

(1) For Model 720 and 720B series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3485, dated December 12, 1991, at the later of the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(2) For Model 707-300, -300B, -300C, and -400 series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3486, dated December 12, 1991, at the later of the times specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(3) For Model 707-100 and -200 series airplanes: Perform a visual and an eddy current inspection to detect cracks in the areas of the upper forward skin of the wing center section specified in Boeing Master Inspection Service Bulletin 3484, dated December 12, 1991, at the later of the times specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this AD.

(i) Prior to the accumulation of 2,200 landings after installation of the bulb angle stiffeners; or

(ii) Within 500 landings or 18 months after the effective date of this AD, whichever occurs first.

(d) If any crack is found during any inspection required by paragraph (a), (b), or (c) of this AD, prior to further flight, repair in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991.

(e) Accomplishment of the "Reinforcing Stiffener Installation and Skin Panel Replacement" in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 2590, Revision 6, dated July 8, 1968; Revision 7, dated September 22, 1969; Revision 8, dated June 2, 1972; Revision 9, dated March 14, 1975; Revision 10, dated January 31, 1991; or Revision 11, dated December 12, 1991; constitutes terminating action for the inspections required by paragraphs (a), (b), and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 1, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-2932 Filed 2-6-95; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release Nos. 33-7133; IC-20874; S7-3-95]

RIN 3235-AG29

Registration Fees for Certain Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposal of rule amendments.

SUMMARY: The Commission is proposing amendments to rules 24f-1 and 24f-2 under the Investment Company Act of 1940, the rules that permit certain investment companies to register securities sold in excess of the number of shares included in a registration statement and to register an indefinite number of securities under the Securities Act of 1933. The Commission is also proposing a new form, Form 24F-2, which would serve as the form for annual notices filed under rule 24f-2. The proposed amendments and the new form would clarify the application of certain provisions of rule 24f-2 and would make the rule's filing deadlines more flexible under certain circumstances.

DATES: Comments on the proposed amendments should be received on or before March 24, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. All comment letters should refer to File No. S7-3-95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC, 20549.

FOR FURTHER INFORMATION CONTACT: Karen J. Garnett, Attorney, Office of Disclosure and Adviser Regulation, (202) 942-0728, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis, (202) 942-0510, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to rules 24f-1 (17 CFR 270.24f-1) and 24f-2 (17 CFR 270.24f-2) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) and a new Form 24F-2 (17 CFR 274.24).

Executive Summary

The Commission is proposing to amend rule 24f-2 under the Investment Company Act of 1940 ("1940 Act"), the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"). The amendments would clarify that annual notices required by rule 24f-2 will be deemed timely filed if the investment company establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date. The amendments would make it easier to compute required filing dates and time periods and clarify the operation of the termination provisions of rule 24f-2 in the case of investment company business combination transactions. The Commission is also proposing Form 24F-2, a standard form for annual notices required by the rule. Form 24F-2 would request the information currently required for annual notices by rule 24f-2 and would also include a work sheet for calculating filing fees. The form would improve the accuracy of information contained in Rule 24f-2 Notices and improve the Commission's ability to process the notices. Finally, the Commission is proposing conforming amendments to rule 24f-1, the rule that permits certain investment companies to register securities sold in excess of the number of shares included in a registration statement.

I. Background

Section 6(b) of the Securities Act (15 U.S.C. 77f(b)) specifies the fees that must be paid in connection with registering securities with the Commission under the Securities Act. Section 24 of the 1940 Act (15 U.S.C. 80a-24) modifies these provisions for certain investment companies

("funds").¹ Section 24 was intended to address the problem of inadvertent "oversales," i.e., sales in excess of securities registered, that could easily occur with a fund that continually issues and redeems securities.²

Rule 24f-2 under the 1940 Act permits funds to register an indefinite number of securities. A fund that makes a declaration to be governed by that rule ("Rule 24f-2 declaration") pays an initial election fee of \$500. Once a fund makes its Rule 24f-2 declaration, it must file a notice within six months after the close of each fiscal year ("Rule 24f-2 Notice") and pay a fee based upon the number of shares sold during the fiscal year.³ If the fund files its Rule 24f-2 Notice within two months after the close of its fiscal year, paragraph (c) of rule 24f-2 permits the fund to deduct the value of shares redeemed from the value of shares sold in calculating the amount of fees due.⁴ This netting provision can result in substantial savings to funds and their shareholders.

Since its adoption in 1977, rule 24f-2 has allowed funds to comply with the registration requirements of the Securities Act without the burden of estimating the number of shares they will sell each year or filing post-effective amendments to register shares sold in excess of such estimates. At the same time, certain questions have arisen in connection with the rule. The Commission has reviewed the operation of rule 24f-2 and has concluded that certain changes to the rule may be appropriate.

II. Proposed Amendments to Rule 24f-2

A. Delayed Filings

The Commission is proposing new paragraph (f) to rule 24f-2 to clarify the date on which a Rule 24f-2 Notice will be deemed filed with the Commission. As with other filings under the 1940 Act, a Rule 24f-2 Notice is currently deemed filed with the Commission on the date it is actually received by the Commission.⁵ The consequences of

missing the rule's filing deadlines can be severe. If a fund's Rule 24f-2 Notice arrives at the Commission more than two months after the end of the fund's fiscal year, the fund cannot use the netting provision of paragraph (c) of the rule. If the fund misses the six month deadline, its Rule 24f-2 declaration terminates.

Recently the Commission has had to address the consequences of late filings by funds that made a good faith effort to file Rule 24f-2 Notices within the two month period but whose filings did not reach the Commission until after the two-month deadline expired. The Commission has issued exemptive orders pursuant to its authority under section 6(c) of the 1940 Act⁶ to allow these funds to take advantage of the netting provisions.⁷ In four cases, the fund mailed its Rule 24f-2 Notice through the United States Postal Service at least seven days before the expiration of the two month period. Three other funds engaged a same-day courier service to deliver their Rule 24f-2 Notices on the last day of the two-month period. In each case, the Rule 24f-2 Notice was not received by the Commission until after the deadline had passed. The Commission determined in each case that the fund was not at fault for the late filing, and that granting an exemption from the provisions of rule 24f-2 was appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act.

The netting provision of rule 24f-2(c) is intended to encourage early filing of Rule 24f-2 Notices, not to penalize funds that file Rule 24f-2 Notices more than two months after the close of their

fiscal year.⁸ The Commission's experience with rule 24f-2 demonstrates that the purposes of the rule are best served if funds give prompt attention to their filing requirements.⁹ Nevertheless, it may not be appropriate for a fund's filing fees to increase substantially as a result of the failure of a third party that guaranteed timely delivery to the Commission.

Proposed paragraph (f) to rule 24f-2 would permit a fund whose Rule 24f-2 Notice reaches the Commission after the expiration of the two month period to take advantage of the netting provisions of rule 24f-2(c), if the fund establishes that it timely transmitted the notice to a company or governmental entity that guaranteed delivery to the Commission no later than the filing date.¹⁰ This provision would apply to both the six month deadline for filing Rule 24f-2 Notices and the two month deadline for taking advantage of the netting provision.¹¹ If this provision is adopted, the Commission would not expect to entertain further exemptive applications from late filers. Comment is requested on whether there are other circumstances under which filings that do not reach the Commission on a timely basis should be deemed timely filed.

Funds that file Rule 24f-2 Notices by direct transmission on the Commission's EDGAR system ("electronic filers") would not be affected by this provision, since the timeliness of their filings does not depend upon the mail or courier services.¹² While an electronic filing may be delayed for technical reasons, the rules governing electronic filings contain adequate procedures to address transmission problems.¹³

⁸ Investment Company Act Rel. No. 9989 (Nov. 3, 1977) (42 FR 58400 (Nov. 9, 1977) (adopting rule 24f-2).

⁹ Investment Company Act Rel. No. 13624 (Nov. 14, 1983) (48 FR 52433 (Nov. 18, 1983) (adopting amendments to rule 24f-2).

¹⁰ This provision would be substantially the same as rule 16a-3(h) under the Securities Exchange Act of 1934 (17 CFR 240.16a-3), which governs filing of periodic reports of beneficial ownership of stock (Forms 3, 4, and 5) by certain corporate "insiders." See Securities Act Rel. No. 6389 (Mar. 8, 1982) (47 FR 1125-01 (Mar. 16, 1982)) (adopting rule 16a-3(h)).

¹¹ The amendments would change the deadlines for filing Rule 24f-2 Notices from six months and two months to 180 days and 60 days, respectively. See *infra* "Calculation of Time Periods."

¹² The term "direct transmission" means the transmission of electronic submissions via a telephonic communication session. 17 CFR 232.11(b).

¹³ Regulation S-T provides that if an electronic filer in good faith attempts to file a document in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control, the

¹ These companies include face amount certificate companies, open-end management investment companies, and unit investment trusts. Rule 24f-2(a)(1) (17 CFR 270.24f-2(a)(1)).

² See Investment Company Act Rel. No. 15611 (Mar. 9, 1987) (52 FR 8302 (Mar. 17, 1987)) (proposing to revise the registration requirements under rule 24f-2 for certain unit investment trusts).

³ Rules 24f-2(a)(1), (a)(3), and (b)(1) (17 CFR 270.24f-2(a)(1), (a)(3), and (b)(1)).

⁴ Rule 24f-2(c) [17 CFR 270.24f-2(c)]. A more detailed explanation of the operation of rule 24f-2 is set out in Investment Company Act Rel. No. 15611 (Mar. 9, 1987) (52 FR 8302 (Mar. 17, 1987)).

⁵ Rule 0-2 under the 1940 Act (17 CFR 270.02). Cf. section 6(c) (15 U.S.C. 77f(c)) of the Securities Act (15 U.S.C. 77a *et seq.*), rule 0-4 (17 CFR 275.04)

under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*), and rule 0-3 (17 CFR 240.03) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

⁶ 15 U.S.C. 80a-6(c).

⁷ The Flex Funds, Investment Company Act Rel. Nos. 19008 (Oct. 8, 1992) 57 FR 47361 (Oct. 15, 1992) (Notice of Application) and 19074 (Nov. 3, 1992) 52 SEC Docket 3632 (Order); Invesco Treasurer's Series Trust, Investment Company Act Rel. Nos. 20503 (Aug. 25, 1994) 59 FR 45054 (Aug. 31, 1994) (Notice of Application) and 20564 (Sep. 20, 1994) 57 SEC Docket 1298 (Order); Kidder Peabody Premium Account Fund and Kidder Peabody Government Money Fund, Inc., Investment Company Act Rel. Nos. 20527 (Sep. 2, 1994) 59 FR 46873 (Sep. 12, 1994) (Notice of Application) and 20586 (Sep. 28, 1994) 57 SEC Docket 20986 (Order); ACM Institutional Reserves, Inc., Investment Company Act Rel. Nos. 20574 (Sep. 26, 1994) 59 FR 50312 (Oct. 3, 1994) (Notice of Application) and 20645 (Oct. 21, 1994) 57 SEC Docket 2705 (Order); A.T. Ohio Municipal Money Fund and The Victory Funds, Investment Company Act Rel. Nos. 20811 (Dec. 29, 1994) 60 FR 2166 (Jan. 6, 1995) (Notice of Application) and 20854 (Jan. 24, 1995) (Order).

B. Dividend Reinvestment Shares

Shares issued in connection with dividend reinvestment plans ("DRIP shares") generally are not treated as "sales" of stock for purposes of registration requirements under the Securities Act,¹⁴ and many funds typically do not include DRIP shares as "sales" for purposes of rule 24f-2. Some of these funds, however, include DRIP shares in determining the amount of shares redeemed during the fiscal year for purposes of rule 24f-2's netting provision. This method of counting shares is inconsistent with the purpose of the netting provision, which was intended to recognize that a substantial portion of shares being registered were issued to replace redeemed shares that had previously been registered under the Securities Act.¹⁵

The Commission proposes to amend rule 24f-2 to require funds taking advantage of the rule's netting provisions to include DRIP shares when determining the amount of shares sold and redeemed during the fiscal year.¹⁶ This amendment would ensure consistent treatment of DRIP shares without imposing the recordkeeping burdens that might accompany a requirement that these shares be excluded from redeemed shares for purposes of rule 24f-2's netting provision. Comment is requested on alternative approaches that would prevent inconsistent treatment of DRIP shares under rule 24f-2's netting provisions. One approach would require funds to determine the ratio of DRIP shares issued during the period to shares sold in transactions registered under the Securities Act and to apply that ratio to determine the amount of redeemed shares that would be available under the rule's netting provision.

C. Mergers and Other Business Combinations

Paragraph (b)(3) of rule 24f-2 (17 CFR 270.24f-2(b)(3)) requires a fund planning to cease operations to file a post-effective amendment terminating the Rule 24f-2 declaration and file a

electronic file may request an adjustment of the filing date, and the Commission, or the staff acting pursuant to delegated authority, may grant the request if it appears that such adjustment is appropriate. 17 CFR 232.13(b).

¹⁴ Securities Act Rel. No. 33-929 (July 29, 1936) (11 FR 10957).

¹⁵ See Investment Company Act Rel. No. 9819 (June 16, 1977) [42 FR 31781 (June 23, 1977)] (adopting the netting provision of rule 24e-2 under the Investment Company Act).

¹⁶ The proposed requirement would not affect the Commission's policy as stated in Securities Act Rel. No. 33-929 (Jul. 29, 1936); fund DRIP shares would be included as sales only for purposes of the netting provision of rule 24f-2.

Rule 24f-2 Notice "before ceasing operations." In the case of investment company business combination transactions, especially those involving a liquidation, merger, or sale of assets, the operation of the rule is unclear. While in most cases operations cease upon consummation of the transaction, it may be impractical for the fund to file before the transaction since sales and redemptions may be occurring until the time of the transaction. In addition, paragraph (b)(3) is silent as to the applicability of the netting provisions of paragraph (c) when a fund files a Rule 24f-2 Notice in connection with ceasing operations.

The Commission is proposing to amend rule 24f-2 to delete the requirement that a fund file its final Rule 24f-2 Notice prior to ceasing operations and, in its place, provide that if a fund ceases operations, the date it ceases operations is the end of its fiscal year for purposes of rule 24f-2. As a result, a fund (or its successor) would have to file a final Rule 24f-2 Notice within 180 days after ceasing operations and pay registration fees on all shares sold during the fiscal year. If a fund files the Rule 24f-2 Notice within sixty days after ceasing operations, it would be permitted, under paragraph (c), to net redemptions made during the period after the end of the last fiscal year against sales during that period.¹⁷

For funds involved in certain business combination transactions, revised paragraph (b)(3) would specify that a fund ceases operations for purposes of rule 24f-2 on the date that the fund's assets are distributed in a liquidation, the effective date of a merger, or, when there has been a sale of all or substantially all of the fund's assets, the date those assets are transferred. The revised paragraph would also clarify that certain other transactions—transactions for the purpose of changing the fund's state of incorporation or form of organization—would not result in the company ceasing operations.¹⁸ Instead, under this type of reorganization the successor company would succeed to all

¹⁷ This approach is similar to that taken in rule 8f-1 under the 1940 Act (17 CFR 270.8f-1), which requires a registered investment company winding up its affairs or being merged into or consolidated with another investment company to file an application for an order declaring that the company has ceased to be a registered investment company after the transaction has occurred.

¹⁸ These transactions would be limited to those reorganizations under which the successor issuer is permitted to succeed to the registration statement of the fund under rule 414 of Regulation C of the Securities Act (17 CFR 230.414). This provision would codify a longstanding staff interpretation of rule 24f-2(b)(3). See, e.g., Lowry Market Timing Fund, Inc. (pub. avail. Jan. 9, 1985); Frank Russell Investment Company (pub. avail. Dec. 3, 1984).

assets and liabilities of the fund, including the registration fee liabilities (net of any redemption credits) under rule 24f-2.¹⁹

D. Calculation of Time Periods

The Commission is proposing to revise paragraphs (b)(1) and (c) of Rule 24f-2 to replace the "six month" and "two month" time periods with "180 day" and "60 day" time periods, respectively. The current rule's references to "months" has resulted in different periods depending upon the months involved and is inconsistent with the timing provisions in other Commission rules.²⁰ This has, on occasion, caused some confusion among funds about determining filing deadlines. To further clarify how to calculate time periods, a new paragraph (e) would be added to the rule specifying that the first day of the time periods is the first calendar day of the fiscal year following the fiscal year for which the Rule 24f-2 Notice is filed. The Commission is proposing similar amendments to rule 24f-1, which permits funds with effective registration statements to file a notification that has the effect of registering shares sold in excess of the number of shares previously registered.²¹

III. Form 24F-2

Rule 24f-2 currently specifies the information which funds must include in a Rule 24f-2 Notice, but generally does not require that the information be presented in any particular format.²² The Commission believes that a standard form for Rule 24f-2 Notices will facilitate the calculation of fees due under rule 24f-2 and reduce errors in the calculation of filing fees. The Commission's ability to process Rule 24f-2 Notices and detect errors should also be improved by a standard form.

Proposed Form 24F-2 consists of twelve items.²³ The first four items

¹⁹ Rule 414(b) (17 CFR 230.414(b)) requires that the succession result in the successor issuer acquiring all of the assets of and assuming all of the liabilities and obligations of the issuer. In combinations other than this type of reorganization, while the successor company would succeed to the fund's registration fee liabilities (as it would all other liabilities), it may only use the fund's redemption credits against the fund's registration fee liabilities—not those of the successor company.

²⁰ See, e.g., rule 485 under the Securities Act (17 CFR 230.485).

²¹ The six month time periods referred to in paragraphs (a) and (c) of the rule (17 CFR 270.24f-1(a), 270.24f-1(c)) would be changed to 180 days.

²² Paragraph (b)(1) of the rule currently specifies the information that must appear in a Rule 24f-2 Notice. Most of these items would be deleted from the rule if the form is adopted.

²³ The proposed Form also contains several instructions concerning completion and filing of the Form which incorporate provisions of the rule. For

require basic identifying information: The name and address of the fund; the class of shares or series to which the filing relates;²⁴ the Securities Act file number of the registration statement on which the shares are registered; and the last day of the fiscal-year for which the Rule 24f-2 Notice is filed.

Items 5 and 6 would be completed only if the fund fails to file its Rule 24f-2 Notice within 180 days after its fiscal year end. In such cases, the fund's declaration to register an indefinite number of shares is terminated on the next business day.²⁵ As under the current rule, such fund must file a separate Form 24F-2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Item 5 would require the fund to indicate whether the form is being filed for purposes of reporting securities sold after the close of the fiscal year but before termination of the fund's Rule 24f-2 declaration. The fund would report the date of termination of its Rule 24f-2 declaration in Item 6.

Items 7 through 11 would require funds to identify the shares sold during the fiscal year for which registration fees have previously been paid or which must be accounted for in determining the fee payable with the Rule 24f-2 Notice. This information is substantially the same as that currently required by a Rule 24f-2 Notice.²⁶ The only

example, Instruction A.3 incorporates the proposed amendments to paragraph (b)(3) of rule 24f-2 regarding the filing requirements for companies that cease operations, and Instruction D.3 incorporates proposed paragraph (f) of rule 24f-2, under which a form would be deemed timely filed if the fund establishes that it timely transmitted the form to a third party that guaranteed delivery no later than the required filing date.

²⁴The proposed instructions clarify how the rule applies to funds that offer more than one class or series of securities. Instruction A.3 of the form makes it clear that an issuer may file a single Rule 24f-2 Notice for more than one class or series, provided each class or series has the same fiscal year end and is registered on the same Securities Act registration statement. See Letter to Registrant, Feb. 25, 1994, at 3 (hereinafter, 1994 Generic Comment Letter). This instruction would not affect the method of allocating expenses among multiple classes of funds in accordance with existing orders or proposed rule 18f-3 under the 1940 Act; a multiple class fund could net credits for redemptions of shares of one class against sales of shares of another class only if the fund's exemptive order or plan under rule 18f-3 treats federal securities registration fees as a fund expense and does not provide for the allocation of those fees on a class by class basis. See Investment Company Act Rel. No. 19955 (Dec. 15, 1993) (58 FR 68074 (Dec. 23, 1993)) (proposing rule 18f-3).

²⁵Rule 24f-2(b)(2) (17 CFR 270.24f-2(b)(2)).

²⁶The information to be provided in items 7 and 8 is not required to determine the fee due, although rule 24f-2 currently requires funds to report this

significant change would be that the form would require information concerning DRIP shares. This item reflects the proposed amendment to paragraph (c) of Rule 24f-2, which would require funds to include all securities issued pursuant to DRIPs in the fund's aggregate sales for purposes of calculating registration fees under the rule's netting provisions.²⁷

Proposed item 12 is a work sheet for calculating the fee payable with the notice. The fee calculation is presented in tabular format to facilitate the Commission staff's review of filing fees for purposes of determining whether a fund has paid the appropriate amount. The work sheet contains seven line items:

- (i) The aggregate sale price of securities sold during the fiscal year in reliance on Rule 24f-2;
- (ii) The aggregate price of DRIP shares (if not included in (i));
- (iii) The aggregate price of shares redeemed or repurchased during the fiscal year;
- (iv) The aggregate price of shares redeemed or repurchased and previously applied as a reduction to filing fees pursuant to Rule 24e-2;²⁸
- (v) The net aggregate sale price of securities sold during the fiscal year in reliance on Rule 24f-2 (line (i), plus line (ii), less line (iii), plus line (iv));
- (vi) The multiplier to be used to determine the fee;²⁹ and

information in annual notices. This information assists the Commission staff and fund compliance personnel in determining whether the issuer has complied with the registration requirements of the Securities Act for shares other than those that are covered by the fund's rule 24f-2 declaration.

²⁷Instruction B.5 would clarify that this item should be completed only if the issuer is using the netting provision of rule 24f-2(c) to calculate its registration fee. For further discussion of the proposed amendment, see *supra* "Dividend Reinvestment Shares."

²⁸Section 24(e)(1) of the 1940 Act permits a fund to file a post-effective amendment to its Securities Act registration statement to increase the number of securities registered. Rule 24e-2 provides that the fee to be paid at the time of filing such post-effective amendment will be based on the maximum aggregate offering price at which the additional securities will be offered. This filing fee may be reduced by the amount of securities redeemed or repurchased by the issuer in its previous fiscal year, provided the issuer did not use those redemptions or repurchases under the netting provisions of rule 24f-2. Conversely, the issuer may not count redemptions and repurchases used to reduce the filing fee under rule 24e-2 for purposes of netting under rule 24f-2.

²⁹In the act making appropriations for the Commission for fiscal 1994, Congress increased the rate of fees prescribed by section 6(b) of the Securities Act from one fiftieth of one percent to one twenty-ninth of one percent. Pub.L. 103-121 (Oct. 27, 1993). Congress extended the increased fee for fiscal year 1995. Pub.L. 103-352 (Oct. 13, 1994). The current fee rate will be in effect through September 30, 1995, unless further extended by Congress; otherwise, the rate will revert to one

(vii) The fee due (line (i) (if the netting provision is not used) or line (v) (if the netting provision is used) multiplied by line (vi)).³⁰

Funds would complete lines (ii), (iii), (iv), and (v) only if the fund is using the rule's netting provision. Thus, the work sheet can be used whether or not the fund is using the rule's netting provision.

The work sheet provided in Item 12 is similar to the method for reporting the calculation of Rule 24f-2 fees on the EDGAR system. Under the EDGAR system, an electronic filer is required to prepare a header for each Rule 24f-2 Notice. The header contains certain filing fee information that is included in the accompanying Rule 24f-2 Notice. The Commission's computer systems are programmed to "check" the filer's fee calculation based on the information provided in the header. If the computer cannot verify the fee calculation, Commission staff review the accompanying notice to determine the source of the error. As proposed, Form 24F-2 would not alter the headers for EDGAR filings. The Commission requests comment whether it should modify its systems to permit computer verification of the fee calculation based on information in the notice rather than the header, thus avoiding the need for filers to duplicate information.

IV. General Request for Comments

Any interested persons wishing to submit written comments on the proposed rule changes and the proposed new form that are the subject of this Release, to suggest additional changes (including changes to provisions of the rules that the Commission is not proposing to amend), or to submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

V. Cost/Benefit Analysis

The rule amendments and new form proposed today would clarify the operation of rule 24f-2 and would make the rule's filing deadlines more flexible under certain circumstances. The

fiftieth of one percent. Instruction C.4 to the Form would remind funds to determine the current fee rate prior to filing, since the form may not be accepted for filing if the law requires the fee to be calculated at a rate higher than that used by the filer and an overpayment may result if the statutory rate in effect is lower than the rate on the form.

³⁰Instruction C.2 specifies that the \$100 minimum fee prescribed by section 6(b) of the Securities Act does not apply to fees payable under rule 24f-2. This provision would also be incorporated into paragraph (c) of the rule.

addition of paragraph (f) to rule 24f-2 would provide a means for companies to avoid late filings, which can result in significant costs to companies. This provision would relieve companies of the cost of preparing applications for exemption from the provisions of the rule and would relieve the Commission of the cost of reviewing such applications. Other proposed revisions to rule 24f-2 are intended to clarify the operation of the rule when an extraordinary business transaction occurs such as a merger or liquidation. The change in use of days rather than months to measure the filing deadlines under rules 24f-1 and 24f-2 would, in most cases, shorten the period to make required filings by a day or two, and thus could be viewed as a "cost." The Commission believes, however, that this "cost" is outweighed by the added certainty and uniformity that such a change would bring to the operation of the rule. Proposed Form 24F-2 would ensure that funds provide consistent information in their Rule 24f-2 Notices and would facilitate the staff's review of annual notices. The Commission believes that the standard form and the interpretive guidance will reduce the burden of preparing and reviewing Rule 24f-2 Notices. The Commission invites specific comment on its assessment of the costs and benefits with respect to today's proposals, including estimates of any costs and benefits perceived by commenters.

VI. Summary of Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Act Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis explains that the proposed form and amendments would result in a reduction of reporting and compliance requirements for small entities. The proposed amendments would clarify several issues that have arisen in connection with rule 24f-2, and the proposed form would facilitate preparation of accurate Rule 24f-2 Notices. The analysis states that there are no alternative means to achieve the objectives of the proposed form and amendments. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained by contacting Karen J. Garnett, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

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

Part 270—[AMENDED]

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, unless otherwise noted.

* * * * *

§§ 270.24f-1 and 270.24f-2 [Amended]

2. The authority citations following §§ 270.24f-1 and 270.24f-2 are removed.

§ 270.24f-1 [Amended]

3. By amending § 270.24f-1, paragraphs (a) and (c), by revising the phrase "6 months" to read "180 days".

4. By amending § 270.24f-2 by revising paragraphs (b)(1), (b)(3), and (c) and by adding paragraphs (e) and (f) to read as follows:

§ 270.24f-2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(b)(1) If an issuer has filed a registration statement or post-effective amendment with a declaration authorized by paragraph (a)(1) of this section, it shall, with respect to such registration statement and within 180 days after the close of any fiscal year during which such declaration was in effect, file five copies of a notice ("Rule 24f-2 Notice") with the Commission. The Rule 24f-2 Notice shall be filed on Form 24F-2 (17 CFR 274.24) and shall be prepared in accordance with the requirements of the form. The Rule 24f-2 Notice shall be accompanied by an opinion of counsel indicating whether the securities the registration of which the notice makes definite in number were legally issued, fully paid, and non-assessable, and the additional filing fee, if any, specified in paragraph (c) of this section.

* * * * *

(3) For purposes of this section, if a registrant ceases operations, the date the registrant ceases operations shall be deemed to be the close of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the registrant's assets, the registrant shall be deemed to have ceased operations for purposes of this section on the date all

or substantially all of the registrant's assets are distributed, the date the merger becomes effective under state law, or the date the assets are transferred; provided, however, that a registrant whose registration statement is succeeded to by another registrant in a transaction described by § 230.414 of this chapter shall not be deemed to have ceased operations.

(c) A Rule 24f-2 Notice shall be accompanied by the payment of a filing fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to this section and shall be based upon the actual aggregate sale price for which such securities were sold. The filing fee shall be calculated in the manner specified in section 6(b) of the Securities Act of 1933 and the rules and regulations thereunder, except that the minimum filing fee required under section 6(b) shall not apply to fees due under this section. When the Rule 24f-2 Notice is filed not later than 60 days after the close of the fiscal year during which such securities were sold pursuant to this section, the filing fee to be paid as to such securities shall be the fee, if any, calculated in the manner specified in section 6(b) of the Securities Act of 1933 except that, for the purposes of such calculation, such fee shall be based upon the actual aggregate sale price for which securities (including, for this purpose, all securities issued pursuant to a dividend reinvestment plan) were sold during the issuer's previous fiscal year, reduced by the difference between

(1) The actual aggregate redemption or repurchase price of such securities of the issuer redeemed or repurchased by the issuer during such previous fiscal year; and

(2) The actual aggregate redemption or repurchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to § 270.24e-2(a) in filings made pursuant to section 24(e)(1) of the Investment Company Act of 1940.

* * * * *

(e) To determine the date on which a Rule 24f-2 Notice must be filed with the Commission under paragraph (b)(1) of this section or the date that a Rule 24f-2 Notice must be filed in order to permit the issuer to calculate the fee due in accordance with the second sentence of paragraph (c) of this section, the first day of the 180 day or 60 day period, as the case may be, shall be the first calendar day of the fiscal year following the fiscal year for which the Rule 24f-2 Notice is to be filed.

Note to Paragraph (e): For example, a Rule 24f-2 Notice for a fiscal year ending on June

30 must be filed no later than December 28 or, if the issuer calculates the fee due in accordance with the second sentence of paragraph (c), no later than August 29. If the last day of the period falls on a non-business day (a Saturday, Sunday or federal holiday), the period shall end on the first business day thereafter, as provided by § 270.02.

(f) The date of filing of a Rule 24f-2 Notice with the Commission shall be the date on which the Rule 24f-2 Notice is actually received by the Commission; provided, however, that other than in the case of a Rule 24f-2 Notice filed by direct transmission (as such term is defined in rule 11 of Regulation S-T [17 CFR 232.11]) a Rule 24f-2 Notice received by the Commission after the date due under either paragraph (b)(1) or paragraph (c) of this section shall be deemed to have been timely filed if the issuer establishes that the Rule 24f-2 Notice had been transmitted timely to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the Notice to the Commission no later than the required filing date.

Part 274—[AMENDED]

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

Authority: 15 U.S.C. 80a-1 *et seq.*, unless otherwise noted.

6. Section 274.24 and Form 24F-2 are added to read as follows:

Note: The text of Form 24F-2 does not appear in the Code of Federal Regulations. A copy of Form 24F-2 is attached as Appendix I to this document.

§ 274.24 Form 24F-2, annual notice of securities sold pursuant to registration of an indefinite number of certain investment company securities.

Form 24F-2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, and unit investment trusts pursuant to § 270.24f-2 for reporting securities sold during the fiscal year.

By the Commission.

Dated: February 1, 1995.

Margaret H. McFarland,
Deputy Secretary.

Appendix I

Form 24F-2—Annual Notice of Securities Sold Pursuant to Rule 24f-2

Read instructions at end of Form before preparing Form. Please print or type.

1. Name and address of issuer: _____
2. Name of each series or class of funds for which this notice is filed: _____

3. Investment Company Act File Number: _____
- Securities Act File Number: _____
4. Last day of fiscal year for which this notice is filed: _____
5. Check box if this notice is being filed more than 180 days after the close of the issuer's fiscal year for purposes of reporting securities sold after the close of the fiscal year but before termination of the issuer's 24f-2 declaration: []
6. Date of termination of issuer's declaration under rule 24f-2(a)(1), if applicable (see Instruction A.5): _____
7. Number and aggregate sale price of securities of the same class or series sold during the fiscal year which had been registered under the Securities Act of 1933 other than pursuant to rule 24f-2 in a prior fiscal year, but which remained unsold at the beginning of the fiscal year: _____
8. Number and aggregate sale price of securities registered during the fiscal year other than pursuant to rule 24f-2: _____
9. Number and aggregate sale price of securities sold during the fiscal year in reliance upon registration pursuant to rule 24f-2: _____
10. Number and aggregate sale price of securities issued during the fiscal year in connection with dividend reinvestment plans, if applicable (see Instruction B.5): _____
11. Number and aggregate sale price of securities sold during the fiscal year: _____
12. Calculation of registration fee:

(i) Aggregate sale price of securities sold during the fiscal year in reliance on rule 24f-2 (from Item 9):	\$	
(ii) Aggregate price of shares issued in connection with dividend reinvestment plans (from Item 10, if applicable):	+	
(iii) Aggregate price of shares redeemed or repurchased during the fiscal year (if applicable): ...	-	
(iv) Aggregate price of shares redeemed or repurchased and applied as a reduction to filing fees pursuant to rule 24e-2 (if applicable):	+	
(v) Net aggregate sale price of securities sold during the fiscal year in reliance on rule 24f-2 [line (i), plus line (ii), less line (iii), plus line (iv)] (if applicable):		
(vi) Multiplier prescribed by Section 6(b) under the Securities Act of 1933 or other applicable law or regulation (see Instruction C.5):	×	

(vii) Fee due [line (vi) multiplied by line (vii)]:

Instruction: Issuers should complete lines (ii), (iii), (iv), and (v) only if the form is being filed within 60 days after the close of the issuer's fiscal year. See Instruction C.3.

13. Check box if fees are being remitted to the Commission's lockbox depository as described in section 3a of the Commission's Rules of Informal and Other Procedures (17 CFR 202.3a). []
Date of mailing or wire transfer of filing fees to the Commission's lockbox depository: _____

Signatures

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.
By (Signature and Title)* _____

Date _____
* Please print the name and title of the signing officer below the signature.

Form 24F-2—Annual Notice of Securities Sold Pursuant to Rule 24f-2

Instructions

A. Rule as to Use of Form 24F-2

1. This form shall be used for annual notices required by rule 24f-2 under the Investment Company Act of 1940 ("Act") [17 CFR 270.24f-2]. Annual notices on this form shall be filed within 180 days after the close of any fiscal year during which the issuer has in effect a declaration to register an indefinite number of securities pursuant to rule 24f-2(a)(1) of the Act. If the notice is being filed not later than 60 days after the close of the issuer's fiscal year, the fees due with the notice may be reduced (see Instruction C.3).

2. If the form contains insufficient space for the information required in any item, issuers should attach additional pages as necessary and indicate in the space provided on the form that additional pages are attached.

3. The issuer named in Item 1 of this form is the face amount certificate company, open-end management company, or unit investment trust that has filed a registration statement under the Securities Act of 1933 ("Securities Act") [15 USC 77a *et seq.*] containing a declaration to register an indefinite number of securities under rule 24f-2(a)(1) of the Act. If the issuer has registered more than one class or series on the same Securities Act registration statement, the issuer may file a single Form 24F-2 for those classes or series, provided each class or series has the same fiscal year end. Issuers electing to calculate filing fees on a class-by-class or series-by-series basis, however, should include in their filings a separate Form 24F-2 for each class or series. All classes and series for which the form is filed should be identified in Item 2.

4. The Investment Company Act file number reported in response to Item 3 should be the number of the issuer's registration statement filed under the Investment Company Act of 1940. The

Securities Act file number in Item 3 refers to the registration statement filed to register an indefinite number of securities (beginning with either "2-" or "33-").

5. Item 4 requires issuers to report the date of the last day of the fiscal year for which the notice is filed. In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of rule 24f-2.

6. Items 5 and 6 should be completed only if the issuer fails to file its Rule 24f-2 Notice within 180 days after the close of the issuer's fiscal year. In such cases, the issuer's declaration to register an indefinite number of shares will be terminated on the next business day, and the issuer should report the date of termination in Item 6. All such issuers must file a separate Form 24F-2 with respect to sales of securities made pursuant to the declaration during (1) the fiscal year for which the notice was not timely filed, and (2) the period after the close of the fiscal year but before the declaration was terminated. Issuers should check the box in Item 5 only if they are filing the form to report securities sold during the 180-day period after the close of the fiscal year but before the declaration was terminated.

B. Computation of Number of Securities

1. In response to Items 7 through 11, issuers may aggregate sales and redemptions of all classes or series for which the notice is being filed. Issuers must aggregate sales prices within each class or series. If the registration fee paid for securities reported in Items 7 and 8 was based on the offering price of those securities, issuers should report the offering price instead of the sale price.

2. Item 7 requires the issuer to report the number and dollar amount of securities of the same class or series as those for which the notice is being filed, if any, which were registered under the Securities Act other than pursuant to rule 24f-2. Such securities must have been registered prior to the fiscal year for which the notice is being filed and must remain unsold at the beginning of the fiscal year.

3. Item 8 refers to securities registered during the fiscal year other than pursuant to rule 24f-2. This item includes securities registered during the fiscal year by post-effective amendment pursuant to rule 24e-2.

4. Item 9 requires the issuer to report the securities sold during the fiscal year in reliance upon registration under rule 24f-2. This number must exclude securities registered other than under rule 24f-2 which were sold during the fiscal year, as reported in Item 8.

5. Item 10 should be completed only if the issuer is using the netting provision of Item 12. In such cases, the issuer should report the number and dollar amount of securities not registered under the Securities Act that were issued during the fiscal year in connection with dividend reinvestment plans.

6. Item 11 should be the sum of Items 7 through 9, but should not include Item 10. If the response does not equal the sum of those items, the issuer should attach to the form an explanation of the difference.

C. Computation of Registration Fees

1. Item 12 is a work sheet for calculating the filing fee due. Items 12 (i) and (ii) should be the same as the responses provided to Items 9 and 10, respectively.

2. The filing fee due shall be calculated in the manner specified in Section 6(b) of the Securities Act [15 U.S.C. 77f(b)]. Except as provided below, fees shall be based on the actual aggregate sale or redemption price at the date on which the securities were sold or redeemed. The \$100 minimum fee prescribed by Section 6(b) does not apply to fees payable under rule 24f-2.

3. Lines (ii), (iii), (iv), and (v) of Item 12 (netting provisions) apply only to issuers that file the form not later than 60 days after the close of the fiscal year during which securities were sold. In such cases, the filing fee shall be based upon the net aggregate sale price for which such securities were sold during the issuer's previous fiscal year. Net aggregate sale price is the actual aggregate sale price, plus the value of shares issued in connection with dividend reinvestment plans, reduced by the difference between (1) the actual aggregate redemption or repurchase price of such securities of the registrant redeemed or repurchased by the issuer during the fiscal year, and (2) the actual aggregate redemption or purchase price of such redeemed or repurchased securities previously applied by the issuer pursuant to rule 24e-2(a) under the Act.

4. If the issuer's total redemptions and repurchases during the fiscal year exceed the issuer's sales during the fiscal year, the issuer may report on line (iii) of Item 12 only the amount of redemptions equal to sales during the fiscal year, as reported on line (i). The net aggregate sales price reported in line (v) of Item 12 cannot be less than zero.

5. The multiplier for calculation of the filing fee required by line (vi) of Item 12 is prescribed by Section 6(b) of the Securities Act. As of October 13, 1994, the multiplier was one twenty-ninth of one percent of the maximum aggregate offering price of the securities being registered. This multiplier is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws. Issuers should determine the current fee rate prior to the time of filing by reference to Section 6(b) and any law or regulation affecting Section 6(b). Unless otherwise specified by act of Congress, the fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changed during the year.

6. Issuers are cautioned that rounding the percentage used to compute the fee may result in payment of an incorrect amount. No part of the filing fee is refundable. Fees must be paid by United States postal money order, certified bank check, or cash. Issuers should refer to rule 0-8 under the Act [17 CFR 270.0-8] and rule 3a under the Commission's Rules of Informal and Other Procedures [17 CFR 202.3a] for instructions on payment of fees to the Commission.

D. Signature and Filing Form; Exhibit

1. The form shall be signed on behalf of the issuer by an authorized officer of the issuer.

The issuer shall file five copies of the completed form, at least one of which has been manually signed, with the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the issuer and the form filed.

2. This form must be accompanied by the appropriate filing fee and an opinion of counsel indicating whether the securities were legally issued, fully paid, and non-assessable, and payment of the filing fee. (See paragraph (b)(1) of rule 24f-2.) A copy of the opinion of counsel should be attached to each copy of the form filed with the Commission. Electronic filers are reminded that the filing fee must reach the Commission not later than the day the Rule 24f-2 Notice is filed with the Commission.

3. This form will be deemed filed with the Commission on the date on which it is actually received by the Commission. Except in the case of a Rule 24f-2 Notice filed by means of "direct transmission" (as such term is defined in rule 11 of Regulation S-T [17 CFR 232.11], this form shall be deemed to have been timely filed if the issuer establishes that it timely transmitted the form and required fees to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the form to the Commission no later than the required filing date. The Commission will not accept for filing any form accompanied by insufficient payment for the filing fee. Forms accompanied by insufficient payment shall be returned to the issuer for proper payment and shall not be deemed filed until receipt by the Commission of proper payment.

[FR Doc. 95-2901 Filed 2-6-95; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

RIN 1010-AB57

Notice of Establishment of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Establishment of advisory committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., the Department of the Interior (Department) is giving notice of the establishment of the Indian Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Indian gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of