

DEREGISTRATION OF INVESTMENT COMPANIES: APPLICATIONS ON FORM N-8F

Under the Investment Company Act of 1940 Act (“1940 Act”), the Commission may deregister a registered investment company (“fund”) if it determines that the fund is no longer an “investment company.”¹ In order to expedite the deregistration process, the Commission adopted Form N-8F, and today, most deregistrations are completed pursuant to an application on the Form.²

The staff of the Division of Investment Management reviews these applications on a rolling basis. If the staff does not identify any deficiencies in an application, it will prepare a notice to inform the public that the application has been filed. The Commission issues the notices in a batch at the end of each month, typically on the last Friday.³ Following the notice period, which is typically 25 days, the Commission will issue an order granting the request to deregister unless a hearing on the application has been ordered.

Many of these applications proceed to notice based on the initial filing. However, if the staff identifies any deficiencies in an application, it will generally issue comments requesting revisions or additional information. The staff has observed that a significant number of these comments relate to a handful of Items on the Form. In order to assist applicants in completing the Form, we identify these Items below and provide additional guidance for responding to these Items.

Guidance on Responding to Selected Items on Form N-8F

- 1) Item 2: This Item requests the fund’s name. The response should provide the name of the registrant as it appears on EDGAR and should not include the name of any particular series of the registrant.
- 2) Item 11: This Item requests information regarding the fund’s adviser. If the fund is a unit investment trust (“UIT”), the response to this Item should be “not applicable” or include an explanation that, as a UIT, the fund does not have an adviser.



- 3) Item 15(a): This Item requests information regarding whether the fund's board of directors has approved the action leading to deregistration. For a UIT, the response to this Item should be "not applicable" or include an explanation that, as a UIT, the fund does not have a board. In the case of an insurance company separate account organized as a UIT, this remains the correct response even if the board of the insurance company associated with the separate account has approved the action leading to deregistration. In the case of a UIT that is liquidating in accordance with its terms, the response may include a statement to that effect.
- 4) Item 25: An applicant filing on the basis of "Abandonment of Registration" may either be (a) a fund that registered but, prior to offering securities publicly, determined to wind up or (b) a fund that will continue to operate but qualifies for an exclusion from the definition of "investment company" under section 3(c)(1) or 3(c)(7) of the 1940 Act.⁴ In many cases, applicants filing for "Abandonment" do not clearly identify which of these categories applies, making it difficult for the staff to evaluate whether deregistration on this basis is appropriate. The staff offers the following guidance for responding to the Form when the fund is winding up or becoming a private fund.

Funds winding up. In the case of a fund that has never publicly offered securities and plans to wind up, the applicant should check "no" in Item 25 and include the following either in Item 12 or Item 25:

Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Registered funds becoming private funds. In the case of a fund that will continue to operate as a private fund, the applicant should check "yes" in Item 25. The description required in Item 25 should then include:

- A statement that the fund will continue to operate in reliance on section 3(c)(1) or 3(c)(7) of the 1940 Act and a brief explanation of the basis for reliance.
- A representation that the fund has notified, or promptly will notify, its beneficial owners that certain legal protections afforded to shareholders under the 1940 Act will no longer apply.

Separate accounts becoming private funds. In the case of an insurance company separate account that will continue to operate as a private fund, the response to Item 25 should set out the information described above as well as:

- The number of contract owners invested in the separate account, including the number of participants in any group contracts.
 - Whether any contract owners not currently invested in the separate account have the option to reallocate amounts currently invested in a general account investment option to a separate account investment option (and, if so, whether this could change the fund's ability to rely on section 3(c)(1) or 3(c)(7)).
 - Whether a contract owner may continue to make premium payments that may be allocated to the separate account.⁵
 - A representation that the insurance company associated with the separate account will remain responsible for performing all obligations to contract owners under the terms of their contracts.
- 5) Verification: In the verification at the end of the Form, the name of the fund should exactly match the name provided in response to Item 2.
- 6) Item 6: This Item requests information regarding the applicant's contact person. Applicants may include an email address for purposes of receiving staff comments, if any, electronically.

Endnotes

- 1 See section 8(f) of the 1940 Act.
- 2 See *Deregistration of Certain Registered Investment Companies*, Release No. IC-23786 (Apr. 15, 1999) [64 FR 19469 (Apr. 21, 1999)] (adopting rule 8f-1 and Form N-8F in their current form). Rule 8f-1 provides that “[a] registered investment company that seeks a Commission order declaring that it is no longer an investment company may file an application with the Commission on Form N-8F [...] if the investment company” falls within one of four enumerated categories (described in the Form as “Merger,” “Liquidation,” “Abandonment of Registration” and “Business Development Company”).
- 3 See <http://www.sec.gov/rules/icdereg.shtml> for a list of notices of applications for deregistration and orders under section 8(f).
- 4 Item 1 provides that applicants filing on the basis of “Abandonment of Registration” are only required to complete certain portions of the Form (specifically, Items 1

through 15, 24 and 25 and the verification). Instruction 1(c) to the Form defines “Abandonment” to include a fund that “qualifies for an exclusion from the definition of ‘investment company’ under section 3(c)(1) or section 3(c)(7)” of the 1940 Act. However, we have also permitted funds to file on the basis of “Abandonment” where they have registered but, prior to offering securities publicly, determined to wind up. If a fund has offered securities publicly prior to winding up, it must instead file on the basis of “Liquidation.”

- 5 In general, if contract owners may continue to make premium payments, the staff would consider the public offering to be ongoing and the fund should not be deregistered using Form N-8F.

This *IM Guidance Update* summarizes the views of the Division of Investment Management regarding various requirements of the federal securities laws. Future changes in laws or regulations may supersede some of the discussion or issues raised herein. This *IM Guidance Update* is not a rule, regulation or statement of the Commission, and the Commission has neither approved nor disapproved of this *IM Guidance Update*.

The Investment Management Division works to:

- ▲ protect investors
- ▲ promote informed investment decisions and
- ▲ facilitate appropriate innovation in investment products and services

through regulating the asset management industry.

If you have any questions about this IM Guidance Update, please contact:

Chief Counsel's Office/Public Inquiry

Phone: 202.551.6825

Email: IMOCC@sec.gov