

are revising the series and class page to make it more user friendly. We have added the ability for investment companies to enter multiple classes (contracts) for a series at one time from a single web page.

For EDGAR Release 8.8, the EDGARLink software and submission templates 1, 2, 3 and 5 will be updated to support Windows® XP, in addition to Windows® NT, 2000, and Windows® 98, and the aforementioned submission form type changes. It is highly recommended that filers download, install, and use the new EDGARLink software and submission templates to ensure that submissions will be processed successfully; filers who wish to use EDGARLink on Windows® XP must download the new version and new templates. Previous versions of the templates may not work properly. EDGARLink will no longer be supported on Windows® 95. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the EDGAR Filing Web site and in the updated Filer Manual Volumes.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549-0102. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You may also obtain copies from Thomson Financial Inc., the paper and microfiche contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative

class page, it must make sure it has only one CIK. Those 1940 Act registrants for whom we proposed to require identifiers for their series and classes (or contracts, in the case of separate accounts) (*i.e.*, Form N-1A, N-3, N-4 and N-6 registrants) must submit their 1940 Act filings under only one 1940 Act number (811-) and one CIK. (Registrants may have multiple 1933 Act numbers under a single CIK.) Any 1940 Act registrant wishing to obtain identifiers who has more than one 1940 Act number or more than one CIK must call the IM EDGAR Inquiry Line at 202-942-0978 for assistance before proceeding on the series and class page.

Procedure Act (APA).<sup>13</sup> It follows that the requirements of the Regulatory Flexibility Act<sup>14</sup> do not apply.

The effective date for the updated Filer Manual and the rule amendments is August 23, 2004. In accordance with the APA,<sup>15</sup> we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 8.8 is scheduled to become available on August 23, 2004. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

#### Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,<sup>16</sup> Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,<sup>17</sup> Section 20 of the Public Utility Holding Company Act of 1935,<sup>18</sup> Section 319 of the Trust Indenture Act of 1939,<sup>19</sup> and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.<sup>20</sup>

#### List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

#### Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

#### PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

\* \* \* \* \*

■ 2. Section 232.301 is revised to read as follows:

#### § 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for

<sup>13</sup> 5 U.S.C. 553(b).

<sup>14</sup> 5 U.S.C. 601-612.

<sup>15</sup> 5 U.S.C. 553(d)(3).

<sup>16</sup> 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

<sup>17</sup> 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

<sup>18</sup> 15 U.S.C. 79t.

<sup>19</sup> 15 U.S.C. 77sss.

<sup>20</sup> 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

electronic submissions. The requirements for filers using modernized EDGARLink are set forth in the EDGAR Release 8.8 EDGARLink Filer Manual Volume I, dated August 2004. Additional provisions applicable to Form N-SAR filers and Online Forms filers are set forth in the EDGAR Release 8.8 N-SAR Supplement Filer Manual Volume II, dated August 2004, and the EDGAR Release 8.8 OnlineForms Filer Manual Volume III, dated August 2004. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0102 or by calling Thomson Financial Inc at (800) 638-8241. Electronic format copies are available on the Commission's Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also photocopy the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: August 6, 2004.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 04-18413 Filed 8-11-04; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Parts 239 and 274

[Release Nos. 33-8393A; 34-49333A; IC-26372A; File No. S7-51-02]

**RIN 3235-AG64**

#### Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies; Technical Amendment

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; Technical amendment to a form.

**SUMMARY:** The Securities and Exchange Commission is adopting a technical

amendment to Item 21(d)(1) of Form N-1A, which was published in the **Federal Register** on Tuesday, March 9, 2004 (69 FR 11244). The amendment corrects an instruction to the requirement for a registered open-end management investment company to include in its shareholder reports disclosure of fund expenses borne by shareholders during the reporting period.

**EFFECTIVE DATE:** August 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** John Faust, Attorney, Office of Disclosure Regulation, Division of Investment Management, (202) 942-0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0506.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Securities and Exchange Commission ("Commission") recently issued a release adopting amendments to Form N-1A that require registered open-end management investment companies to disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period ("Adopting Release").<sup>1</sup> The amendments require shareholder reports to include: (1) The cost in dollars associated with an investment of \$1,000, based on the fund's actual expenses and return for the period; and (2) the cost in dollars associated with an investment of \$1,000, based on the fund's actual expenses for the period and an assumed return of 5 percent per year. The requirements for the expense examples include an instruction to round all dollar figures to the nearest dollar.<sup>2</sup>

The purpose of the expense examples is to increase investors' understanding of the fees that they pay on an ongoing basis for investing in a fund, and to facilitate comparison of ongoing expenses among funds.<sup>3</sup> In adopting the requirement for the expense examples, we required the examples to be based on an initial investment of \$1,000, rather than \$10,000 as proposed, but did not reconsider the rounding instruction.<sup>4</sup> Subsequent to the adoption of the rule, we have become aware that, in some cases, rounding expenses paid on a \$1,000 investment to the nearest dollar may result in insufficiently precise

expense figures. Such figures would not facilitate investors' ability to estimate their own expenses and to compare the costs of different funds. This will tend to affect funds with relatively low expense ratios disproportionately. For example, an investor in a fund with an annual expense ratio of 0.10% would pay \$0.51 in expenses for a \$1,000 initial investment over a half-year period (assuming a 5% annual return for the period). An investor in a fund with an annual expense ratio of 0.29% would pay \$1.47 in expenses for a \$1,000 investment over a half-year period (assuming a 5% annual return for the period). However, under the requirements we adopted, these two funds would both show rounded expenses of \$1.00, even though the expense ratio for the second fund is almost three times as large as that of the first fund. In addition, an investor who used this \$1.00 expense figure to estimate his or her own expenses for an investment in either of the two funds would significantly underestimate or overestimate expenses. For example, an investor with a \$25,000 initial investment in each of the two funds would calculate his or her expenses to be \$25.00 ( $\$25,000/\$1,000 \times \$1.00$ ) for each fund, while a calculation based on expense figures rounded to the nearest cent would result in estimates of \$12.75 ( $\$25,000/\$1,000 \times \$0.51$ ) and \$36.75 ( $\$25,000/\$1,000 \times \$1.47$ ), respectively.

The Commission is adopting a technical amendment to Instruction 1(a) of Item 21(d)(1) of Form N-1A to require funds to round all figures in the table of expense examples to the nearest cent. In light of the change to the initial investment amount, we have concluded that it is appropriate to require rounding to the nearest cent, rather than the nearest dollar.

**II. Certain Findings**

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when the agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>5</sup> The Commission is making a technical amendment to Form N-1A to effect the intent of the Commission as expressed in both the proposing and adopting releases. This amendment will make a minor change in the presentation of the expense example in shareholder reports, which will have no effect on the burden on funds of performing the calculation required. For the foregoing reasons, the

Commission finds that publishing the changes for comment is unnecessary.<sup>6</sup>

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.<sup>7</sup> However, an agency may forgo the 30-day requirement if it finds good cause for doing so.<sup>8</sup> For the same reasons that the notice and comment period is not required, the Commission finds good cause for the amendment to take effect immediately. The Adopting Release required all fund reports to shareholders for periods ending on or after July 9, 2004, to comply with the amendments in that release, including the requirement for expense examples.<sup>9</sup> Therefore, any such shareholder report transmitted on or after the date of this release must also comply with this amendment.

**III. Statutory Authority**

The Commission is adopting amendments to Form N-1A pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act of 1933 [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z-3]; sections 10(b), 13, 15(d), and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b), 78m, 78o(d), and 78w(a)]; and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-6(c), 80a-8, 80a-24(a), 80a-29, and 80a-37].

**List of Subjects**

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Form Amendment**

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

<sup>6</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>7</sup> 5 U.S.C. 553(d).

<sup>8</sup> *Id.*

<sup>9</sup> See Adopting Release, *supra* note 1, 69 FR at 11254.

<sup>1</sup> Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] ("Adopting Release").

Form N-1A is the registration form used by open-end management investment companies to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933.

<sup>2</sup> Instruction 1(a) to Item 21(d)(1) of Form N-1A.

<sup>3</sup> Adopting Release, *supra* note 1, 69 FR at 11246.

<sup>4</sup> See Adopting Release, *supra* note 1, 69 FR at 11247.

<sup>5</sup> 5 U.S.C. 553(b).

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

■ 1. The general authority citation for Part 239 continues to read as follows:

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

\* \* \* \* \*

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

■ 2. The authority citation for part 274 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

\* \* \* \* \*

■ 3. Instruction 1(a) to Item 21(d)(1) of Form N-1A (referenced in §§ 239.15A and 274.11A) is amended to read as follows:

**Note:** The text of Form N-1A does not and this amendment will not appear in the *Code of Federal Regulations*.

**Form N-1A**

\* \* \* \* \*

**Item 21. Financial Statements**

\* \* \* \* \*

(d) \* \* \*  
(1) \* \* \*

**Instructions.**

1. **General.**

(a) Round all figures in the table to the nearest cent.

\* \* \* \* \*

Dated: August 9, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-18449 Filed 8-11-04; 8:45 am]

**BILLING CODE 8010-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 17**

[Docket No. 2003N-0308]

**Civil Money Penalties Hearings; Maximum Penalty Amounts and Compliance With the Federal Civil Penalties Inflation Adjustment Act; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that published in the **Federal Register** of July 20, 2004 (69 FR 43299). The document issued a regulation to adjust for inflation the maximum civil money penalty amounts for various civil money penalty authorities within our jurisdiction. The document published with some errors and this document corrects those errors.

**DATES:** The rule is effective September 20, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joyce A. Strong, Office of Policy (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville MD, 20857, 301-827-7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 04-16388, appearing on page 43299 in the **Federal Register** of Tuesday, July 20, 2004, the following corrections are made:

**§ 17.2 [Corrected]**

1. On pages 43301 and 43302, in the last column of the table (in dollars), paragraphs (a)(4), (a)(11), and (a)(12) are corrected to read: 16,500, 1,100, and 330,000, respectively. For the convenience of the reader, the table is republished in its entirety:

**CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS**

U.S.C. Section	Description of Violation	Former Maximum Penalty Amount (in dollars)	Assessment Method	Date of Last Penalty	Adjusted Maximum Penalty Amount (in dollars)
(a) 21 U.S.C.					
(1) 333(b)(2)(A)	Violation of certain requirements of the Prescription Drug Marketing Act (PDMA)	50,000	For each of the first two violations in any 10-year period	2004	55,000
(2) 333(b)(2)(B)	Violation of certain requirements of the PDMA	1,000,000	For each violation after the second conviction in any 10-year period	2004	1,100,000
(3) 333(b)(3)	Violation of certain requirements of the PDMA	100,000	Per violation	2004	110,000
(4) 333(f)(1)(A)	Violation of certain requirements of the Safe Medical Devices Act (SMDA)	15,000	Per violation	2004	16,500
(5) 333(f)(1)(A)	Violation of certain requirements of the SMDA	1,000,000	For the aggregate of violations	2004	1,100,000
(6) 333(f)(2)(A)	Violation of certain requirements of the Food Quality Protection Act of 1996 (FQPA)	50,000	Per individual	2004	55,000
(7) 333(f)(2)(A)	Violation of certain requirements of the FQPA	250,000	Per "any other person"	2004	275,000
(8) 333(f)(2)(A)	Violation of certain requirements of the FQPA	500,000	For all violations adjudicated in a single proceeding	2004	550,000