Wednesday,
October 29, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 210, et al.
Exemption From Shareholder Approval for Certain Subadvisory Contracts; Proposed Rule
Exemption From Shareholder Approval for Certain Subadvisory Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing a new rule under the Investment Company Act of 1940 that would, under certain conditions, permit an adviser to serve as a subadviser to an investment company ("fund") without approval by the shareholders of the fund. The rule is designed to reduce burdens on investment companies by eliminating the need to obtain from the Commission a supervisory order that facilitates so-called "manager of managers" arrangements, under which one or more subadvisers manage a fund's assets subject to the supervision of an investment adviser whose advisory contract has been approved by fund shareholders.

DATES: Comments must be received on or before January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Adam B. Glazer, Attorney, or C. Hunter Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

EXECUTIVE SUMMARY

I. Background

A growing number of investment companies ("funds") are now offered in the early 1990s, manager of managers funds have grown in popularity. Today more than 100 fund complexes offer these types of funds, which hold more than 400 billion dollars in assets. Many of these funds are sponsored by insurance companies and operate as financing vehicles for separate accounts offering variable annuity and variable

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that enacted section 15(a) anticipated subadvisory arrangements, and concluded that shareholders should have a role in the selection of subadvisers. In crafting this rule proposal (and the exemptive orders that have preceded it), we have sought to distinguish subadvisory arrangements in which the subadvisers have resembled portfolio managers from the more traditional subadvisory arrangements that Congress explicitly covered in the shareholder voting requirement of section 15(a). Our proposed rule, therefore, contains several conditions, which we discuss below, that limit the scope of relief to subadvisers of manager of managers funds and that provide other means of protecting fund investor expectations and interests. 15

Today we are proposing a rule that would eliminate the need for funds to obtain exemptive orders to hire subadvisers that they supervise. We have drafted the rule to preserve, to the extent possible, the important role the Investment Company Act gives shareholders in the governance of their funds while accommodating the special needs of manager of managers funds. The other provisions of section 15 would remain applicable. Under those provisions, the manager of managers fund’s principal adviser 16 still must have its contract approved by the fund’s board and shareholders, 17 and the board must approve the terms of each subadvisory contract. 18 Thus, the rule would afford shareholders of a manager of managers fund the opportunity, both directly through their consideration of the principal advisory contract and indirectly through their representatives

Company Act Release No. 24816 (Jan 2 2001) [66 FR 3734 (Jan. 16, 2001)] at n.53 (“The Act does not distinguish an adviser from a sub-adviser.”) (citing section 2(a)(20)). Section 15(c) also requires that a majority of the fund’s independent directors approve contracts with all investment advisers, including subadvisers, 15 U.S.C. 80a–15(c).

12 Section 6(c) of the Act (15 U.S.C. 80a–6(c)) permits the Commission, conditionally or unconditionally, to exempt any person, security, or transaction (or classes of persons, securities, or transactions) from any provision of the Act “if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions” of the Act.

13 We use the term “principal adviser” to mean a party that contracts directly with a fund to provide investment advisory services to the fund. See supra note 3.

14 See 15 U.S.C. 80a–15(a). Although the proposed rule does not exempt a fund’s advisory contract with a principal adviser from the shareholder approval requirement of section 15(a), rule 15a–4 under the Act [17 CFR 270.15a–4] allows for the possibility that a principal adviser to the fund is temporarily serving the fund without shareholder approval of its advisory contract.

...
on the board of directors, to influence the terms of the advisory contracts under which their fund is managed.

A. Conditions of the Proposed Rule

1. Terms of the Subadvisory Contracts;
   Subadvisory Fees

The proposed amendments would largely rely on the principal adviser, negotiating with each subadviser on an arm’s length basis and subject to the approval of the fund’s board, to determine the terms of the subadvisory contract, including the amount of the subadviser’s fee. As a condition to the rule, however, we would preclude a new or modified subadvisory contract from directly or indirectly increasing the management fees charged to the fund by its subadvisors. As a result, the rule would preserve the statutory requirement that increases in the rate of advisory fees paid by the fund be approved by shareholders.

In most cases, subadvisers are compensated by the fund’s principal adviser, which negotiates the amount of the subadvisers’ compensation. Consequently, a principal adviser is free to bargain for lower subadvisory fees, which will benefit the fund to the extent that lower fees are passed through on to lower advisory fees. Sponsors of manager of managers funds have represented that they are able to negotiate lower fees with subadvisers if they do not have to disclose those fees separately, and in our orders we have provided them relief from our disclosure requirements.

2. New Subadvisory Contracts

Proposed rule 15a-5(a)(1). It’s a new advisory contract to increase those fees, the subadviser entering into the contract would not qualify for relief under the rule, and the contract would need to be submitted to shareholders for their advisory fee could be increased under the rule, however, as long as the total amount of the advisory fees paid by the fund does not exceed the total amount provided by advisory contracts that shareholders have approved. For instance, a subadvisory contract would still be eligible for relief under the proposed rule even though it increases a fund’s advisory fee, if the increase is deducted from the principal adviser’s fee. See Republic Funds, Investment Company Act Release Nos. 24292 (Feb. 16, 2000) [65 FR 10112 (Feb. 22, 2000) (notice) and 24338 (Mar. 14, 2000) (order) [71 SEC Docket 2701 (Apr. 11, 2000)] (order) [granting exemption from shareholders approval for subadvisory contracts where the fund directly pays subadvisory fees and deducts the subadvisory fees from the fee paid to the principal adviser].


21 See, e.g., Endeavor Series Trust, Investment Company Act Release Nos. 24054 (Sept. 27, 1999) [64 FR 53428 (Oct. 1, 1999)] (notice) and 24108 (Oct. 22, 1999) [70 SEC Docket 3081 (Nov. 23, 1999)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1999) [60 FR 30321 (June 8, 1999)] (notice) and 21169 (June 28, 1999) [59 SEC Docket 2105 (June 25, 1999)] (order).

22 The individual fee paid to an unaffiliated subadviser of the principal adviser would not have to be disclosed, but the individual fee paid to each wholly-owned subadviser (defined below in Section I.A.3) would have to be disclosed. Under our proposal, a fund would disclose in its statement of Additional Information on Form N–1A, in lieu of the individual fees paid to a subadviser, (i) the individual fees paid to the principal adviser and to each subadviser that is an affiliated person of the principal adviser (including a wholly-owned subadvisor whose contract has not been approved by shareholders on reliance on the proposed rule), (ii) the net advisory fee retained by the principal adviser after payment of fees to all subadvisers, and (iii) the aggregate fees paid to all of the fund’s subadvisers that are not affiliated persons of the principal adviser. Proposed Instruction 5 to Item 15a(3) of Form N–1A. We also are proposing conforming amendments to rule 6–47 of Regulation S–X and the Instructions to Item 22(c) of Schedule 14A.

Under the conditions of the manager of managers orders allowing a fund to disclose the aggregate fees paid to all of the fund’s unaffiliated subadvisers, the principal adviser is required to provide the board, no less frequently than quarterly, with information about its profitable management arrangements that are relied on by the board. In addition, the principal adviser is required to provide the board with information showing the expected impact on the principal adviser’s profitability where a subadviser is hired or terminated. We have not included these conditions in the proposed rule. However, information must still be provided to the board pursuant to section 15(c) of the Act, which requires fund directors to request and evaluate, and an investment adviser to the fund to furnish, any information that may be necessary to evaluate the terms of any investment advisory contract with the fund.

23 See 15 U.S.C. 80a–1(a)(1) (requesting any investment advisory contract to precisely describe all compensation to be paid thereunder).

24 We request comment on the proposal.

• Should the Commission permit fund directors to enter into subadvisory contracts that increase advisory fees without the consent of shareholders?

• Should the Commission limit relief to subadvisory contracts that do not increase the portion of the advisory fee retained by the principal adviser in order to assure that subadvisers are selected based on ability and performance?

• Do shareholders need information about the amount of compensation paid to each subadviser?

• We also request comment on whether any amendments are required to the fee table items of Forms N–4 and N–6, the registration forms used by insurance company separate accounts registered under the Act as unit investment trusts.

2. Obligation to Supervise

An important aspect of any manager of managers arrangement is the responsibility assumed by the principal adviser to supervise, i.e., monitor and oversee, the subadvisers in the performance of their duties for the fund. We propose to require that any principal advisory contract under the rule obligate the principal adviser to supervise the subadviser. In addition, compensation under section 36(b) of the Act, without first making a demand on the board to initiate such action.

25 17 CFR 239.17b–c, 274.11c–d.

26 See, e.g., Pitcairn Funds and Pitcairn Trust Company, Investment Company Act Release Nos. 25106 (Aug. 9, 2001) [66 FR 42901 (Aug. 15, 2001)] (notice) and 25150 (Sept. 5, 2001) [75 SEC Docket 2214 (Oct. 2, 2001)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1999) [60 FR 30321 (June 8, 1999)] (notice) and 21169 (June 28, 1999) [59 SEC Docket 2105 (July 25, 1999)] (order). A typical subadvisory agreement stipulates that the subadviser, in carrying out its investment management duties under the agreement, is subject to the supervision and/or oversight of the board of directors of the principal adviser.

27 Proposed rule 15a–5(a)(4). See Western Asset Management Co. and Legg Mason Fund Adviser, Inc., Investment Advisers Act Release No. 1980 (Sept. 28, 2001) (the Commission found that the principal adviser failed to adequately supervise an employee of its affiliated subadviser). Although the manager of managers orders do not require the principal adviser to supervise subadvisers, a fund in requiring the principal adviser to supervise all of the subadvisers it retains to provide services to the fund, the orders do require the principal adviser to supervise its subadvisers. See, e.g., Hillview...
because the principal adviser must be able to discharge a subadviser in order to effectively supervise the subadviser, our proposed rule includes a condition requiring that the subadvisory contracts be terminable at any time by the principal adviser, on no more than 60 days written notice, without payment of penalty.²⁸

3. Arm’s Length Relationship Between Principal Adviser and Subadvisers

We are proposing two related conditions designed to limit the rule to arrangements in which the principal adviser is in a position to hire and supervise (and, if necessary, discharge) subadvisers on the basis of the subadviser’s performance, rather than on the basis of other business relationships the principal adviser may have with the subadviser. First, we would preclude subadvisers relying on the rule from being affiliated persons of the principal adviser with which they contract or of the fund (other than by reason of serving as investment advisers to the fund) (“affiliated subadviser”).²⁹

Second, we would preclude any director or officer of the fund and the principal adviser or any director or officer of the principal adviser with which the subadviser has contracted from owning, directly or indirectly, any material interest in the subadviser other than through a pooled investment vehicle that is not controlled by such person or entity.³⁰ A principal adviser may not be in a position to discharge, for example, a parent corporation or a sister corporation, or a person that controls the principal adviser. It may have substantial economic incentives to hire and refrain from discharging a subsidiary or other types of affiliated persons. These conditions have been a key element of our exemptive orders in order to protect against the conflict of interest and potential for self-dealing that are inherent when a principal adviser hires an affiliated subadviser.³¹

The Commission, however, has issued an order expanding the traditional relief to allow wholly-owned subsidiaries of the principal adviser to replace other wholly-owned subsidiaries of the principal adviser as subadvisers (“wholly-owned subadvisers”) to the manager of managers fund and to allow the principal adviser to materially amend a wholly-owned subsidiary’s subadvisory contract without shareholder approval.³² The applicants asserted that “impermissible conflict of interest would be present when replacing one wholly-owned subadviser with another wholly-owned subadviser.”³³

In light of the absence of an economic incentive for the principal adviser to replace one wholly-owned subadviser with another (other than to increase the fund’s return on its investments),³⁴ we are including wholly-owned subadvisers within the scope of the proposed rule.³⁵ We are, however, limiting relief to allow the principal adviser to replace only a wholly-owned subadviser with another wholly-owned subadviser and to allow the principal adviser to materially amend a wholly-owned subsidiary’s subadvisory contract without shareholder approval.³⁶ The rule would not permit a principal adviser to replace any other type of subadviser with a wholly-owned subadviser, because the principal adviser would have an economic incentive in such a situation by virtue of its total (or near total) ownership interest in the wholly-owned subadviser, as compared to no ownership or a smaller ownership interest in the subadviser being replaced.

- We request comment on whether the scope of the proposed rule should be expanded to include wholly-owned subadvisers replacing other affiliated subadvisers.
- Should the scope of the rule be expanded to include other affiliated subadvisers? Should all subadvisory contracts be exempt from the Act’s shareholder voting requirement? If so, should the Commission expand the proposed rule to include all subadvisers?

4. Board Oversight

Under the Investment Company Act, a fund’s board plays an important role in the selection and oversight of the fund’s subadvisers.³⁷ Because the rule would permit a fund board to approve subadvisory contracts without the shareholder vote that the statute otherwise requires, we propose to require that the fund adopt certain governance practices that strengthen the role of the independent directors. As part of our initiative to improve fund governance practices, in 2001 we made similar amendments to a number of our exemptive rules, including rule 15a–4, which permits boards of directors to approve interim advisory contracts.

³⁴ See PIMCO, supra note. That order contains all of the other conditions contained in a typical manager of managers order, including the condition that prohibits a new subadvisory contract from increasing the management fees. The principal adviser would likely have no direct economic incentive to replace one wholly-owned subadviser with another, because its overall compensation would not increase by virtue of its ownership interest in both entities.
³⁵ Replacing one wholly-owned subadviser with another is no different than the principal adviser terminating a wholly-owned subadviser and directly managing the fund formerly managed by the wholly-owned subadviser. In either situation, the principal adviser’s advisory fee (and the portion of the fee that it retains after paying all unaffiliated subadvisers) remains the same.
³⁶ Proposed rule 15a–5(a)(ii). The first wholly-owned subadviser hired by the fund would not qualify for relief under the proposed rule, and its subadvisory contract would have to be approved by shareholders.

³⁷ Section 15 of the Act requires that a majority of the board’s independent directors approve the fund’s advisory contracts (including subadvisory contracts), and that the board (or shareholders) annually approve any advisory contract that continues more than two years. 15 U.S.C. 80a–15(a), 15(c). The directors also must request and evaluate information reasonably necessary for them to evaluate the terms of an advisory contract. 15 U.S.C. 80a–15(c). The board is carrying out its obligations under the Act should consider any material business arrangements between the adviser or principal underwriter and the subadviser, including the involvement of the subadviser in the distribution of the fund’s shares. The board when approving a wholly-owned subadviser’s contract also should consider the extent that the affiliation between the principal adviser and wholly-owned subadviser had on the decision of the principal adviser to replace a wholly-owned subadviser with another wholly-owned subadviser (as opposed to replacing with an unaffiliated subadviser).
without a shareholder vote. Thus, manager of managers funds relying on the rule would be required to have a board of directors whose independent directors (i) constitute a majority of directors, (ii) are selected and nominated by independent directors, and (iii) if represented by legal counsel, are represented by “independent legal counsel.”

5. Expectation of Investors

We also are proposing four requirements designed to assure that investors understand that they are investing in a manager of managers fund, and to require that they receive information about who the subadvisers are and that the subadvisers could be changed at any time without shareholder approval. First, the rule would require that, except in the case of a newly offered fund, shareholders approve the fund’s operation as a manager of managers fund, by authorizing the adviser (with the approval of the fund’s board of directors) to enter into subadvisory contracts without shareholder approval.40 Second, we would amend Form N–1A to require that the fund disclose in its prospectus the principal adviser’s ability, subject to the approval of the fund’s board of directors, to retain and discharge subadvisers without shareholder approval.41

Third, proposed rule 15a–5 would prohibit a fund from having a name that contains the subadviser’s name unless the name of the principal adviser precedes the subadviser’s name. This limitation is designed to prevent confusion about the relative roles of the adviser and subadviser. A fund name that includes the name of a subadviser might serve to invite investors to invest in the fund to obtain the advisory services of the subadviser rather than the adviser, which is arguably inconsistent with the basis upon which we have granted relief from the shareholder voting requirement for manager of managers funds. Use of such a name also suggests that the principal adviser is unlikely to be in a position to terminate the advisory contract without upsetting the investors who have invested for the purpose of seeking the advisory services of the subadviser. On the other hand, use of a subadviser’s name may merely identify one investment option among many in a series fund.

Fourth, we are proposing to require that when the principal adviser enters into a subadvisory contract or makes a material change to a wholly-owned subadviser’s contract, the fund furnish shareholders with (and file with the Commission) an information statement that describes the subadvisory agreement, and contains other information that would have been provided in a proxy statement had a vote been held.42 This condition has been included in our exemptive orders.

We request comment on whether the proposed requirements are adequate to assure that investors understand they are investing in a manager of managers fund. If they are not adequate, what additional requirements should be included? Should the rule simply prohibit the use of the subadviser’s name in a manager of managers fund to assure that investors are investing in a fund based on the principal adviser’s reputation for selecting and supervising subadvisers?

• We are considering whether to adopt substantially similar amendments to Form N–3, the registration form for insurance company “managed separate accounts.”43 Should we amend Form N–3, and if so should the amendments differ from the proposed Form N–1A amendments?

6. Number of Subadvisers

Many manager of managers funds employ multiple subadvisers. Our exemptive orders, however, do not require the retention of a minimum number of subadvisers,44 and some funds operating under our orders use only one subadviser for the fund, or for each series of the fund.45

The conditions contained in our exemptive orders provide the same protections for funds with single subadvisers and those with multiple subadvisers.46 In each case, the conditions limit relief to funds in which the subadviser is analogous to a portfolio manager and in which shareholders were informed of the principal adviser’s ability to retain new subadvisers without shareholder approval. Moreover, the principal adviser’s ability to hire and fire subadvisers without shareholder approval benefits shareholders by allowing funds to terminate poorly performing subadvisers, while avoiding having to operate for a significant period of time without a subadviser providing investment management services.47

Also, subadviser changes are not infrequent for funds advised by single subadvisers.48 Therefore, the Commission has issued orders to funds with a single subadviser, and our proposed rule would not require that each fund or portfolio engage a certain minimum number of subadvisers.49

41 Proposed rule 15a–5(a)(7). See 17 CFR 270.0–1(a)(6) (“delegation of independent legal counsel”). The manager of managers excessive order have typically included these board composition and nomination requirements. The manager of managers order also include relief from our disclosure rules require independent directors to retain independent counsel. Consistent with the amendments to exemptive rules in 2001, the proposed rule would require that the independent directors have independent counsel only if they choose to retain counsel. See Rule of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].
42 Proposed rule 15a–5(a)(3). If the fund has not publicly offered securities or sold securities to non-affiliates or promoters (or their affiliates), the rule would require that the board of directors approve the fund’s operation as a manager of managers fund by authorizing the adviser to enter into subadvisory contracts without shareholder approval. Id. This condition also has been included as a condition to our orders.
43 Proposed Instruction 3 to Item 4(b)(1) and proposed amendments to Item 6(a)(3)(ii) of Form N–1A. The amendments to Form N–1A also would require the fund to disclose in its prospectus, in the discussion of principal investment strategies, the fund’s use of (or reservation of its right to use) subadvisers that may be changed at any time. Proposed Instruction 3 to Item 4(b)(1). A fund also would have to disclose in its summary of principal investment strategies, required by Item 2(b) of Form N–1A, that the fund uses (or reserves the right to use) the services of one or more subadvisers without shareholder approval. See Item 2(b) of Form N–1A (as of October 1999) (notices) and 21666 (Jan. 11, 1999) [61 SEC Docket 2105 (Feb. 6, 1999)] (order) (granted to fund in which each series of the fund was advised initially by a single subadviser).
44 See, e.g., Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)](notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (July 25, 1995)] (order).
45 See, e.g., Managed Accounts Services Portfolio Trust and Mitchell Hutchins Asset Management, Inc., Investment Company Act Release Nos. 21590 (Dec. 11, 1995) [60 FR 64461 (Dec. 15, 1995)] (notice) and 21666 (Jan. 11, 1999) [61 SEC Docket 142 (Dec. 17, 1998)] (order) (granted to fund in which each series of the fund was advised initially by a single subadviser).
46 For example, the compensation received by subadvisers to single subadviser funds is fully disclosed to investors. See supra Section II.A.1.
47 Absent the impediment of operating without a subadviser, it is more likely that poorly performing subadvisers would be terminated.
48 For example, between August 1999 and October 2000, 6 of 27 American Skandia portfolios that employed only one subadviser replaced the subadviser. Between October 1999 and September 2000, 3 of 11 Paine Webber PACE Select Advisors Trust portfolios that employed only one subadviser (as of October 1999) replaced the subadviser.
49 Some have argued that the conditions of the Commission’s exemptive orders were designed for funds in which a principal adviser selects and supervises multiple subadvisers, and that the costs and delays associated with a shareholder vote for a fund with one subadviser do not warrant...
As discussed above, proposed rule 15a–5 and the proposed amendments to Form N–1A would essentially codify existing exemptive orders that allow manager of managers funds and their principal advisers to enter into subadvisory contracts without shareholder approval. Therefore this analysis examines the costs and benefits to funds, advisers, and investors that would result from reliance on the exemptive relief under the proposed amendments, in comparison to the costs and benefits associated with obtaining an exemptive order from the Commission.

A. Benefits

We anticipate that funds, their advisers, and their shareholders would benefit from the proposed rule and amendments.\textsuperscript{52} Funds and advisers that rely on the rule would be able to enter into subadvisory contracts without obtaining exemptive relief from the Act’s shareholder approval requirement, which relief can be costly to funds and their shareholders.\textsuperscript{53} Obtaining an exemptive order also can entail delays for the fund that applies for relief, although these applications for relief are typically processed expeditiously.\textsuperscript{54}

Some of the conditions included in the proposed rule and amendments differ from the conditions or representations typically included in a manager of managers exemptive order. We anticipate that these differences will not yield significant costs or benefits. For example, an exemptive order for a fund that intends to provide only subadvisory services typically included in a fund’s independent directors retain independent legal counsel. The proposed rule would not require independent directors to retain legal counsel.

B. Costs

Funds that choose to rely on the proposed amendments, as well as their advisers, would incur certain costs in complying with the rules.\textsuperscript{55} As discussed above, proposed rule 15a–5 includes a condition requiring the contract between a manager of managers fund and its principal adviser to provide that the adviser will supervise and monitor the performance of its subadvisers.\textsuperscript{56} If the Commission rescinds the previous exemptive orders granted for manager of managers funds, a fund that already has an exemptive order would need to modify its advisory contract to include that provision. Similarly, if an existing fund were to choose to operate as a manager of managers fund under the proposed amendments, it would need to modify its advisory contract.\textsuperscript{57} The modification of advisory contracts in response to the proposed rule would impose one-time costs. The Commission anticipates providing a sufficiently long compliance period for the proposed amendments, so that the contract modifications could be made when the fund’s board next approves a new advisory contract. Therefore we believe the costs involved in making the modifications would be minor.\textsuperscript{58}

There are no new costs associated with any of the remaining conditions of the proposed rule and amendments. First, the proposed rule would require that the fund provide shareholders,

\textsuperscript{55} Because the proposed rule is an exemptive rule, funds can choose whether or not to rely on it. Only those funds that choose to rely on the proposed rule would incur costs in complying with the rule.

\textsuperscript{56} See supra Section II.A.2.

\textsuperscript{57} Under our proposal, contracts between the principal adviser and subadvisers also would be required to authorize the principal adviser to terminate the subadvisory contract at any time without penalty. However, most if not all subadvisory contracts already contain such a provision, and therefore this condition would not impose a new cost on funds.

\textsuperscript{58} For purposes of the Paperwork Reduction Act, the Commission staff has estimated that it would take a total of 5 hours and $1,287.77 per fund to comply with the condition of proposed rule 15a–5 related to the supervision of subadvisers. During the first year after adoption of the rule, it is estimated that all funds that currently rely on exemptive orders (those funds that would choose to rely on the proposed rule during the first year) would spend a total of 600 hours and $154,719 to comply with the supervision requirement. After the first year, the staff estimates that ten funds per year, whose securities have already been publicly offered, would seek to rely on the proposed rule and therefore would need to modify their advisory contracts with principal advisers. The Commission staff estimates that, after the first year, those ten funds together would annually spend 50 hours and $12,877 to comply with the supervision requirement.
within 90 days of the entry into a subadvisory contract or a material change to a wholly-owned subadviser’s contract, with an information statement that contains the information that would have been provided to shareholders in a proxy statement if a shareholder vote had been held.60 Second, the proposed rule would require funds to obtain shareholder authorization for a principal adviser to enter into subadvisory contracts without shareholder approval.61 Third, the proposed rule would require that disinterested directors supervise their subadvisers.62 Fourth, the proposed rule would require independent legal counsel, if they hire legal counsel, to hire an independent legal counsel.63 All of these conditions (or their substantial equivalent) are typically included in manager of managers exemptive orders, and therefore would not result in any manager of managers exemptive orders,64 these conditions (or their substantial directors.65 The proposed rule would only if they choose to retain counsel. Moreover, the independent directors have independent counsel.62 Fourth, the proposed rule would already have independent counsel or would not retain legal counsel.65 Adoption of the proposed rule would alter the relationship between the principal adviser and shareholders (by allowing the principal adviser to hire and terminate subadvisers without shareholder approval) and the principal adviser and its subadvisers, the effects of which would be minimal because shareholders have the right to terminate subadvisers66 and principal advisers have a contractual duty to supervise their subadvisers.67

C. Request for Comment

The Commission requests comment on the potential costs and benefits of the proposed rule and amendments and any suggested alternatives to the proposals. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,67 the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide data to support their views.

V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.68 The Commission anticipates that the proposed amendments would not adversely affect efficiency, competition, or capital formation.

The proposed amendments are intended to allow funds to enter into subadvisory contracts without shareholder approval, which would eliminate the need for funds to hold a shareholder meeting or obtain specific exemptive relief, either of which can be costly and time consuming. We anticipate that the proposed amendments would enhance efficiency by significantly reducing the time period needed for selecting subadvisers, while also reducing the fund’s costs associated with the hiring of a new subadviser.69 Adoption of the proposed rule and rescission of the exemptive orders would subject all funds and advisers to the same conditions, and enable them to compete under more uniform conditions. The Commission does not expect the proposed amendments to have a material effect on competition or capital formation.70

The Commission requests comments on whether the proposed rule and proposed form and rule amendments, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and sections 3(f) and 23(a)(2) of the Exchange Act.

VI. Paperwork Reduction Act

Certain provisions of proposed rule 15a–5 and certain provisions of the proposed amendments to Form N–1A would result in new “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.71 The Commission is submitting these proposals to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information associated with the proposed rule is “Rule 15a–5 under the Investment Company Act of 1940, ‘Exemption from shareholder approval for certain contracts.’” The title for the collection of information associated with the proposed amendments is “Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, ‘Registration Statement of Open-End Management Investment Companies.’” An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The approved collection of information associated with Form N–1A, which would be revised by the proposed amendments, displays control number 3235–0307.

Proposed rule 15a–5 and the proposed amendments to Form N–1A would permit manager of managers funds to operate without obtaining shareholder approval when the fund’s principal adviser hires a new subadviser or replaces an existing subadviser subject to certain conditions. The rule and amendments would largely codify numerous exemptive orders issued by the Commission. We believe that the information collection requirements of the proposed rule and amendments ensure that only manager of managers funds are eligible for relief, that shareholders are provided with information on the identity of the fund’s subadvisers, and that shareholders are aware of a fund’s and a principal adviser’s ability to hire and fire subadvisers without shareholder approval. The provision of information in accordance with the proposed rule and amendments would be voluntary.
because rule 15a–5 is an exemptive rule and, therefore, funds may choose whether to rely on it. Because the information provided to the Commission on Form N–1A is available to the public, this analysis does not address the confidentiality of responses under the proposed rule.

The proposed rule would require that a fund’s contract with each principal adviser that retains the services of one or more subadvisers contain a provision obligating the principal adviser to supervise and oversee the activities of its subadvisers. The proposed rule also would require all contracts with subadvisers that are retained without shareholder approval to provide that the principal adviser may terminate the subadviser at any time without penalty.

During the first year after adoption of the rule, the Commission staff estimates that requiring funds to modify their existing contracts with principal advisers so that each principal adviser is required to supervise and oversee the activities of its subadvisers would create an initial one-time burden of 5 hours per fund (4 hours by in-house counsel, .5 hours by fund directors, .5 hours by support staff) or about 600 burden hours. The Commission staff estimates that after the first year, approximately 10 registered open-end investment companies would spend, on average, 5 hours annually (4 hours by in-house counsel, .5 hours by fund directors, .5 hours by support staff) to modify their contracts regarding supervision, for a total of 50 burden hours.

Rule 15a–5 also would require funds to provide shareholders (and file with the Commission), within 90 days of entering into a subadvisory contract or materially amending a wholly-owned subsidiary’s subadvisory contract, with an information statement describing the agreement and containing all of the information shareholders would have received in a proxy statement had a shareholder vote been held. During the first 3 years after adoption of the proposed rule, the Commission staff estimates that 150 registered open-end investment companies would each spend 20 hours annually in preparing and distributing information statements. The total annual burden estimate for complying with the reporting requirement of rule 15a–5 would be 3,000 hours annually.

The proposed amendments also would result in new information collection requirements. The proposed amendments to Form N–1A would require any fund that is authorized to hire one or more subadvisers without shareholder approval pursuant to proposed rule 15a–5, to disclose this information in its prospectus. The Commission believes that the added information collection burdens would be negligible and would be mostly offset by other disclosure amendments that would permit funds that comply with the requirements of proposed rule 15a–5 to disclose the aggregate fees paid to all unaffiliated subadvisers of the principal adviser, in lieu of the individual fee paid to each subadviser. To arrive at the total information collection burden, a weighted average of the first year burden and the annual burden after the first year was calculated. Using a three-year period, the weighted average information collection burden is 3,232 hours. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission’s estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rule and amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–20–03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–20–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis.

The first year burden of 3,600 hours (600 hours to modify existing contracts + 3,000 hours to comply with the reporting requirement) is weighted (1 year / 3 years = 33 percent) as 1,188 hours. The burden after the first year of 3,050 hours (50 hours to modify contracts + 3,000 hours to comply with the reporting requirement) is weighted (2 years / 3 years = 67 percent) as 2,044 hours. The total weighted information collection burden hours for the proposed amendments are 1,188 + 2,044 = 3,232 hours.
The Commission staff expects the proposed rule and amendments to have little impact on small entities. Like other funds, small entities will be affected by the proposed rule and amendments only if they enter into a subadvisory contract with an unaffiliated or wholly-owned subadviser. Because the proposed rule is voluntary in nature, only small entities that choose to rely on the rule will be subject to its conditions. Moreover, the burdens imposed by the proposed rule and amendments should be more than offset by the fact that the proposed rule and amendments would enable funds, including small entities, to enter into subadvisory contracts without incurring the expenses associated with a shareholder vote or the filing of an application for exemption under section 6(c) of the Act.

The IRFA discusses the reporting, recordkeeping, and compliance requirements associated with the proposed rule and amendments. It notes that the proposed rule would require funds to provide a proxy statement to its shareholders (and file it with the Commission) within 90 days of the entry into a subadvisory contract or a material change to a wholly-owned subadviser’s contract as a substitute for the proxy statement that the fund would have had to provide to each shareholder if a shareholder vote had been held.

The IRFA also explains that the proposed rule would impose compliance requirements. For funds relying on the proposed rule, the rule would require that: (i) the subadvisory contract: (a) does not directly or indirectly increase the management and advisory fees charged to the fund or its shareholders; and (b) provides that it may be terminated at any time, on no more than 60 days written notice, without penalty, by the principal adviser; (ii) the subadvisory contract with an unaffiliated or wholly-owned subadviser clearly identifies the principal adviser; (iii) a majority of the directors of the fund are not interested persons of the fund, and those directors select and nominate any other disinterested directors; and (viii) any person who acts as legal counsel for the disinterested directors is an independent legal counsel.

The IRFA explains that the proposed rule would benefit funds by allowing them to enter into subadvisory contracts without shareholder approval, and thereby avoid incurring the costs and delay associated with the exemptive application process or with obtaining shareholder approval. The IRFA also notes that while the proposed rule would require funds to comply with numerous conditions, many of the compliance requirements do not involve any new costs on funds and those that

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85 These estimates are based on data reported on Form N-SAR filed with the Commission between July and December 2002.
86 The Commission believes that small funds are unlikely to retain multiple subadvisers to manage fund assets because it would not be practical for subadvisers to manage a portion of a small fund’s assets. A subadviser receives as a fee a percentage of the value of the assets under its management. Therefore, providing management services to a portion of a small fund’s assets would not provide a large enough fee to justify the subadviser’s time or effort. Because it is unlikely that a small fund would retain more than one subadviser, small funds rarely have reason to seek exemptive relief.
87 As noted above, to date only two small funds have obtained an exemptive order allowing them to enter into subadvisory contracts without shareholder approval. The Commission does not believe that the small funds seeking such relief will increase in the future. See supra note 86 and accompanying text.
88 Proposed rule 15a–5(a)(5). The exemptive orders that have been issued by the Commission require that shareholders be provided with an information statement in place of the proxy statement.
89 Proposed rule 15a–5(a)(1).
90 Proposed rule 15a–5(a)(4).
91 Proposed rule 15a–5(a)(2)(i).
92 Proposed rule 15a–5(a)(2)(ii). The proposed rule would allow a wholly-owned subadviser to qualify for relief from section 15(a) of the Act even though it is an affiliate of the principal adviser and the principal adviser has an ownership interest in the subadviser, if the wholly-owned subadviser meets all of the other conditions of the proposed rule and the wholly-owned subadviser is replacing another wholly-owned subadviser or its contract has been materially amended. Proposed rule 15a–5(a)(2)(ii).
93 Proposed rule 15a–5(a)(3).
94 Proposed rule 15a–5(a)(4).
95 Proposed rule 15a–5(a)(6).
96 Proposed rule 15a–5(a)(7)(i).
97 Proposed rule 15a–5(a)(7)(ii).
do not result in a significant burden being placed on the funds.\textsuperscript{98} The IRFA explains that the proposed amendments would impose reporting requirements on funds, but would not impose recordkeeping or compliance requirements. The proposed amendments would require any fund that is authorized to hire one or more subadvisers without shareholder approval pursuant to proposed rule 15a–5, to disclose this ability in its prospectus.\textsuperscript{99} Compliance with these amendments would require little time, involve no extra costs to funds, and should not impose a significant burden, if any, on funds, including small entities. Shareholders of funds would benefit by being fully informed of the fund’s ability to replace subadvisers without shareholder approval.

The proposed amendments also would allow a fund that complies with the requirements of proposed rule 15a–5 to decide not to disclose the individual fee paid to each unaffiliated subadviser of the principal adviser.\textsuperscript{100} For purposes of fee disclosure in the fund’s Statement of Additional Information, the fund would be required to disclose in place of the individual fee paid to each subadviser (both as a dollar amount and as a percentage of its net assets) (i) the individual fees paid to the principal adviser and to each of its affiliated subadvisers (including its wholly-owned subadvisers), (ii) the net advisory fee retained by the principal adviser after payment of fees to all subadvisers, and (iii) the aggregate fees paid to all subadvisers that are not affiliated persons of the principal adviser.\textsuperscript{101} These amendments would benefit funds, including small entities, by reducing the disclosure burden on funds that qualify for relief under the proposed rule and by allowing the principal adviser to negotiate a lower advisory fee with each unaffiliated subadviser than the fee normally charged by such subadviser.\textsuperscript{102} The IRFA explains that the Commission has considered significant alternatives to the proposed rule and amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The Commission believes that no alternative could carry out these objectives as effectively as the proposed rule and amendments.

The Commission encourages the submission of comments on matters discussed in the IRFA. Specifically, comment is requested on the effects the proposed rule and amendments would have on small entities, and the number of small entities that would be affected. Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect. These comments will be placed in the same public file as comments on the proposed rule and amendments themselves. A copy of the IRFA may be obtained by contacting Adam B. Glazer, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

VIII. Statutory Authority

The Commission is proposing to adopt new rule 15a–5 pursuant to the authority set forth in sections 6(c) and 38(a) [15 U.S.C. 80a–6(c) and 80a–37(a)] of the Investment Company Act.

The Commission is proposing amendments to rule 6–07 of Regulation S–X pursuant to authority set forth in section 7 of the Securities Act [15 U.S.C. 77g] and sections 8 and 38(a) of the Investment Company Act [15 U.S.C. 80a–8, 80a–37(a)]. We are proposing amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [15 U.S.C. 78n, 78w(a)(1)] and sections 20(a) and 38 of the Investment Company Act [15 U.S.C. 80a–20(a), 80a–37]. We are proposing amendments to Form N–1A pursuant to authority set forth in sections 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77j, 77s(a)] and sections 8, 24(a), and 30 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), and 80a–29].

List of Subjects
17 CFR Part 210
Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239 and 240
Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274
Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form Amendments

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

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:
Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79(b), 79(a), 79n, 79(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

2. Section 210.6–07 is amended by:

(a) Redesignating paragraphs 2.(d), (e), (f), and (g) as paragraphs 2.(e), (f), (g), and (h), and
(b) Adding new paragraph 2.(d) to read as follows:

§ 210.6–07 Statements of operations.

2. Expenses. * * * * * (d) If a registered investment company or separate series of a registered investment company (“Fund”) or a principal adviser (as defined in §270.15a–5(b)(2) of this chapter) of the Fund, in reliance on §270.15a–5 of this chapter, has entered into a contract or contracts with a subadviser (as that term is defined in §270.15a–5(b)(3) of this chapter) of the Fund without approval by a vote of the securities of the Fund, the investment advisory fee paid to any subadviser that is not an affiliated person (as defined in 15 U.S.C. 80a–2(a)(3)) of the principal adviser with which it has contracted or of the Fund (other than by reason of serving as an investment adviser to the Fund) need not be disclosed as a separate expense item in response to paragraphs 2.(a), (b), or (c) of this section.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77ae, 77gg, 77nn, 77ss, 77tt, 78(c), 78d, 78e, 78f, 78g, 78i, 78j, 78k–1, 78k–2, 78l, 78m, 78n, 78o, 78p, 78q, 78u, 78u–5, 78w(a), 78ll, 78mm, 79(b), 79(a), 79n, 79(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202, 7241, 7262, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77ee, 77ggg, 77nnm, 77ss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78k–1, 78k–2, 78l, 78m, 78n, 78o, 78p, 78q, 78u, 78u–5, 78w(a), 78ll, 78mm, 79(b), 79(a), 79n, 79(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80b–4, 80b–11, 7202, 7241, 7262, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

5. Section 240.14a–101, Item 22, is amended by:

a. Designating the Instruction before paragraph (c)(1) as Instruction 1 and adding Instruction 2; and
b. Designing the Instruction after paragraph (c)(10) as Instruction 1 and adding Instruction 2.

These additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(c) * * *

Instructions to paragraph (c).

1. Where information is furnished in response to this item in order to comply with the requirements of §270.15a–5(a)(5) of this chapter, the rate of compensation and the aggregate amount of the fee paid to the subadviser (as that term is defined in §270.15a–5(b)(3) of this chapter) need not be disclosed in response to any paragraph of this item, and the information required by paragraph (c)(9) of this item need not be disclosed, unless such subadviser is a wholly-owned subsidiary (as defined in 15 U.S.C. 80a–2(a)(43) of the principal adviser (as that term is defined in §270.15a–5(b)(2) of this chapter) with which it has contracted.

* * * * *

(10) * * *

Instructions to paragraph (c)(10).

1. * * *

2. Where information is furnished in response to this item in order to comply with the requirements of §270.15a–5(a)(5) of this chapter, the compensation information required by this paragraph (c)(10) need not be disclosed, unless the information pertains to a subadviser (as that term is defined in §270.15a–5(b)(3) of this chapter) that is a wholly-owned subsidiary (as defined in 15 U.S.C. 80a–2(a)(43)) of the principal adviser (as that term is defined in §270.15a–5(b)(2) of this chapter) with which it has contracted.

§ 270.15a–5 Exemption from shareholder approval for certain subadvisory contracts.

(a) Exemption from shareholder approval. Notwithstanding section 15(a) of the Act (15 U.S.C. 80a–15(a)), a subadvisory contract need not be approved by a vote of a majority of the outstanding voting securities of a fund, if the following conditions are met:

(1) No increase in fees. The subadvisory contract does not directly or indirectly increase the management and advisory fees charged to the fund or its shareholders.

(2) Conflicting relationships prohibited.

(i) The subadviser is not an affiliated person of the principal adviser with which it has contracted or of the fund (other than by reason of serving as an investment adviser to the fund), and no director or officer of the fund, and no principal adviser or director or officer of the principal adviser with which the subadviser has contracted, directly or indirectly owns any material interest in the subadviser other than an interest through ownership of shares of a pooled investment vehicle that is not controlled by such person (or entity); or

(ii) The subadviser is a wholly-owned subsidiary (as defined in section 2(a)(43) of the Act (15 U.S.C. 80a–2(a)(43)) of the principal adviser, and the wholly-owned subsidiary has been hired as a subadviser to replace another wholly-owned subsidiary that has been terminated as a subadviser to the fund, or the subadvisory contract of a wholly-owned subsidiary has been materially amended.

(3) Shareholder authorization.

Shareholders of the fund have authorized a principal adviser, subject to approval by the board of directors, to enter into contracts with subadvisers without approval by a vote of the outstanding voting securities of the fund or, if the fund’s securities have not been publicly offered or sold to persons who are not promoters or affiliated persons of the fund, the directors of the fund have authorized the principal adviser to enter into such contracts.

(4) Supervision of subadvisers. A contract between the fund and a principal adviser provides that the principal adviser must supervise and oversee the activities of the subadviser under the subadvisory contract on behalf of the fund.

(5) Disclosure to shareholders. Within 90 days after entry into a new subadvisory contract or after making a material change to a wholly-owned subsidiary’s existing subadvisory contract, the fund furnishes its shareholders with an information statement, which must be filed with the

(6) Fund name. If the fund identifies the subadviser as a part of the fund’s name or title, it also clearly identifies in its name or title the principal adviser with which the subadviser has contracted, before the name of the subadviser.

(7) Board of directors composition, selection, and representation.

(i) A majority of the directors of the fund are not interested persons of the fund, and those directors select and nominate any other disinterested directors; and

(ii) Any person who acts as legal counsel for the disinterested directors is an independent legal counsel.

(b) Definitions.

(1) Fund means a registered open-end management investment company, or separate series of a registered open-end management investment company.

(2) Principal adviser means an investment adviser as defined in section 2(a)(20)(A) of the Act (15 U.S.C. 80a–2(a)(20)(A)).

(3) Subadviser means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

(4) Subadvisory contract means a contract between a principal adviser and subadviser to a fund, under which contract the subadviser agrees to perform investment advisory services on behalf of the fund, and which is terminable at any time by the principal adviser, on no more than 60 days written notice, without payment of penalty.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

8. The authority citation for part 274 continues to read in part as follows:

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

9. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

(a) In Item 4(b)(1) by redesignating Instructions 3, 4, 5, 6, and 7 as Instructions 4, 5, 6, 7, and 8 and adding new Instruction 3;

(b) In Item 6 adding a sentence to the end of paragraph (a)(1)(i) and a Note; and

(c) In Item 15 adding Instruction 5 before paragraph (b).

These additions and revisions read as follows:

Note: The text of Form N–1A does not and these amendments will not appear in the Code of Federal Regulations.

Form N–1A

Item 4. Investment Objectives, Principal Investment Strategies, and Related Risks

(a) * * *

(b) * * *

(1) * * *

Instructions. * * *

3. A Fund that uses (or reserves the right to use) the services of any other investment adviser to implement the investment objectives, strategies, and policies of the Fund, without shareholder approval of those advisers’ contracts in reliance on § 270.15a–5, should regard such use (or reservation to use) as a principal investment strategy.

Item 6. Management, Organization, and Capital Structure

(a) * * *

(1) Investment Adviser.

(i) * * * If the investment adviser is a subadviser whose contract has not been approved by shareholders in reliance on § 270.15a–5, explain that the subadviser may be replaced, and that additional subadvisers may be retained, without shareholder approval.

Note: If the Fund uses the services of more than one subadviser whose contracts have not been approved by shareholders in reliance on § 270.15a–5, then the Fund may include a general statement, appropriately located, explaining that any of the subadvisers may be replaced, and that additional subadvisers may be retained, without shareholder approval.

* * * * *

Item 15. Investment Advisory and Other Services

(a) * * *

(3) * * *

Instructions. * * *

5. If the Fund and an investment adviser comply with the conditions of §§ 270.15a–5(a)(1)–(7) and (b)(4) (which permits a subadviser to advise the Fund without shareholder approval), the Fund may elect not to disclose separately the fees paid to each subadviser that is not an affiliated person of the principal adviser with which it has contracted, if the Fund instead discloses, both as a dollar amount and as a percentage of its net assets:

(a) The individual fees paid to the principal adviser of the Fund and to each subadviser that is an affiliated person of the principal adviser with which it has contracted;

(b) The net advisory fee retained by the principal adviser after payment of fees to all subadvisers; and

(c) The aggregate fees paid to all subadvisers of the Fund that are not affiliated persons of the principal adviser with which they have contracted.

* * * * *

By the Commission.


Jill M. Peterson, Assistant Secretary.

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