Analyst Certification**

Citation: 17 CFR 242.500 through 505.

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 80a-23, 80a-29, and 80a-37.

Description: Regulation Analyst Certification ("Regulation AC") requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his or her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his or her specific recommendations or views. Broker-dealers are also required to obtain periodic certifications by research analysts in connection with the analyst's public appearances.

Prior Commission  
Determination  
Under  
5 U.S.C. 610:

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that Regulation AC would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, was set forth in the proposing release, Release No. 33-8119 (August 2, 2002). The Commission solicited comments on the potential impact of Regulation AC on small entities in the proposing release. No comments were received that discussed the Regulatory Flexibility Act Certification. However, in the adopting release, Release No. 33-8193 (February 20, 2003), in response to other comments, the Commission revised its estimates and concluded that the total burden in hours required to comply with proposed Regulation AC would be approximately 5.78 hours per year, per small firm, as compared to the original estimate of two hours and two minutes per year, per small firm.

\* \* \* \* \*

Title: **Standards Relating to Listed Company Audit Committees**

Citation: 17 CFR 229.401 and 17 CFR 240.10A-3.

Authority: 15 U.S.C. 77b, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77q, 15 U.S.C. 77s, 15 U.S.C. 78c(b), 15 U.S.C. 78j-1, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 80a-8, 15 U.S.C. 80a-20, 15 U.S.C. 80a-24(a), 15 U.S.C. 80a-29, 15 U.S.C. 80a-37, and 15 U.S.C. 7202.

Description: The Commission adopted rules to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the Sarbanes-Oxley Act of 2002. In addition, the Commission adopted amendments changing its disclosure requirements regarding audit committees.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33-8220 (April 9, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 33-8173 (January 8, 2003), but received no comments.

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Title: **Customer Identification Programs for Mutual Funds**

Citation: 17 CFR 270.0-11

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39.

Description: The rule implements section 326 of the USA PATRIOT Act of 2001 and requires investment companies (i) to implement procedures to verify the identity of any person seeking to open an account, (ii) to the extent reasonable and practicable, to maintain records of the information used to verify the person's identity, and (iii) to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency.

Prior Commission Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-26031 (April 29, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. 34- 46192 (July 12, 2002) at that time.

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Title:

**Improper Influence on Conduct of Audits**

Citation:

17 CFR 240 13b2-2.

Authority:

15 U.S.C. 7202(a), 15 U.S.C. 7242, 15 U.S.C. 77e, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77h, 15 U.S.C. 77j, 15 U.S.C. 77s, 15 U.S.C. 78c, 15 U.S.C. 78j-1, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78n, 15 U.S.C. 78o, 15 U.S.C. 78q, 15 U.S.C. 78w, 15 U.S.C. 80a-6, 15 U.S.C. 80a-8, 15 U.S.C. 80a-20, 15 U.S.C. 80a-29, 15 U.S.C. 80a-30, and 15 U.S.C. 80a-37.

Description:

The rules were adopted pursuant to the requirements of Section 303 of the Sarbanes-Oxley Act of 2002 to prohibit officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to coerce, manipulate, mislead, or fraudulently influence the auditor of the issuer's financial statements if that person knew or should have known that such action, if successful, could result in rendering the financial statements materially misleading.

Prior Commission  
Determination Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Act Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34-47890 (May 20, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. 34-46685 (October 18, 2002) at that time.

\* \* \* \* \*

Title: **Management’s Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports**

Citation: 17 CFR 210.1-02, 17 CFR 210.2-02, 17 CFR 229.307, 17 CFR 229.308, 17 CFR 240.12b-15, 17 CFR 240.13a-14, 17 CFR 240.13a-15, 17 CFR 240.15d-14, 17 CFR 240.15d-15.

Authority: 15 U.S.C. 77e, 15 U.S.C. 77f, 15 U.S.C. 77g, 15 U.S.C. 77j, 15 U.S.C. 77q, 15 U.S.C. 77s, 15 U.S.C. 78l, 15 U.S.C. 78m, 15 U.S.C. 78o, 15 U.S.C. 78w, 15 U.S.C. 78mm, 15 U.S.C. 80a-8, 15 U.S.C. 80a-29, 15 U.S.C. 80a-30, 15 U.S.C. 80a-37, 15 U.S.C. 7202(a), 15 U.S.C. 7241, 15 U.S.C. 7262, 15 U.S.C. 7263, and 18 U.S.C. 1350.

Description: The rules and amendments were adopted in light of Congress’ directive in Section 404 of the Sarbanes-Oxley Act of 2002 to require reporting companies, other than registered investment companies, to include in their annual reports a report of management on the company’s internal control over financial reporting. The internal control report must include management’s assessment of the effectiveness of the company’s internal control over financial reporting as of the end of its most recent fiscal year, as well as a statement that the registered public accounting firm that audited the company’s financial statements included in the annual report has issued an attestation report on management’s assessment. The rules also require companies to file the registered public accounting firm’s attestation report as part of its annual report. Further, the rules require that management evaluate any change in the company’s internal control over financial reporting that occurred during a fiscal quarter that has or is reasonably likely to materially affect the company’s internal control over financial reporting. In addition, the amendments require companies to provide the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to certain periodic reports.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended Section 404 of the Sarbanes-Oxley Act to provide that Section 404(b) shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer, nor a large accelerated filer, as defined in Exchange Act Rule 12b-2. In 2010, the Commission adopted conforming amendments to its rules.

Prior Commission Determination Under

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility

5 U.S.C. 610:

Act in conjunction with the adoption of Release No. 33-8238 (June 5, 2003). The Commission solicited comments with respect to the rules and amendments in two separate proposing releases, Release Nos. 33-8138 (October 22, 2002) and 33-8212 (March 21, 2003). The Commission also solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis, but received no comments on the impact on small entities of the new certification requirements.

\* \* \* \* \*

Title:

**Certain Research and Development Companies**

Citation:

17 CFR 270.3a-8

Authority:

15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39.

Description:

The rule provides a nonexclusive safe harbor from the definition of an investment company for certain bona fide research and development companies.

Prior Commission

Determination

Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-26077 (June 16, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. IC- 25835 (Nov. 26, 2002) but received no comments.

\* \* \* \* \*

Title:

**Custody of Funds or Securities of Clients by Investment Advisers**

Citation:

17 CFR 275.206(4)-2; 17 CFR 279.1

Authority:

15 U.S.C. 80b-1 et seq., 80b-2(a)(11)(F), 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11

Description:

The amendments to the custody rule conformed the rule to modern custodial practices and required advisers that have custody of client funds or securities to maintain those assets with broker-dealers, banks, or other qualified custodians. The amendments

were designed to enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

Prior Commission  
Determination  
Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act with respect to amended rule 206(4)-2 under the Advisers Act and to amended Part 1A, Item 9 and Part II, Item 14 of Form ADV in conjunction with the adoption of Release No. IA- 2176 (September 25, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. IA-2044 (July 18, 2002), but received no comments.

\* \* \* \* \*

Title: **Amendments to Investment Company Advertising Rules**

Citation: 17 CFR 270.34b-1

Authority: 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39.

Description: The rule amendments (i) require enhanced disclosure in investment company advertisements to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance, and (ii) implement section 24(g) of the Investment Company Act by permitting the use of a prospectus under section 10(b) of the Securities Act with respect to securities issued by an investment company that includes information the substance of which is not included in the investment company's statutory prospectus.

Prior Commission  
Determination  
Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-26195 (September 29, 2003). The Commission considered comments to the proposing release and to the Initial Regulatory Flexibility Analysis prepared in Release No. IC- 25575 (May 17, 2002) at that time.

\* \* \* \* \*

Title: **Purchases of Certain Equity Securities by the Issuer and Others**

Citation: 17 CFR 228.703; 17 CFR 229.703; 17 CFR 240.10b-18; 17 CFR 249.220f; 17 CFR 249.308a; 17 CFR 249.308b; 17 CFR 249.310; 17 CFR 249.310b; 17 CFR 249.33117 CFR 270.23c-1; 17 CFR 274.128; 17 CFR 274.201

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77K, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78c, 78c(b), ), 78d, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78l, 78m, 78n, 78o(d), 78u-5, 78w, 78x, 78ll, 78mm, 79e, 79j, 79n, 79q, 79t, 80a-1 et seq., 80a-8, 80a-9, 80a-20, 80a-23, 80a-24, 80a-26, 80a-29, 80a-30, 80a-24, 80a-26, 80a-29, 80a-34(d), 80a-38(a), 80a-37, 80a-39, 80b-3, 80b-4, 80b-11, 7201 et seq., 18 U.S.C. 1350.

Description: The rule amendments provide issuers with a "safe harbor" from liability for manipulation when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions. The amendments are intended to simplify and update the safe harbor provisions in light of market developments since the rule's adoption. To enhance the transparency of issuer repurchases, the Commission also adopted amendments to a number of regulations and forms regarding disclosure of repurchases of equity securities by the issuer and affiliated purchasers (both open market and private transactions), regardless of whether the repurchases are effected in accordance with the issuer repurchase safe harbor rule.

Prior Commission Determination Under 5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 33-8335 (November 10, 2003). The Commission solicited comments concerning the impact on small entities and the Initial Regulatory Flexibility Analysis prepared in Release No. 34-46980 (December 10, 2002), but received no comments.

\* \* \* \* \*

**Title:** **Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors**

**Citation:** 17 CFR 270.30a-2; 17 CFR 274.128

**Authority:** 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, 80a-39.

**Description:** The rule amendments impose new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operations of boards of directors. Specifically, the Commission adopted enhancements to existing disclosure requirements regarding the operations of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with directors. These rules require disclosure but do not mandate any particular action by a company or its board of directors; rather, the new disclosure requirements are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

**Prior Commission Determination Under 5 U.S.C. 601:**

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. IC-26262 (November 24, 2003). The Commission solicited comments on the proposing release and on the Initial Regulatory Flexibility Analysis prepared in Release No. 34-48301 (August 8, 2003). The Commission received no comments on the Initial Regulatory Flexibility Analysis, but it did receive comments on the impact of the proposed rules on small business issuers. The Commission considered those comments in the adopting release.

\* \* \* \* \*

**Title:** **Processing Requirements for Cancelled Security Certificates**

**Citation:** 17 CFR 240.17f-1, 17 CFR 240.17Ad-7, 17 CFR 240.17Ad-12, and 17 CFR 240.17Ad-19

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll,

78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7202, 7241, 7262, and 7263, and 18 U.S.C. 1350.

Description:

This rule requires every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. The rule requires transfer agents to mark each cancelled securities certificate with the word "cancelled"; maintain a secure storage area for cancelled certificates; maintain a retrievable database of all cancelled, destroyed, or otherwise disposed of certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, the Commission amended its lost and stolen securities rule and its transfer agent safekeeping rule to make it clear that these rules apply to unissued and cancelled certificates.

Prior Commission  
Determination  
Under  
5 U.S.C. 610:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34-48931 (December 16, 2003). The Commission solicited comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. 34-43401 (October 2, 2000), but received no comment on that analysis. The Commission did receive comments related to small business, and considered those comments in the adopting release.

\* \* \* \* \*

Title:

**Compliance Programs of Investment Companies and  
Investment Advisers**

Citation:

17 CFR 270.38a-1; 17 CFR 275.204-2; 17 CFR 275.206(4)-7

Authority:

15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, 80b-1 *et seq.*, 80b-2(a)(11)(F), 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11

Description:

The rules require each investment company and investment adviser registered with the Commission and each business development company to (i) adopt and implement written compliance policies and procedures, (ii) review those policies and procedures annually, and (iii) appoint a compliance officer to be responsible for administering the policies and procedures. The rules also impose a

new recordkeeping requirement.

Prior Commission  
Determination  
Under  
5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act regarding rule 38a-1 under the Investment Company Act of 1940, new rule 206(4)-7 under the Investment Advisers Act, and amendments to rule 204-2 under the Investment Advisers Act, and to Part 1, Schedule A, Item 2(a) of Form ADV in conjunction with the Commission's adoption of Release No. IA-2204 (December 17, 2003). The Commission considered comments on the proposing release and on the Initial Regulatory Flexibility Analysis prepared in Release No. IC-25925 (Feb. 5, 2003) at that time.

\* \* \* \* \*

Title: **Recordkeeping Requirements for Registered Transfer Agents**

Citation: 17 CFR 240. 240.17Ad-7

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7202, 7241, 7262, and 7263, and 18 U.S.C. 1350.

Description: The Commission amended its rule concerning recordkeeping requirements for registered transfer agents. The amendments made it clear that registered transfer agents may use electronic, microfilm, and microfiche media as a substitute for hard copy records, including cancelled stock certificates, for purposes of complying with the Commission's transfer agent recordkeeping rules and that a third party on behalf of a registered transfer agent may place into escrow the required software information.

Prior Commission  
Determination  
Under  
5 U.S.C. 610:

A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with Release No. 34-48949 (December 18, 2003). The Commission received comment letters in response to the Initial Regulatory Flexibility Analysis in the proposing release, Release

No. 34-48036 (June 16, 2003), that did not address the issues presented in the proposing release.

By the Commission.

Brent J. Fields  
Secretary

Dated: December 19, 2014