May 21, 2004

U.S. Securities and Exchange Commission
c/o Jonathan G. Katz
Secretary
450 Fifth Street, NW
Washington, DC 02549-0609

Re: File No. S7-12-04
Proposed Rules Concerning Disclosure Regarding
Portfolio Managers of Registered Investment Companies

Ladies and Gentlemen:

We appreciate the opportunity to comment on behalf of Wellington Management Company, LLP ("Wellington Management") with respect to the proposed rule and form amendments (collectively, the "Proposed Rules") described in Securities Act Release No. 33-8396, dated March 11, 2004 (the "Proposing Release").[1]

I. INTRODUCTION

Wellington Management is an independent, privately owned investment advisory firm registered with the Securities and Exchange Commission (the "Commission") under the Investment Advisers Act of 1940. Headquartered in Boston, Massachusetts with eight affiliate offices in the United States and around the world, Wellington Management manages U.S., international and global equity, fixed income and multi-asset portfolios for institutional and subadvisory clients in forty countries. As of March 31, 2004, the firm had client assets under

[1] The Proposing Release is also designated as Securities Exchange Act Release 34-49398 and Investment Company Act Release IC-26383.

management totaling over $400 billion.

Wellington Management focuses exclusively on institutional relationships, with a client base that includes mutual fund and variable annuity sponsors; corporate, occupational and public pension funds; government and supranational entities; hedge funds; banks; insurance entities; endowments and foundations; investment advisory firms; and private investment offices. While Wellington Management is not itself a sponsor or distributor of U.S. registered investment companies ("mutual funds"), it provides investment subadvisory services to over 175 mutual funds in over forty-five mutual fund families. As an investment subadviser, Wellington Management's specific mandate is to make and implement investment decisions for the portfolios it has been retained to manage and to assume primary responsibility for ensuring that those decisions are in compliance with the portfolio's investment objectives, policies and restrictions.

II. COMMENTS

A. General Comment. Wellington Management supports the Commission's emphasis on increased transparency of information regarding mutual fund portfolio managers. We agree with the basic rationale, articulated in the Proposing Release, that information concerning a portfolio manager's identity and business experience, as well as the structure of her compensation as it relates to incentives, may be considered relevant to the investment decisions of current and prospective shareholders and should, therefore, be integrated into the disclosure regime of the Investment Company Act of 1940 (the "Investment Company Act").[2] However, as discussed in greater detail below, we believe that, with respect to certain aspects of the Proposed Rules, the

[2] Proposing Release, at 3-4.

scope of the required disclosure should be more limited than that proposed by the Commission, in order to ensure that such enhanced disclosure concerning mutual fund portfolio managers will be genuinely useful to investors without being unduly invasive of portfolio managers' legitimate privacy interests or burdensome to the industry.

B. Identification of Portfolio Management Team Members. Wellington Management generally supports the Proposed Rule that would require open-end and closed-end investment companies and separate accounts that issue variable annuity contracts to disclose the name, title, length of service and business experience (collectively, "Identifying Information") of each portfolio manager who is "primarily responsible for the day-to-day management" of the portfolio. In addition, we agree that, in the case of a mutual fund that utilizes a portfolio management team or committee whose members are "jointly and primarily responsible" for investment decision making, the requirement to disclose such Identifying Information should apply in principle to the team's members.[3] The disclosure of Identifying Information about those individuals who, as members of a portfolio management team, are principally engaged in providing investment advisory services to a mutual fund can assist shareholders in assessing the collective experience of fund management and bring to light instances of frequent turnover in investment personnel.

We are concerned, however, that the disclosure contemplated by the Proposed Rule would be of limited utility to, and could result in confusion for, investors in the case of certain research-driven portfolios. Wellington Management manages numerous research-driven portfolios that draw upon the in-depth knowledge and experience of investment personnel with

[3] Proposing Release, at 4.

expertise in different investment styles, industries, sectors and regions. Portfolio management for such funds is typically provided through a large-scale team-oriented approach, where numerous investment professionals and analysts are each allocated a portion or "sleeve" of the portfolio over which they have independent responsibility for research, stock selection and portfolio construction. Each such portfolio management team has a coordinator who functions as the team leader, with responsibility for allocating the portfolio among the various managers and analysts, implementing trades on behalf of analysts on the management team, reviewing the overall composition of the portfolio to ensure its compliance with the client's investment guidelines and monitoring cash flows. Because such research-driven portfolios aim to be sector-neutral and are managed against a benchmark that may change or be rebalanced annually, the percentage of the portfolio that is allocated by the coordinator to individual team members typically varies from year to year. In certain cases, the management team for a research-driven portfolio can consist of as many as fifty individuals, some of whom may be responsible for managing a sleeve that represents no more than one or two percent of the portfolio's total net assets. While the sum of the contributions of such individual team members is significant to the overall performance of the portfolio, the performance of any one sleeve, by virtue of its small size, is unlikely by itself to have a material impact on overall fund performance.

We believe that for these types of research-driven portfolios, the disclosure required by the Proposed Rule would become so voluminous as to be of limited utility to investors. Presenting Identifying Information for each member of such a portfolio management team, without regard for the magnitude of the percentage of the overall portfolio over which such member exercises investment authority, could obscure more relevant Identifying Information concerning those individuals who have responsibility for managing a significant portion of the

portfolio and whose investment decisions could have a more material impact on the fund's overall performance.

Wellington Management, therefore, recommends that any final rule adopted by the Commission include specific instructions applicable to mutual fund portfolios, such as the research-driven portfolios described above, that are managed by a team or committee whose individual members each exercise investment discretion over an allocated portion of the portfolio. Where the management team for such a portfolio consists of five or fewer individuals (including any portfolio coordinator), we believe that it would be appropriate to require disclosure of Identifying Information for each team member who exercises investment discretion over all or a portion of the portfolio. However, in cases where the number of team members exceeds five, we would recommend that disclosure of Identifying Information be required only for the portfolio coordinator, who plays a key role in implementing and monitoring the overall investment mandate, and for each team member who exercises investment discretion with respect to a portfolio sleeve that represented at least 20% of the fund's total net assets at any point during the fund's last fiscal year (or, in the case of an initial registration statement, who is expected to manage a portfolio sleeve of such magnitude during the fund's first fiscal year). In circumstances where no team member's allocation meets this threshold, we would recommend requiring disclosure of this fact in lieu of any Identifying Information for any team member other than the portfolio coordinator. We believe that applying such a threshold for disclosure in the case of large portfolio management teams would ensure that salient biographical information concerning those individuals who are *primarily* responsible for day-to-day management of the fund is not obscured by voluminous disclosure concerning persons whose investment decisions would have a less material effect on the overall performance of the portfolio.

C. Disclosure Regarding Other Accounts Managed, Potential Conflicts of Interest, and Policies and Procedures to Address Conflicts. Wellington Management generally supports the Proposed Rule requiring a mutual fund to disclose information concerning other investment accounts for which the fund's portfolio manager is primarily responsible for day-to-day portfolio management (collectively, "Other Accounts"), as well as a description of conflicts of interest that may arise in connection with the portfolio manager's simultaneous management of the fund and such Other Accounts and the investment adviser's policies and procedures for addressing such conflicts. A registered investment adviser, as a fiduciary, has "an affirmative duty of 'utmost good faith and full and fair disclosure of all material facts,' as well as an affirmative obligation to 'employ reasonable care to avoid misleading . . . clients'."[4] When the portfolio management personnel of an investment adviser (or subadviser) to a mutual fund simultaneously manage Other Accounts, conflicts of interest may arise which must be addressed by the adviser's (or subadviser's) policies and procedures regarding such matters as investment and trade aggregation and allocation. It is important for mutual fund investors to know whether the personnel responsible for managing the fund's investment portfolio, in the course of satisfying the investment mandates of Other Accounts, may take certain actions that would not be conducive to meeting the fund's investment objectives, as well as how the investment adviser (or subadviser) intends to resolve such conflicts in a manner consistent with its fiduciary duties to both the fund and the Other Account.[5]

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[4] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963), quoted in "*Side-by-Side Management of Registered Investment Companies and Investment Accounts*, " Investment Company Institute Paper, March 2004.

[5] A similar point was made by the Commission staff in its recent study on the hedge fund industry. "*Implications of the Growth of Hedge Funds*," Staff Report to the U.S. Securities and Exchange Commission (September 2003), at 83-85.

However, we would recommend that the Commission limit the disclosure required by any final rule to *material* conflicts of interest that may arise with respect to a portfolio manager's side-by-side management of a mutual fund and Other Accounts, defined as conflicts of interest which have a reasonable possibility of arising given the nature of the mutual fund and the Other Account(s) at issue, and to the policies or procedures used by the fund or its investment adviser to address such material conflicts should they arise. Absent such a limitation, the proposal to require disclosure of "*any* conflicts of interest that *may* arise" is likely to generate over-inclusive, boilerplate descriptions of all possible conflicts that might arise in situations of side-by-side management, which would obscure information concerning potential conflicts of interest that are of genuine relevance to a particular fund's shareholders concerning, for example, a portfolio manager's allocation of trades among the fund and Other Accounts, or her simultaneously holding an equity security long in the fund while selling it short in an Other Account. Restricting the required disclosure to those conflicts of interest which are material to a mutual fund's investment policies and strategies would ensure that a fund's shareholders receive information that would help them to evaluate the alignment of a portfolio manager's interest with theirs.

D. Portfolio Manager Compensation Structure. Wellington Management agrees with the Commission's rationale for proposing to require disclosure of certain information regarding mutual fund portfolio managers' compensation, namely, that "it would help [investors in a mutual fund] to assess the managers' incentives and whether their interests are aligned with shareholders."[6] Investors in a mutual fund have a legitimate interest in knowing whether there are incentives arising from a portfolio manager's compensation arrangements that might, for example, induce her to employ riskier investment strategies in an effort to increase the fund's

[6] Proposing Release, at 8.

performance over a defined period of time, or to focus attention on bringing new assets into the fund rather than meeting its investment objectives, or to favor Other Accounts when allocating trades.

However, we also believe that the Commission's rationale for requiring disclosure by mutual funds about their portfolio managers' compensation also suggests an inherent limit on the appropriate scope of such disclosure. To the extent that information about a portfolio manager's compensation arrangements does not shed light on potential conflicts or misalignments of interest between the manager and the fund's shareholders, or possible risks associated with an investment in the fund, such information has no relevance to an investor's decision about whether or not to invest in the fund and should, therefore, be excluded from the scope of the disclosure requirement. In keeping with the Commission's articulated rationale for requiring disclosure of portfolio manager compensation, then, we would recommend that such disclosure be limited to a statement of (i) the types or components of compensation paid to a portfolio manager by the fund, by the fund's 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.

More extensive disclosure of the methods and criteria for determining portfolio manager compensation would, in our view, 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. As with many advisory firms, Wellington Management's methods for determining the compensation of its portfolio

management personnel are complex and multi-factored. Such compensation typically includes both fixed and variable components, and the variable components may consist of discretionary and/or merit-based awards. No single compensation model applies across the board to all personnel at Wellington Management who are engaged in providing portfolio management services to clients, and we expect that the same holds true for many similarly situated advisory firms. To require a description of the full range of criteria used to determine the compensation of each portfolio manager who has primary responsibility for managing a mutual fund, and to do so with respect to every Other Account also managed by such person, would thus be burdensome for mutual fund sponsors and, as explained above, of doubtful value to investors, as many of the criteria employed in such determinations have no bearing on potential conflicts of interest or the risks associated with an investment in the fund.

In addition, Wellington Management is privately owned by its partners. We regard our compensation arrangements for our investment professionals as confidential, proprietary information, and while we respond on a confidential basis to our clients' requests for information concerning the structure of portfolio manager compensation as it relates to portfolios we manage for such clients, information concerning our methods and criteria for determining compensation for portfolio managers is not generally publicized outside of the firm. In fact, compensation matters are not even discussed broadly within the firm. To require public disclosure of such information by mutual funds subadvised by Wellington Management, when it would not be required of firms that provide investment advisory services exclusively to separate accounts for individuals, institutional investors (e.g., pension funds, charitable endowments and foundations) and/or private investment vehicles (e.g., commingled trusts and hedge funds), would put us, as well as all other mutual fund advisers and subadvisers, at a competitive disadvantage vis-à-vis

these other firms in the marketplace for investment talent, thereby impeding the ability of firms that provide investment advisory services to mutual funds to attract and retain talented portfolio managers. Finally, to the extent that information concerning the structure and methods for determining mutual fund portfolio managers' compensation exceeds the legitimate purpose of informing shareholders about potential misalignments of interest and investment risks, public disclosure of such information would intrude on the personal privacy of such individuals without any compelling justification for doing so. The requirement for such disclosure would thus serve as a disincentive for talented investment professionals to lend their expertise to the management of mutual fund portfolios. Accordingly, we urge the Commission to adopt final rules that would limit the required disclosure of compensation arrangements for portfolio managers, in order to adhere more strictly to the rationale for such disclosure.

E. Disclosure of Securities Ownership of Portfolio Managers. The Proposed Rules would require a mutual fund to disclose, with respect to each portfolio manager who is primarily responsible (or, in the case of a portfolio management team, jointly and primarily responsible) for the day-to-day management of the fund's portfolio, the aggregate dollar range of securities owned by such portfolio manager and his "immediate family members" (as defined in the rule) in the fund and in any Other Account, including any other mutual fund, that is managed by such portfolio manager, by an investment adviser of the fund (each, an "Advisory Affiliate"), or by any person directly or indirectly controlling, controlled by, or under common control with an Advisory Affiliate or principal underwriter of the fund (each, a "Control Affiliate"). This Proposed Rule is predicated on the view that such disclosure "could help investors to assess the extent to which the portfolio manager's interests are aligned with theirs, as well as the level of confidence that a manager has in the investment strategy of the fund," and that it "could assist

investors in assessing potential conflicts of interest between their interests and the interests of other clients or investment vehicles in which the manager has an interest."[7]

Unlike the other Proposed Rules discussed above, where we generally agree with the rationale for the disclosure articulated by the Commission, we do not agree that a portfolio manager's personal securities holdings in a mutual fund, or in any Other Account that she manages or that is managed by an Advisory Affiliate of the fund or its Control Affiliates, is useful information for shareholders of the fund. The decision of a portfolio manager not to invest personally in a fund she manages may have nothing to do with lack of confidence in the fund's investment strategy, but may instead reflect the suitability of the fund's investment objective, strategy or asset class to her personal financial situation and goals.[8] Because investors lack knowledge of a portfolio manager's personal situation, however, they might improperly infer that the absence of a personal ownership interest in the fund equates with a lack of confidence. Similarly, a portfolio manager's personal investment in a mutual fund may lead shareholders to infer that the manager's interests are aligned with theirs and to overlook more relevant information that may shed light on potential conflicts of interest, such as, for example, the structure of the manager's compensation with respect to Other Accounts. In short, disclosing information about the personal securities holdings of mutual fund portfolio managers, without the context of the manager's personal situation, is potentially misleading to investors and may cause them to draw conclusions that are not supported by the data.

In addition, mandatory disclosure of a portfolio manager's personal securities holdings

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[7] Proposing Release, at 8.

[8] See, e.g., "*Proposed Rule: Role of Independent Directors of Investment Companies,"* Investment Company Act Release IC-24082, October 14, 1999, at 21; "*Final Rule: Role of Independent Directors of Investment Companies*," Investment Company Act Release IC-24816, January 2, 2001, at 13.

would intrude upon such person's financial privacy. Given that such disclosure would, in our view, shed little meaningful light on the manager's confidence in the fund or the alignment of her interests with those of shareholders, its intrusiveness would not be counterbalanced by any significant informational benefits to mutual fund investors. Indeed, we would urge the Commission to consider the potential negative effects that such invasive disclosure could have on investment by portfolio managers in mutual funds they manage, as well as on the ability of investment advisers to recruit talented investment professionals to serve as portfolio managers to mutual funds. That is, faced with the disclosure that would be required by the Proposed Rule, portfolio managers will have an incentive not to invest personally in the mutual funds they manage (as well as in Other Accounts that are managed by the Advisory Affiliates of such funds and their Control Affiliates), thereby avoiding the obligation to publicize their personal financial status. Thus, a rule ostensibly aimed at promoting equity ownership by portfolio managers in funds they manage as evidence of their confidence in the funds' respective investment strategies could well end up encouraging the opposite result. Moreover, as with the proposed disclosure requirement for compensation arrangements, mandatory public disclosure of the personal securities holdings of mutual fund portfolio managers would provide a further incentive for investment professionals to put their talents to work for client accounts that are not subject to such disclosure requirements, thus resulting in a loss to mutual fund shareholders of access to certain investment expertise.

However, in the event that such disclosure is to be required by the final rules, Wellington Management urges the Commission to more narrowly circumscribe its scope. As noted above, the Proposed Rule, as currently drafted, would require a fund to include disclosure of a portfolio manager's securities holdings in any Other Account, including an investment company, that is

managed by "an investment adviser of the [fund], or by any person directly or indirectly controlling, controlled by or under common control with an investment adviser or principal underwriter of the [fund]." As defined in Section 2(a)(20) of the Investment Company Act, the term "investment adviser" includes any subadviser of a mutual fund. Accordingly, for a subadvised mutual fund, the Proposed Rule would require disclosure, with respect to each of the fund's portfolio managers and their immediate family members, of securities ownership in (i) the fund, (ii) any Other Account managed by the portfolio manager, (iii) any Other Account managed by the subadviser that employs the portfolio manager (the "Employing Adviser"), (iv) any Other Account managed by any direct or indirect Control Affiliate of such Employing Adviser, (v) any Other Account managed by any other Advisory Affiliate of the fund, whether an adviser or subadviser, (vi) any Other Account that is managed by any direct or indirect Control Affiliate of each such other Advisory Affiliate, and (vii) any Other Account that is managed by a direct or indirect Control Affiliate of the fund's principal underwriter.

As a subadviser to more than 175 U.S. registered mutual funds in over forty-five mutual fund families, Wellington Management is often one of multiple subadvisers engaged by a fund's investment adviser. As an example of the reach of the Proposed Rule, we would ask you to consider the disclosure obligation that would result for one such mutual fund, where the fund's investment adviser has engaged Wellington Management and two other unaffiliated subadvisers to provide portfolio management services. In this particular instance, two of the three subadvisers utilize a portfolio management team with multiple members, and the fund's investment adviser in turn controls three other advisory firms and each of the other subadvisers has numerous Control Affiliates. Under the Proposed Rule, the fund would be required to disclose the personal securities holdings of each of its subadviser's portfolio managers and/or

portfolio management team members in more than 175 mutual funds and sixty Other Accounts subadvised or sponsored by Wellington Management, as well as in the 427 mutual funds and an unknown number of private investment funds that are collectively advised or sponsored by the mutual fund's other two subadvisers, its investment adviser and their respective Control Affiliates.

We cannot overemphasize how time-consuming and burdensome it would be to collect and verify such securities ownership data on an annual basis with respect to each individual who serves as a portfolio manager for a subadvised fund's various portfolios. Moreover, given that the obligation for compiling and verifying this ownership data will likely fall, in the first instance, on the subadvisory firm that is the portfolio manager's Employing Adviser, the resulting disclosure burden will grow exponentially for firms, such as Wellington Management, that serve exclusively in a subadvisory role for a large number of mutual funds and that will, accordingly, be required to track portfolio manager ownership with respect to all Other Accounts that are managed by the Advisory Affiliates and Control Affiliates for each subadvisory engagement.

In addition, we note that one rationale cited by the Commission in support of this Proposed Rule – namely, that it would provide mutual fund shareholders with useful information concerning potential conflicts between their interests and the interests of Other Accounts in which a portfolio manager has a personal financial stake – is already adequately addressed by the Proposed Rules that would require disclosure concerning Other Accounts that are managed by a mutual fund's portfolio managers and related compensation arrangements. That is, a potential conflict of interest between a mutual fund and an Other Account in which the mutual fund's portfolio manager may happen to own securities could only reasonably be inferred if the

manager were in a position to exercise investment discretion with respect to that Other Account, and thus to direct that investment decisions be made or trades allocated in a manner that could benefit the Other Account to the disadvantage of the mutual fund's shareholders. Accordingly, what is relevant information for shareholders of a mutual fund is not that a portfolio manager of the fund may have a personal investment in an Other Account, or the dollar range of such investment, but rather whether the portfolio manager is in a position to exert control or influence over the investment operations of an Other Account for which she receives compensation. This legitimate informational need would be fulfilled by the Commission's proposal to require mutual funds to disclose Other Accounts for which their portfolio managers are primarily responsible for day-to-day portfolio management and the structure of the managers' compensation for managing those Other Accounts; to go beyond this and mandate disclosure of a manager's personal holdings in such Other Accounts would intrude on her privacy without providing any additional informational benefit to shareholders.

For the reasons cited above, Wellington Management recommends that the Proposed Rule regarding disclosure of securities ownership by portfolio managers, if adopted, be limited to a portfolio manager's ownership interest in the mutual fund that is making the disclosure. Such a limitation would result in disclosure of information that is at least arguably meaningful to shareholders of the mutual fund, while it avoids being unduly invasive of the managers' privacy or placing an unmanageable disclosure burden on firms that advise or subadvise mutual funds. In addition, with respect to the content of such disclosure, we would recommend that the dollar ranges of equity ownership required to be disclosed for portfolio managers be the same as that required of mutual fund directors, in which the maximum range is "over $100,000," rather than the dollar ranges suggested in the Proposed Rule, in which the maximum range would be "over

$1,000,000." We believe that the dollar ranges currently applicable to equity ownership by mutual fund directors would, when applied to portfolio managers, provide sufficient information to allow mutual fund shareholders to evaluate the alignment of managers' interests with their own while at the same protecting portfolio managers' legitimate privacy interests.[9]

We appreciate the consideration given to this letter and we look forward to working with the Commission and its staff to implement the final rules if or when they are adopted.

/s/ CYNTHIA M. CLARKE

Cynthia M. Clarke
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[9] Compare Proposing Release, at 9, with "*Final Rule: Role of Independent Directors of Investment Companies*," *supra* note 8, at 12.