

**SUMMARY OF COMMENTS
ON
PROPOSED AMENDMENTS
REQUIRING DISCLOSURE REGARDING PORTFOLIO MANAGERS
OF
REGISTERED MANAGEMENT INVESTMENT COMPANIES**

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S7-12-04

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**DISCLOSURE REGARDING PORTFOLIO MANAGERS OF REGISTERED
MANAGEMENT INVESTMENT COMPANIES**

LIST OF COMMENTERS

Funds/ Investment Advisers/Financial Advisers/Fund Industry Professionals

1.	American Express Asset Management Group Inc.; American Express Financial Corporation	American Express
2.	BlackRock, Inc.	BlackRock
3.	Capital Research and Management Company	Capital Research
4.	Frank Russell Investment Management Company	Russell
5.	Goldman, Sachs & Co. (and affiliates)	Goldman
6.	Janus Capital Management LLC	Janus
7.	John C. Bogle	Bogle
8.	Lincoln Financial Advisors	Lincoln
9.	T. Rowe Price Associates, Inc.; T. Rowe Price International, Inc.	T. Rowe
10.	USAA Investment Management Company	USAA
11.	Vanguard Group	Vanguard
12.	Wellington Management Company, LLP	Wellington

Professional and Trade Associations

1.	Asset Managers Forum; Asset Managers Forum COO Group	AMF
2.	The Financial Services Roundtable	FSR
3.	Investment Company Institute	ICI
4.	Investment Company Institute's Board of Governors	ICI Board
5.	Investment Counsel Association of America	ICAA
6.	North American Securities Administrators Association, Inc.	NASA

Service Providers

1.	Morningstar, Inc.	Morningstar
2.	The Ranking Service	TRS

Retiree Organizations

- | | | |
|----|----------------------------------|-----------------|
| 1. | Lucent Retirees Organization | Lucent Retirees |
| 2. | TelCo Retirees Association, Inc. | TRA |

Individual Investors

- | | | |
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| 3. | Larry Cohen | Cohen |
| 4. | Daniel Colon | Colon |
| 5. | Gerald R. Haywood | Haywood |
| 6. | Mike Heller | Heller |
| 7. | William C. Johnson | Johnson |
| 8. | Cynthia Manabe | Manabe |
| 9. | Richard Mueller | Mueller |
| 10. | Peter Ryan | Ryan |
| 11. | David L. Spurr | Spurr |
| 12. | John R. Straub | Straub |
| 13. | William Thomson | Thomson |
| 14. | Susan Wang | Wang |
| 15. | Kevin Zachmann | Zachmann |

Attorneys/Accountants

- | | | |
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| 1. | Scott A. Burnett, Esq. | Burnett |
| 2. | James E. Grant, CPA | Grant |

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I. INTRODUCTION

On March 11, 2004, the Securities and Exchange Commission (the “Commission”) issued a release proposing form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 (the “Investment Company Act”).¹ The proposed amendments would require improved disclosure regarding portfolio managers of registered management investment companies (“funds”). Specifically, the amendments would:

- Require a fund to identify in its prospectus each member of a committee, team, or other group of persons that is jointly and primarily responsible for the day-to-day management of the fund’s portfolio;
- Require a fund to provide information in its Statement of Additional Information (“SAI”) regarding other accounts managed by any of its portfolio managers, including a description of conflicts of interest that may arise in connection with simultaneously managing the fund and the other accounts;
- Require a fund to disclose in its SAI the structure of, and the method used to determine, the compensation of each portfolio manager;
- Require a fund to disclose in its SAI each portfolio manager’s ownership of securities in the fund and other accounts, including investment companies, managed by the portfolio manager, the fund’s investment adviser, or any person controlling, controlled by, or under common control with an investment adviser or principal underwriter of the fund; and
- Require a closed-end fund to provide disclosure regarding its portfolio managers in its reports on Form N-CSR.

The comment period closed on May 21, 2004. The Commission received comments from 40 commenter that used the file number of the proposal (S7-12-04). Thirty-four of these commenters addressed the proposed disclosure requirements in

¹ Investment Company Act Release No. 26383 (March. 11, 2004) [69 FR 12752 (March 17, 2004)] (“Proposing Release”).

whole or in part;² the rest addressed other issues related to investment companies in general.

II. DISCUSSION

Of the 34 commenters that addressed the proposed amendments, 23 expressed general support for the Commission's proposals, although many expressed concerns regarding portions of the disclosure or suggested changes.³

A. Identification of Portfolio Management Team Members

Summary: The Commission proposed form amendments that would require a fund to identify in its prospectus each member of a committee, team, or other group of persons associated with the fund's investment adviser that is jointly and primarily responsible for the day-to-day management of the fund's portfolio. The proposed amendments would require the fund to state the name, title, length of service, and business experience of each member of its portfolio management team. The proposals would also require the fund to provide a brief description of each member's role on the management team.

Fifteen commenters expressly addressed the proposal to require disclosure regarding portfolio management team members.⁴ All fifteen generally supported the proposal, agreeing that the disclosure would provide investors with useful information regarding portfolio management teams. However, most of these commenters also expressed concerns about the proposal and suggested changes.⁵

Eight commenters objected to the proposed requirement to identify and provide disclosure with respect to each member of a portfolio management team who is jointly and primarily responsible for the day-to-day management of a fund.⁶ The commenters argued generally that providing specific information on each member of a large portfolio management team would overwhelm investors with information that would not be useful, mainly because each individual team member typically would have responsibility for

² American Express; AMF; BlackRock; Bogle; Burger; Burnett; Capital Research; Colon; Frank Russell; FSR; Goldman; Grant; Haywood; Heller; ICAA; ICI; ICI Board; Janus; Lincoln; Manabe; Morningstar; Mueller; NASAA; T. Rowe; Ryan; Spurr; Straub; TRS; Thomson; USAA; Vanguard; Wang; Wellington; Zachmann.

³ American Express; AMF; BlackRock; Burger; Burnett; Capital Research; FSR; Goldman; Haywood; ICAA; ICI; Janus; Lincoln; Morningstar; Mueller; NASAA; Ryan; Straub; TRS; Thomson; USAA; Wellington; Zachmann.

⁴ American Express; AMF; Frank Russell; FSR; Goldman; Grant; Heller; ICAA; ICI; Morningstar; NASAA; T. Rowe; USAA; Vanguard; Wellington.

⁵ American Express; AMF; Goldman; ICAA; ICI; Morningstar; NASAA; T. Rowe; USAA; Vanguard; Wellington.

⁶ American Express; AMF; Goldman; ICAA; ICI; Morningstar; T. Rowe; Wellington.

only a very small percentage of the fund’s assets, thus making their individual identities and other individual information substantially less material to investors. In addition, these commenters argued that identifying each team member could affect the flexibility of organizing teams, be a costly burden to funds, and encourage other firms to aggressively pursue team members, thus increasing manager turnover. Finally, commenters argued that lengthy disclosure might distract investors’ attention from more important information in the prospectus, including the identity of those managers who are the most responsible for the fund.⁷

All of the commenters that objected to the proposed requirement suggested limiting the number of persons for whom disclosure must be provided.⁸ Some of these commenters suggested that the Commission should limit identification and disclosure to managers that are primarily responsible for the management of a fund’s portfolio, for example, “portfolio coordinators,” “lead members” of a portfolio management team, or individuals identified by the fund’s board of directors as being responsible for day-to-day management.⁹ Other suggestions included identifying only a fixed number of managers, such as five, most responsible for day-to-day management, and/or managers responsible for a certain percentage of fund assets, such as ten percent.¹⁰

Two commenters also noted that the proposed “jointly and primarily responsible” standard for disclosure was unclear, particularly with respect to analysts responsible for contributing a specified number of stock picks for the fund.¹¹ One of these commenters asked the Commission to clarify that the term “jointly and primarily responsible” refers only to the individual team members who are authorized to make final investment decisions for a fund’s portfolio.¹² The other commenter suggested that the Commission provide guidance on factors for the board to use to determine who should be designated a manager of the fund.¹³

In response to a request for comment, two commenters supported requiring additional disclosure regarding the portfolio management team structure and decision-making process.¹⁴ One of these commenters suggested requiring disclosure concerning how the team is structured; how responsibilities are divided; and the aggregate staffing, tenure, and personnel turnover data of the securities analysts on the team.¹⁵ However, three commenters argued that it is not necessary to require disclosure

⁷ See, e.g., ICAA.

⁸ American Express; AMF; Goldman; ICAA; ICI; Morningstar; T. Rowe; Wellington.

⁹ American Express; AMF; Goldman; ICAA; Morningstar; Wellington.

¹⁰ American Express; ICI; Morningstar; T. Rowe; Wellington.

¹¹ ICAA; Morningstar.

¹² ICAA.

¹³ Morningstar.

¹⁴ Morningstar; NASAA.

¹⁵ Morningstar.

of the structure and decision-making process for portfolio management teams, and that these elements are in constant flux and therefore it would be difficult to keep the information accurate and current.¹⁶ One commenter also argued against requiring disclosure of the team's decision-making process, and stated that a brief description of the structure of the team, and the role of each team leader and each category of other team members, would seem better to achieve the purposes of the proposal.¹⁷

With respect to the information to be disclosed about each portfolio manager identified, one commenter recommended that the name of each portfolio manager and the initial date when he or she assumed responsibility be required to be disclosed in a table at the front of the prospectus, but that the requirement for other background information be eliminated.¹⁸ On the other hand, another commenter recommended that the Commission expand the reporting requirement with respect to a portfolio manager's experience from five years to ten years.¹⁹

With respect to the location of the disclosure, two commenters argued that all information relating to portfolio management teams should be included in the SAI.²⁰ Another commenter agreed that the additional disclosure called for by the proposal regarding other accounts managed, compensation structure, and securities ownership should be in the SAI.²¹ Another commenter suggested that if the final amendments required disclosure with respect to team members who are not authorized to make final decisions, the disclosure, including basic information, about such individuals should be in the SAI.²² Two commenters suggested that the prospectus was the appropriate location to disclose the name, title, length of service and business experience of portfolio managers, but that any additional disclosure such as concerning a team's structure, division of responsibilities, and personnel turnover should be placed in the SAI.²³ One of these commenters added that the prospectus disclosure should refer to the availability of this supplemental information in the SAI.²⁴ One final commenter supported locating the identification of team members in the prospectus, but suggested that it should appear in table format at the front of that document.²⁵

¹⁶ American Express; FSR; ICAA.

¹⁷ Goldman.

¹⁸ Grant.

¹⁹ NASAA.

²⁰ FSR; NASAA.

²¹ Goldman.

²² ICAA.

²³ Goldman; Morningstar.

²⁴ Morningstar.

²⁵ Grant.

One commenter specifically supported the proposal to require managed separate accounts that issue variable annuity contracts to provide prospectus disclosure in the same manner as other fund managers.²⁶ Another commenter expressed support for applying the portfolio manager disclosure requirement to both mutual funds underlying variable insurance products and to other types of mutual funds.²⁷

A commenter argued that manager-of-managers funds that rely upon a no-action letter with respect to the disclosure of their portfolio managers should continue to be able to rely upon the no-action letter, or that the relevant provisions of the no-action letter should be incorporated into the final amendments.²⁸ Under the terms of the no-action letter, such funds may conclude that individuals employed by the adviser, rather than the sub-advisers, are responsible for day-to-day management of the fund and should be named as the portfolio managers.

Six other commenters noted that providing all of the proposed SAI information, such as disclosure regarding compensation structure and securities ownership, for manager-of-managers funds or other funds that engage sub-advisers would be particularly problematic.²⁹

B. Disclosure Regarding Other Accounts Managed, Potential Conflicts of Interest, and Policies and Procedures to Address Conflicts

Summary: The Commission proposed form amendments that would require a fund to provide disclosure in its SAI: (1) regarding other accounts for which a fund's portfolio manager is primarily responsible for the day-to-day portfolio management; (2) describing any conflicts of interest that may arise in connection with the portfolio manager's management of the fund's investments, on the one hand, and the investments of the other accounts, on the other; and (3) providing a description of the policies and procedures used by the fund or the fund's adviser to address any such conflicts.

1. Disclosure of Other Accounts

Fourteen commenters expressly addressed the proposal to require disclosure regarding other accounts managed.³⁰ Most generally supported the goal of the proposal of alerting investors to the types of conflicts that can arise when a portfolio manager simultaneously manages a mutual fund and other accounts.³¹ One commenter argued that

²⁶ NASAA.

²⁷ American Express.

²⁸ Frank Russell.

²⁹ American Express; FSR; ICI; USAA; Vanguard; Wellington.

³⁰ American Express; AMF; Capital Research; FSR; Goldman; ICAA; ICI; ICI Board; Morningstar; NASAA; T. Rowe Price; USAA; Vanguard; Wellington.

³¹ American Express; AMF; Capital Research; FSR; Goldman; ICAA; ICI; ICI Board; NASAA; Wellington.

requiring detailed disclosure of other accounts managed by each fund's portfolio managers would create the impression that there is something inappropriate about a portfolio manager managing multiple accounts and would serve mainly as a red herring that distracts investors from more important information about a fund.³² Another commenter, in response to a request for comment, specifically opposed requiring funds to identify other accounts managed by a portfolio manager.³³

While commenters generally supported the Commission's proposal to enumerate other accounts managed by a fund's portfolio manager by category, three commenters recommended that the categories "other investment companies" and "other pooled investment vehicles" proposed for disclosure of other accounts managed be combined, as they appear to overlap and, in any event, are not helpful in enabling investors to assess conflicts.³⁴

One commenter requested that the "other accounts" category include only other accounts managed on behalf of the adviser that employs the portfolio manager to avoid potential interpretive issues that could arise in situations such as when a fund's portfolio manager is managing an account in a personal capacity, *e.g.*, a family trust.³⁵

Three commenters suggested limiting the information required to be provided about "other accounts" in order to highlight information that is most beneficial to investors. One commenter suggested that the disclosure be limited to: (i) the total number of other accounts managed by the portfolio manager; (ii) the total assets within such other accounts; and (iii) the total assets of the fund.³⁶ This commenter argued that if funds are already required to disclose potential conflicts of interest involving other accounts, there is no real purpose in also requiring details regarding the types of other accounts managed or performance fee arrangements for these other accounts. Two other commenters argued that the disclosure with respect to total assets and performance-based advisory fees is unnecessary.³⁷

Three commenters argued that any disclosure regarding other accounts managed should be limited to only those individuals with the authority to make investment decisions.³⁸ One of these commenters also argued that no more than five individuals should be required to disclose this information.³⁹ Another commenter added that this

³² Vanguard.

³³ Morningstar.

³⁴ ICAA; ICI; USAA.

³⁵ ICI.

³⁶ Vanguard.

³⁷ FSR; Goldman.

³⁸ FSR; ICAA; Morningstar.

³⁹ FSR.

disclosure should apply only to accounts for which the portfolio manager also has final investment decision-making authority.⁴⁰

Finally, three commenters specifically supported including the proposed disclosure about other accounts managed in the SAI.⁴¹

2. Description of Conflicts Related to Other Accounts

Ten commenters expressly addressed whether the Commission should require descriptions of any conflicts of interest that may arise in connection with a portfolio manager's management of the fund's investments, on the one hand, and the investments of other accounts, on the other.⁴² Seven commenters generally supported the proposal, although many expressed concerns regarding the extent of the proposed requirements, and suggested changes.⁴³

Many of the commenters thought the requirement to describe "any conflicts of interest that might arise" was overly broad and open-ended, arguing that it would be impossible to identify with certainty every possible conflict and that funds would provide overly comprehensive lists of conflicts that could occur, however remote the possibility of their occurrence.⁴⁴ Other commenters suggested that the Commission provide further guidance on or examples of the types of conflicts that would be required to be disclosed.⁴⁵

Nine commenters suggested that the Commission modify the proposal to require funds to disclose only *material* conflicts of interest given the type of fund(s) and account(s) at issue, arguing that this would more appropriately tailor the requirement to elicit relevant and meaningful information.⁴⁶ One of these commenters recommended clarifying that the factors to be considered in disclosing material conflicts of interest should include: the amount and structure of the portfolio manager's compensation relating to other accounts, personal investments in other accounts by the portfolio manager and his family members, and any agreements or understandings between the portfolio manager and third parties with respect to investments in the fund or other accounts.⁴⁷ This commenter also suggested using the materiality standard that applies

⁴⁰ ICAA.

⁴¹ Capital Research; FSR; Morningstar.

⁴² American Express; AMF; Goldman; ICAA; ICI; Mueller; T. Rowe; USAA; Vanguard; Wellington.

⁴³ American Express; AMF; Goldman; ICAA; ICI; Mueller; Wellington.

⁴⁴ *See, e.g.*, ICAA; ICI.

⁴⁵ AMF; Morningstar.

⁴⁶ American Express; AMF; Goldman; ICAA; ICI; T. Rowe; USAA; Vanguard; Wellington.

⁴⁷ Vanguard.

under Item 13(b) of Form N-1A to disclosure of any interests of directors in fund transactions, that is, “on the basis of the significance of the information to investors in light of all the circumstances of the particular case.” Another of these commenters also suggested that a portfolio manager’s ownership interests in other accounts should be addressed as an aspect of material conflicts of interest.⁴⁸

A final commenter stated that the Commission should ensure that funds describe potential conflicts in a specific, but non-technical way.⁴⁹

3. Description or Disclosure of Policies and Procedures

Eight commenters addressed the requirement to discuss or disclose fund policies and procedures concerning potential conflicts related to side-by-side management.⁵⁰ Five of these commenters criticized the requirement related to the disclosure of policies and procedures as excessive and unnecessary.⁵¹ Two commenters supported the proposed requirement, but agreed with those commenters who were critical of the proposal that it was broader than necessary.⁵² The remaining commenter requested that the Commission provide specific examples of disclosures of the policies and procedures relating to conflicts.⁵³

Of the commenters who were critical of the proposed requirement, three commenters noted that the problems with the proposed requirement would be significantly greater in the case of funds with multiple advisers, including manager-of-manager funds.⁵⁴ Five commenters suggested that the Commission instead require (or allow as an alternative) disclosure that the fund and/or its adviser have policies and procedures in place designed to address the conflicts of interest identified, and that such policies and procedures have been approved and are periodically reviewed by the fund’s board of directors.⁵⁵ These commenters argued that this recommendation would address concerns related to excessive and unnecessary disclosure while achieving the objectives of the proposed disclosure requirements.⁵⁶ One commenter argued that the Commission is already sufficiently addressing concerns regarding portfolio manager conflicts of interest through other rulemaking initiatives, such as the requirement for funds and advisers to adopt compliance policies and procedures, and the proposed requirement for

⁴⁸ ICAA.

⁴⁹ Morningstar.

⁵⁰ American Express; Capital Research; FSR; ICAA; ICI; Morningstar; USAA; Vanguard.

⁵¹ Capital Research; ICAA; ICI; USAA; Vanguard.

⁵² American Express; FSR.

⁵³ Morningstar.

⁵⁴ ICI; USAA; Vanguard.

⁵⁵ Capital Research; FSR; ICAA; ICI; USAA.

⁵⁶ FSR; ICAA; ICI.

investment advisers to adopt codes of ethics.⁵⁷ One commenter suggested limiting the disclosure to material procedures to address material conflicts of interest.⁵⁸

4. Conflicts Regarding “Side-by-Side Management” Generally

Ten commenters specifically addressed the Commission’s request for comment on whether the proposed conflicts of interest disclosure is sufficient or whether the Commission should prohibit portfolio managers of registered funds from managing certain types of accounts.⁵⁹ One commenter supported an outright ban on mutual fund portfolio managers simultaneously managing hedge funds and/or separate accounts due to the conflicts of interest inherent in the incentives and compensation in the different entities.⁶⁰ The remaining commenters, however, opposed any such prohibition, arguing that such prohibition would reduce investor access to the expertise of certain portfolio managers and that the proposed disclosure, together with existing regulation, would in any event be sufficient. One commenter argued that such a prohibition would have a particularly disruptive and anti-competitive effect on smaller investment management firms that have fewer employees and may not have the resources to maintain separate staff for different types of accounts.⁶¹

C. Disclosure of Portfolio Manager Compensation Structure

Summary: The Commission proposed form amendments that would require a fund to provide disclosure in its SAI regarding the structure of, and the method used to determine, the compensation of its portfolio managers.

Nineteen commenters addressed the proposal to require disclosure in the SAI regarding a portfolio manager’s compensation structure.⁶² All of these commenters generally supported requiring disclosure regarding a portfolio manager’s compensation structure in order to help investors better understand the incentives of portfolio managers, although many of these commenters expressed concerns regarding the scope of the required disclosure and suggested changes or clarification.

Several comments addressed the definition of compensation. For example, one commenter was concerned that the proposed definition of “compensation” was vague and overly broad in certain respects, particularly when coupled with the phrases “without

⁵⁷ Vanguard.

⁵⁸ American Express.

⁵⁹ American Express; AMF; BlackRock; FSR; Goldman; ICAA; ICI; Morningstar; NASAA; TRS.

⁶⁰ TRS.

⁶¹ ICI.

⁶² American Express; AMF; Bogle; Burnett; Capital Research; FSR; Goldman; Heller; ICAA; ICI; Lincoln; Morningstar; Mueller; NASAA; Ryan; Spurr; USAA; Vanguard; Wellington.

limitation” and “non-cash” compensation.⁶³ Another simply requested further specific guidance on the definition and the required components of compensation.⁶⁴

Most commenters suggested limiting the elements and criteria of compensation to be disclosed. Six commenters argued that certain benefits – such as health, qualified retirement plans and arrangements that meet certain IRS requirements that are generally available to company employees – should not be covered because disclosing them would not assist investors in assessing whether the manager’s interests are aligned with those of the fund’s shareholders.⁶⁵

An additional commenter recommended that compensation disclosure be limited to a statement of (i) the types or components of compensation paid to a portfolio manager by the fund, the investment adviser and by other sources with respect to the manager’s management of the fund and other accounts, (ii) for each such type or component of compensation, whether it is fixed or variable, and (iii) with respect to variable compensation, whether or not it is based on the manager’s meeting certain performance targets relating to the portfolio and, if so, describing such targets.⁶⁶ This commenter argued that more extensive disclosure of the methods and criteria for determining portfolio manager compensation would not only be irrelevant to shareholders, but also impractical and burdensome to the industry, competitively disadvantageous to mutual fund advisers, and intrusive of the privacy of individual portfolio managers.

Two other commenters, however, suggested that additional elements of compensation be disclosed.⁶⁷ One of the commenters argued that compensation disclosure should include information about compensation related to benchmark performance (*i.e.*, incentives to outperform a benchmark index).⁶⁸ The other commenter suggested that the Commission require disclosure of: (1) the specific metrics used to measure performance; (2) a percentage breakdown of a manager’s compensation between the various types of pay identified; (3) an explanation of the disparity in situations where a benchmark or peer group average used to evaluate a portfolio manager’s performance differs from the fund’s stated benchmark; and (4) the structure of compensation for the five most highly compensated individuals at the fund’s investment adviser.⁶⁹

Eight commenters addressed whether the dollar value of a portfolio manager’s compensation should be disclosed.⁷⁰ Two commenters argued that the Commission

⁶³ ICI.

⁶⁴ ICAA.

⁶⁵ American Express; FSR; Goldman; ICI; USAA; Vanguard.

⁶⁶ Wellington.

⁶⁷ Morningstar; Spurr.

⁶⁸ Spurr.

⁶⁹ Morningstar.

⁷⁰ American Express; Bogle; Capital Research; FSR; Goldman; ICI; Ryan.

should require disclosure of the dollar amount of each portfolio manager's compensation (including his share of the benefits of the investment adviser) as opposed to only the compensation structure.⁷¹ The remaining six commenters opposed any disclosure of actual compensation, arguing that it would give no indication of the portfolio manager's incentives, would raise privacy issues, and would act as a disincentive for talented portfolio managers to manage mutual funds, as opposed to other accounts (such as private accounts or hedge funds) that are not subject to such a requirement.⁷²

Two commenters suggested limiting the portfolio managers about whom compensation disclosure would have to be made, requesting that the Commission only require disclosure of the compensation structure with respect to the persons with authority to make investment decisions.⁷³ One of these commenters also added that the number of such persons should be limited to five individuals in a portfolio management team.⁷⁴ Another commenter expressed concerns regarding the applicability of requiring compensation disclosure to funds that engage sub-advisers, arguing that the proposal would have the unintended effect of making it more burdensome, and therefore less desirable, for independent advisory firms to provide portfolio management services to mutual funds as compared to other types of accounts.⁷⁵ On the other hand, another commenter recommended that the compensation disclosure requirement extend to the five-highest paid executives of the management company, in addition to the portfolio managers.⁷⁶

Finally, two commenters stated that the SAI is the appropriate location for the proposed compensation disclosure.⁷⁷ One of these commenters noted that while it would be desirable to set forth management compensation information in the fund prospectus, the sheer length of this disclosure would make such a goal difficult.⁷⁸

D. Disclosure of Securities Ownership of Portfolio Managers

Summary: The Commission proposed form amendments that would require a fund to disclose in its SAI the ownership of securities of each of its portfolio managers in the fund and in other accounts, including investment companies, managed by the fund's investment adviser or the portfolio manager or by an affiliate of an investment adviser or principal underwriter.

⁷¹ Bogle; Ryan.

⁷² American Express; Capital Research; FSR; Goldman; ICI; NASAA.

⁷³ FSR; Morningstar.

⁷⁴ FSR.

⁷⁵ Vanguard.

⁷⁶ Bogle.

⁷⁷ FSR; Morningstar.

⁷⁸ Morningstar.

Nineteen commenters addressed the proposal to require funds to disclose the ownership of securities of each of its portfolio managers.⁷⁹ Fifteen of these commenters supported the proposal, although many expressed reservations or suggested changes.⁸⁰ Commenters who supported the proposal argued, in general, that investors would benefit by being able to assess the alignment of the fund manager's interest in a fund with their own interest. Three commenters opposed the proposed disclosure requirement altogether, however, arguing that the disclosure would have limited or dubious value, would be burdensome to collect, and addresses problems better handled by disclosure with respect to conflicts of interest.⁸¹ In addition, one commenter questioned the assumptions behind the proposal, and suggested that the proposed requirement not apply to state-specific tax-exempt funds because the incentive to own shares of these funds is dependent on state residence rather than confidence in the management of the fund.⁸²

Six commenters disagreed with or questioned the statements in the Proposing Release that disclosure of a portfolio manager's ownership interest in the fund and in other accounts could help investors assess the level of confidence that the manager has in the fund's investment strategy.⁸³ These commenters argued that while the level of ownership may be an indicator of the portfolio manager's confidence in the fund's investment strategy where the manager owns shares in the fund, it does not necessarily follow that a portfolio manager with little or no securities ownership has any less confidence or is any less concerned about the fund's performance than is a manager who has a large stake in the fund that he or she manages. Three of these commenters urged the Commission to make clear in the adopting release or in the disclosure item itself that the level of the portfolio manager's investment in the fund is not necessarily indicative of the level of confidence the manager has in that fund's investment objectives or strategies.⁸⁴

Ten commenters generally argued that the scope of the proposal, in requiring disclosure of a fund's portfolio manager's ownership of securities in all accounts managed by the fund's investment adviser or the portfolio manager or by an affiliate of the investment adviser or principal underwriter, is overly broad.⁸⁵ These commenters suggested that other proposed disclosure requirements concerning compensation structure

⁷⁹ American Express; AMF; Capital Research; FSR; Goldman; ICAA; ICI; ICI Board; Lincoln; Manabe; Morningstar; NASAA; Thomson; T. Rowe; TRS; USAA; Vanguard; Wang; Wellington.

⁸⁰ American Express; Capital Research; FSR; Goldman; ICAA; ICI; ICI Board; Lincoln; Manabe; Morningstar; NASAA; Thomson; T. Rowe; TRS; Wang.

⁸¹ AMF; Vanguard; Wellington.

⁸² USAA.

⁸³ AMF; ICAA; ICI; USAA; Vanguard; Wellington.

⁸⁴ ICAA; ICI; USAA.

⁸⁵ American Express; Capital Research; FSR; Goldman; ICI; Morningstar; T. Rowe; USAA; Vanguard; Wellington.

and conflicts of interest would achieve the same purpose in a more direct and effective manner. They also suggested that the disclosure requirement should instead be limited to the fund making the disclosure, the funds that the portfolio manager actually manages, or funds within the complex of funds managed by the primary investment adviser or promoted by the same principal underwriter. One such commenter noted that limiting the scope of the disclosure to funds within the fund complex would make the requirement parallel to that applicable to fund directors.⁸⁶

Many of the commenters opposed to the scope of the proposed disclosure requirement argued that this disclosure would (1) be burdensome to the disclosing fund companies to collect and update, (2) provide investors with little useful information, (3) put a fund company in the unenviable position of having to disclose competitor funds in its SAI, and (4) impose registration statement liability for the accuracy of such information. Several of these commenters also noted that these concerns would be magnified when a fund is managed by one or multiple sub-advisers unaffiliated with the investment adviser or principal underwriter of a fund because a fund could be required to disclose numerous portfolio managers' investments in numerous fund families depending on the firm's team composition, and the corporate structure and activities of control affiliates.⁸⁷

Five commenters argued that the proposed disclosure requirements are not adequately sensitive to portfolio managers' legitimate privacy interests, and that forcing portfolio managers to disclose indications of high net worth could make them targets for plaintiffs' attorneys or for persons who prey on high net worth individuals.⁸⁸ In addition, the commenters suggested that the proposed disclosure requirements would have the unintended effect of encouraging portfolio managers to move their investments to other fund companies in order to avoid having to disclose this information. The commenters also argued that such a move could adversely impact the fund's relationship with its portfolio managers, and discourage talented investment professionals from serving as portfolio managers to funds.

Eight commenters recommended that the Commission limit the scope of the rule by reducing the maximum dollar range of securities owned from "over \$1,000,000" to "over \$100,000," consistent with the requirement for fund directors.⁸⁹ These commenters argued that use of a maximum threshold level of over \$100,000 would provide information that would allow fund shareholders to assess the extent to which the portfolio manager's interests are aligned with theirs, while avoiding undue invasion of portfolio managers' privacy. One of these commenters suggested that the relative stakes of the portfolio manager in different accounts may be more appropriately addressed as an aspect of material conflicts of interest in the item that would require disclosure of "Other

⁸⁶ ICI.

⁸⁷ ICI; Vanguard; Wellington.

⁸⁸ Capital Research; FSR; Goldman; ICI; Wellington.

⁸⁹ American Express; Capital Research; FSR; Goldman; ICAA; ICI; USAA; Wellington.

Accounts,” and recommended a cross-reference to this discussion in lieu of disclosure about ownership.⁹⁰

On the other hand, one commenter supported the proposed dollar ranges, and specifically objected to setting the maximum range at “over \$100,000,” arguing that, unlike directors, most managers would exceed this threshold, which would greatly diminish the value of the disclosure.⁹¹ Two commenters stated that disclosing the actual value of the securities owned by a portfolio manager would be preferable to disclosing a dollar range.⁹² One of these commenters also suggested that the Commission require disclosure of the actual amount of fund shares owned by fund directors and officers, in addition to portfolio managers.⁹³

One commenter argued that requiring portfolio managers to include the securities ownership of family members would be overly broad, difficult, and highly intrusive.⁹⁴ This commenter also claimed that the holdings of family members have no bearing on the portfolio manager’s qualifications, and disclosing these holdings cannot seriously help investors to determine whether there is a conflict of interest. However, two commenters supported the proposed disclosure requirement with respect to immediate family members, including spouses and children residing in the same household.⁹⁵

Three commenters specifically opposed any requirement for a fund to disclose the percentage of a portfolio manager’s net worth that is invested in the securities of a fund or other accounts of the investment adviser, on the grounds that such disclosure would be an invasion of privacy, unnecessary, and could cause talented managers to abandon funds.⁹⁶ However, another commenter argued that securities ownership would be best expressed as a percentage of liquid net worth (*i.e.*, the portion of a manager’s net worth which is readily convertible to cash) because it would most clearly show whether management has a significant stake in the fund.⁹⁷

One commenter addressed the appropriate definition of beneficial ownership that would apply in the disclosure requirement, and whether the securities ownership provision should apply to securities owned beneficially or of record.⁹⁸ The commenter recommended using the definition in Exchange Act Rule 16a-1(a)(2) to determine

⁹⁰ ICAA.

⁹¹ Morningstar.

⁹² Bogle; NASAA.

⁹³ Bogle.

⁹⁴ Capital Research.

⁹⁵ FSR; Morningstar.

⁹⁶ ICAA; ICI; T. Rowe.

⁹⁷ Morningstar.

⁹⁸ ICI.

beneficial ownership, and not requiring disclosure of record ownership. The commenter noted that the Commission took this approach when it adopted requirements for disclosure of fund directors' ownership of fund securities.

One commenter stated, in response to the Commission's request for comment, that the disclosure of securities owned by a portfolio manager should not differentiate between securities that a portfolio manager is required to own as a condition of employment and securities that are owned voluntarily.⁹⁹

Finally, three commenters suggested that the information regarding portfolio manager's securities ownership of funds they manage be included in the prospectus.¹⁰⁰ They argued that management incentives have a strong bearing on the way a fund is run, and as such the disclosure demands prominent placement. One commenter supported the proposal to require this disclosure in the SAI, however.¹⁰¹

E. Removal of Exclusion for Index Funds

Summary: The Commission proposed to remove the current exclusion for a fund that has as its investment objective replication of the performance of an index from the requirement to identify and provide disclosure regarding its portfolio managers.

Four commenters expressly addressed whether index funds should be excluded from having to identify and provide disclosure regarding their portfolio managers.¹⁰² Two commenters supported the proposal to remove the exclusion for index funds, noting that conflicts of interest may arise where portfolio managers of index funds also manage other index funds and actively managed funds, and arguing that there is no substantive reason to allow different treatment for index funds.¹⁰³ The other two commenters disagreed with this proposal and urged the Commission to maintain the exclusion for portfolio managers of "plain vanilla" index funds, because their portfolio management is largely mechanical and there is little or no conflict between the shareholders and the portfolio manager(s) where the fund's objective is to replicate the performance of an index.¹⁰⁴ One of these commenters suggested, in the alternative, that an exclusion should extend to portfolios wherein management decisions are based on objective mathematical formulas rather than subjective, traditional portfolio management decision-making.¹⁰⁵

⁹⁹ Morningstar.

¹⁰⁰ Manabe; Morningstar; Thomson.

¹⁰¹ FSR.

¹⁰² ICI; Janus; Morningstar; Vanguard.

¹⁰³ Morningstar; Vanguard.

¹⁰⁴ ICI; Janus.

¹⁰⁵ Janus.

One commenter, in response to a request for comment, supported retaining the current exclusion for money market funds from portfolio manager disclosure.¹⁰⁶

F. Disclosure of Availability of Information

Summary: The Commission proposed form amendments that would require funds to state in their prospectus that the SAI provides additional information about portfolio managers' compensation, other investment companies or accounts managed by the portfolio managers, and the portfolio managers' ownership of securities in the fund and other accounts managed by the investment adviser or the portfolio managers. The amendments would also require the cover page of a fund prospectus to state whether the fund makes available its SAI and its reports to shareholders on or through its Web site.

There were no comments specifically related to this proposed disclosure requirement. However, one commenter suggested that the "upon request" standard currently used for disclosure of the SAI is insufficient and that all investors should receive the SAI.¹⁰⁷ The commenter stated that electronic delivery modes would help reduce distribution costs.

G. Amendment of Form N-CSR

Summary: The Commission proposed form amendments that would require closed-end funds to provide updated portfolio manager disclosure in each annual report on Form N-CSR.

One commenter addressed this issue and argued that the additional disclosure to be included in Form N-CSR should not apply to those registered closed-end investment companies that update their prospectuses annually (*i.e.*, there is no reason to treat such closed-end funds differently from open-end funds).¹⁰⁸

H. Date of Disclosure

Summary: The Commission proposed that information relating to portfolio manager compensation structure, other accounts managed and securities ownership should be provided as of the end of a fund's most recently completed fiscal year.

Three commenters addressed this issue generally.¹⁰⁹ These commenters recommended that all portfolio manager disclosure be required as of December 31 (*i.e.*, calendar year end), arguing that providing information as of calendar year end would greatly ease administrative burdens on, and related costs to, the fund and would serve the

¹⁰⁶ ICI.

¹⁰⁷ NASAA.

¹⁰⁸ Goldman.

¹⁰⁹ ICI; T. Rowe; Vanguard.

same purpose for investors as fiscal year end data. One of these commenters noted that similar disclosure currently required with respect to fund directors is required as of December 31.¹¹⁰

One commenter suggested that the disclosure regarding other accounts managed should be required to be provided as of one day during the year – for example, the December 31 immediately preceding the date of the prospectus. The commenter argued that, otherwise, fund complexes and their investors would be burdened with the requirement to file constant updates as investment advisers attract or lose investment management clients whose assets may be managed by persons who also manage a mutual fund.¹¹¹

Another commenter argued that requiring disclosure regarding the securities ownership of portfolio managers as of the end of the most recently completed fiscal year, as proposed, strikes a reasonable balance between timeliness and practicality.¹¹²

I. Compliance Date

Summary: The Commission proposed to require that all new registration statements and annual reports on Form N-CSR, and all post-effective amendments that are annual updates to effective registration statements, filed on or after the effective date of the amendments comply with the proposed amendments. The Commission also proposed to require that post-effective amendments that add a new series, filed on or after the effective date, comply with the proposals with respect to the new series.

Two commenters specifically addressed the compliance date for the proposals.¹¹³ The commenters argued that funds would need time to collect the broad range of information that would be required by the proposals and ensure an adequate level of review of this new disclosure. One of the commenters recommended that the Commission provide a compliance date that is at least 12 months after adoption of the final rules.¹¹⁴ The other commenter recommended that Commission require funds to provide the information as of the first calendar year end after adoption of the final rule, with at least 6 months lead time after the end of each calendar year for funds to gather and process the required information.¹¹⁵

J. Cost/Benefit Analysis

¹¹⁰ T. Rowe.

¹¹¹ American Express.

¹¹² Morningstar.

¹¹³ ICI; Vanguard.

¹¹⁴ ICI.

¹¹⁵ Vanguard.

There were no comments specifically related to the Cost/Benefit Analysis.

K. Paperwork Reduction Act Summary

There were no comments specifically related to the Paperwork Reduction Act summary.

L. Regulatory Flexibility Act Analysis

There were no comments specifically related to the Regulatory Flexibility Act Analysis.

M. Consideration Of Effects On Efficiency, Competition, And Capital Formation

There were no comments specifically related to this section.

N. Comments Unrelated to the Disclosure Proposals

Nine commenters addressed issues unrelated to the proposals.¹¹⁶ These commenters addressed various issues, including methods of delivering disclosure documents to investors, mutual fund fees, the regulation of pension and other qualified retiree trust funds, and portfolio manager registration.

¹¹⁶ Bgould; Burnett; Cohen; Colon; Lucent Retirees; NASAA; TelCo; TRS; Vanguard.