SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7143, IC–20915, File No. S7–32–93]

RIN 3235–AF00

Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans

AGENCY: Securities and Exchange Commission

ACTION: Final Rules

SUMMARY: The Securities and Exchange Commission is adopting a rule under the Investment Company Act of 1940 (''Investment Company Act'') to permit open-end management investment companies (''mutual funds'') to issue multiple classes of voting stock representing interests in the same portfolio. The new rule will eliminate the need for funds seeking to issue multiple classes of their shares to apply for exemptions. The Commission also is adopting amendments to certain registration statement forms under the Investment Company Act and the Securities Act of 1933 (''Securities Act'') and publishing a staff guide to one registration form. These amendments require that multiple class and master-feeder funds provide investors with certain disclosure. The disclosure will allow investors to obtain information about these funds and their structures.

DATES: *Effective Date:* April 3, 1995.

Compliance Date: Registration statements and post-effective amendments filed with the Commission after the effective date must be in compliance with the amendments to Forms N–1A and N–14.

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SUPPLEMENTARY INFORMATION: The Commission is today adopting rule 18f–3 [17 CFR 270.18f–3] and a related amendment to rule 12b–1 [17 CFR 270.12b–1], both under the Investment Company Act. The Commission is also adopting amendments to Forms N–1A [17 CFR 239.15A, 274.11A] and N–14 [17 CFR 239.23].

Most multiple class funds have also obtained exemptive relief to impose contingent deferred sales loads (''CDSLs''). In separate releases, the Commission also is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act, to allow mutual funds to impose CDSLs, and proposing to amend the rule to permit other forms of deferred loads, such as installment loads, and to remove many of the requirements of the rule as adopted.[1]

Table of Contents

Executive Summary

Since 1985, the Commission has issued approximately 200 exemptive orders allowing funds to issue multiple classes of shares representing interests in the same portfolio, typically with different distribution arrangements. The orders frequently impose as many as 20 conditions designed to address various investor protection concerns.

The Commission is adopting rule 18f–3 under the Investment Company Act, which will permit funds to issue multiple classes of shares without the need to seek exemptions from the Commission. The rule will decrease the amount of time and expense involved in creating these structures. It also will reduce the Commission's burden of reviewing the applications. The rule requires certain differences in the expenses, rights, and obligations of different classes, permits certain other differences among classes, specifies the matters on which class voting is required, and prescribes how income and expenses must be allocated. The rule also emphasizes the responsibilities of the board of directors to establish and monitor allocation and other procedures in the best interests of each class and of the fund as a whole. Finally, the rule permits, but does not require, different classes to have different exchange privileges and conversion rights. A related amendment to rule 12b–1 clarifies that a rule 12b–1 plan must have separate provisions for each class; any action on the plan, such as director or shareholder approval, must take place separately for each class.

Over the past few years, many fund sponsors have adopted another distribution arrangement designed to achieve many of the same business goals as the multiple class structure without the need to obtain exemptions under section 18. This ''master-feeder'' arrangement comprises a two-tier structure in which one or more funds (the upper tier) invest solely in the securities of another fund (the lower tier).[2] Although master-feeder structures are functionally similar to multiple class funds, they are viewed as not needing exemptions and have been subject to different disclosure requirements.

The disclosure requirements adopted today apply equally to multiple class and master-feeder funds, and are similar to those currently in effect for master-feeder funds. A prospectus for a class or feeder fund will be required to include disclosure about other publicly offered classes or feeder funds not offered through the prospectus and a telephone number an investor may call to receive additional information about other classes or feeder funds sold by the same bank, broker, or other financial intermediary. In view of commenters' concerns, the Commission is not adopting the more extensive disclosure requirements originally proposed. The provisions as adopted are consistent

[1] Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995); Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] Master-feeder funds are often referred to as ''core and feeder'' or ''hub and spoke'' funds. Signature Financial Group is the originator and patent licensor of the Hub and Spoke® form of the master-feeder structure.

with the Commission's encouragement of simplified prospectuses.

I. Background

Both the multiple class and master-feeder structures may benefit shareholders and fund sponsors. These structures may increase investor choice, result in efficiencies in the distribution of fund shares, and allow fund sponsors to tailor products more closely to different investor markets. Fund sponsors assert that multiple classes may enable funds to attract larger asset bases, permitting them to spread fixed costs over more shares, qualify for discounts in advisory fees (''breakpoints''), and otherwise experience economies of scale, resulting in lower fees and expenses. They also state that multiple classes avoid the need to create ''clone'' funds, which require duplicative portfolio and fund management expenses. Furthermore, fund sponsors state that a larger asset base permits greater portfolio liquidity and diversification.

Master-feeder funds may achieve similar benefits of economies of scale, thus potentially lowering expenses, and also allow several different small funds access to the same management and compliance personnel. The master-feeder structure allows a fund sponsor to offer feeder funds that invest in specialized portfolios, even though the sponsor's expected asset base may not justify organizing a stand-alone fund for that market or market segment. Sponsors also use this structure to offer off-shore and other unregistered feeder funds.[3]

Investor understanding of sales and service charges in both arrangements, however, has been a subject of concern to the Commission.[4] Some commentators have asserted that the complexity generated by these arrangements may confuse many investors, who often may not understand them or the effect that fees have upon performance.[5]

On December 15, 1993, the Commission proposed for public comment rule 18f–3 and related amendments to rule 12b–1 under the Investment Company Act and advertising and prospectus disclosure requirements.[6] Among other things, rule 18f–3 would have allowed funds to issue multiple classes of shares without the need to apply for and receive an exemption from the Commission and largely would have codified the exemptive orders. The proposal also would have made consistent the disclosure requirements of Form N–1A for multiple class and master-feeder funds by imposing disclosure requirements based on those in the multiple class exemptive orders. These requirements would have included a prominent legend following the fee table disclosing the availability of other classes or feeder funds not offered in that prospectus, and an undertaking to provide investors with additional information about other classes or feeder funds. They also would have required full cross-disclosure in the prospectus about any other classes or feeder funds that were offered or made available through the same broker, dealer, bank, or other financial intermediary, and permitted investors to choose among alternative arrangements for sales and related charges. The proposal also would have required a line graph comparing the hypothetical value of holdings of the classes or feeder funds described in the prospectus upon redemption at the end of each year during a ten-year period. The proposal would have made conforming changes to advertising and sales literature rules and Form N–14. A related amendment to rule 12b–1 would have clarified that a rule 12b–1 plan must treat each class separately and required separate director and shareholder approval.

II. Discussion

The Commission received 24 comments on the proposal.[7] Most of the commenters were fund groups, law firms, and trade associations. Although all commenters favored a rule allowing multiple class structures without the need for exemptive orders, most strongly opposed the proposed disclosure requirements. The Commission is adopting rule 18f–3 and related prospectus disclosure requirements with modifications that address the comments received. Rule 18f–3 allows funds flexibility in tailoring many aspects of their multiple class structures, overseen by the board of directors, while preserving investor protection conditions based on the exemptive orders and derived from the concerns underlying section 18. The Commission has reconsidered the disclosure aspects of the proposal in light of the strong opposition of the commenters, and is adopting much less extensive requirements than proposed. The rule and form amendments will give investors the means to obtain information about certain other classes or other feeder funds investing in the same master fund, but do not require extensive cross-disclosure in prospectuses and advertisements.

A. Rule 18f–3

The Commission is adopting rule 18f–3 to create a limited exemption from sections 18(f)(1) and 18(i)[8] for funds that issue multiple classes of shares with varying arrangements for the distribution of securities and provision of services to shareholders. Multiple class funds relying on existing exemptive orders would be allowed to use the rule but would not be required to do so.[9] The Commission has made several modifications to the rule in view of the comments received.

The rule largely codifies the exemptive order approach of addressing

[3] P.W. Coolidge, *Business Applications of the Hub and Spoke® Structure,* 1993 Mutual Funds & Investment Management Conference X–3 (Mar. 11, 1993); R.M. Phillips and C.E. Plaza, *Hub & Spoke® Mutual Funds,* 26 Securities & Commodities Regulation 137 (Aug. 1993). *See also ''Hub-and-Spoke'' Funds: A Report Prepared by the Division of Investment Management,* submitted with letter from Richard C. Breeden, Chairman, SEC, to John D. Dingell, Chairman, House Comm. on Energy and Commerce (Apr. 15, 1992).

[4] *See, e.g.,* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955 (Dec. 15, 1993), 58 FR 68074 (Dec. 23, 1993) [hereinafter Proposing Release].

[5] *See* Proposing Release, 58 FR at 68082 n.59; *see also* Jeff Kelly, *A Fine Mess,* Morningstar Mutual Funds, Nov. 25, 1994, at S1; Carole Gould, *Brokers' New Pitch; Level Load on Funds,* N.Y. Times, May 7, 1994, at 37 (''If investors are confused about which pricing method is best for them, it's no wonder''); Vanessa O'Connell, *Mastering the ABCs of Fund Shares,* Money, Sept. 1993 (''Counting A, B and C shares, analysts now predict that the number of fund options could double to a mind-numbing 8,000 within the next 18 months'').

[6] Proposing Release, *supra* note 4.

[7] The comment letters, as well as a comment summary dated Dec. 21, 1994 prepared by the Commission's staff, are available for public inspection and copying at the Commission's public reference room in File No. S7–32–93.

[8] 15 U.S.C. § 80a–18(f)(1) and –(i). Section 18(f)(1) generally makes it ''unlawful for any registered open-end company to issue any class of senior security.'' Section 18(g) defines senior security to include any stock of a class having a priority over any other class as to distribution of assets or payment of dividends. Section 18(i) requires that every share of stock issued by a registered investment company be voting stock, with the same voting rights as every other outstanding voting stock.

[9] Funds currently relying on exemptive orders that choose to operate instead under the new rule must first prepare plans under paragraph (d) of the rule and file copies of the plans with the Commission as exhibits to their registration statements under new Item 24(b)(18) of Form N–1A. Provided that no changes are made to arrangements and expense allocations under an existing order, paragraph (d) does not require board approval of the plan. A fund choosing to rely on an existing exemptive order, including one providing an exemption for ''future classes,'' may continue to do so, provided it complies with *all* of the conditions in the order (including the disclosure conditions); in addition, such a fund would also be subject to the disclosure requirements adopted today. *See* discussion at II.A.5. regarding the adoption of a multiple class plan under the rule.

the potential for conflicts among classes by limiting the permissible differences among classes in expenses and voting rights. It specifies permissible methods of allocating expenses, and allows the waiver of expenses by service providers. Rule 18f–3 also specifies the conditions under which shares of one class may be converted into or exchanged with shares of another class.

The rule requires the board of directors of a fund to approve a plan detailing each class's arrangement for the distribution of securities and the services provided to each class, and the payment of other expenses. The board must determine that the plan is in the best interests of each class individually and the fund as a whole.

1. Differences in Distribution and Shareholder Services

Under paragraph (a)(1)(i), classes must differ either in the manner in which they distribute their securities, or in the services they provide to their shareholders, or both. As under the proposal, distribution systems may differ in the amount or form of payment, or the nature or extent of services provided. A class that pays a front-end load, for example, differs from a class paying a rule 12b–1 fee [10] in a spread load or level load arrangement in the amount, the form (by shareholders individually versus the class as a whole), and timing (at purchase versus over time) of distribution charges.

Funds may also meet paragraph (a)(1)(i) by providing different services to the shareholders of each class. One commenter expressed concern that the requirement in proposed paragraph (a)(5) that all classes have the same rights and obligations would not permit differences among classes in services such as checkwriting.[11] Presumably, the commenter viewed the term ''shareholder service'' as encompassing only certain services provided to shareholders by banks, brokers, and other third parties detailed in the many multiple class exemptive applications, and not shareholder transaction services, such as checkwriting. The term ''shareholder services'' in the rule, however, encompasses both types of services.

2. Allocation of Expenses

a. Class Expenses. Under rule 18f–3, certain expenses must be allocated to individual classes, while others may be so allocated at the discretion of the fund's board of directors. Paragraph (a)(1)(i) provides that expenses relating to the distribution of a class's shares, or to services provided to the shareholders of that class, must be allocated to that class. Although this requirement was implicit in proposed paragraph (a)(1)(i), the text of the rule as adopted has been clarified to make it explicit.

Paragraph (a)(1)(ii) provides that other expenses (other than advisory [12] or custodial fees or other expenses relating to the management of the fund's assets, which must be allocated to all classes in accordance with paragraph (c)) may be allocated to different classes in different amounts to the extent that they are incurred by one class in a different amount, or reflect differences in the amount or kind of services that different classes receive.[13] This paragraph encompasses both differences in actual out-of-pocket expenses among classes (for instance, blue sky fees that are incurred for some classes but not others), and differences in charges when classes receive services that are different in kind or amount. For example, some classes may use transfer agency services differently than others. Thus, the rule contemplates that allocations may be based upon the level or kind of services used.[14]

The proposal requested comment on whether the rule should provide more specific limits on differential allocations of expenses. Commenters strongly supported the flexible approach taken in the proposal.[15] In particular, one commenter stated that ''[a] more rigid approach to expense allocation could undermine the utility of the exemptive rule.'' [16] Another endorsed the ''proposal to leave these determinations to the Directors.'' [17] A commenter stated that mandating certain expenses as class expenses could run afoul of Internal Revenue Service private letter rulings, which only permit *de minimis* differences among the expenses of different classes.[18]

At several commenters' suggestion, the Commission has revised paragraph (a)(1)(ii) to delete the word ''materially.'' Although the materiality qualifier in proposed paragraph (a)(1)(ii)(B) would have allowed boards of directors to avoid making allocation determinations for trivial differences in expenses, several commenters interpreted the requirement to mean that boards could not allocate expenses with immaterial differences at all.[19] Because paragraph (a)(1)(ii) is permissive, allocations of differential expenses, regardless of materiality, are at the board's discretion.

b. Allocation of Fund Income and Expenses. Paragraph (c) sets forth the allocation methods for income, realized and unrealized capital gains and losses, and expenses that are not assigned to a particular class. The proposal would have required that these items be allocated to each class based on the relative net assets. One commenter, however, argued that requiring allocations based on net asset value could result in the dilution of shareholders in daily dividend funds such as money market funds that permit investors to subscribe for shares, but not

[10] A rule 12b–1 fee is a charge to fund assets that may be used to pay certain distribution expenses in accordance with rule 12b–1 (17 CFR 270.12b–1) under the Investment Company Act.

[11] Letter from the Investment Company Institute to Jonathan G. Katz, Secretary, SEC 22 (Feb. 22, 1994).

[12] Under rule 18f–3, the investment advisory fee charged to each class generally must be the same percentage amount. In the case of a multiple class fund with an advisory contract that provides for compensation to the adviser on the basis of performance, paragraph (a)(1)(iii) clarifies that the percentage amount may vary for each class to the extent that any difference is the result of the application of the same performance fee provisions to the different investment performance of each class.

In addition, the Commission believes that it would also be consistent with section 205(b)(2) and rule 205–1 if a multiple class fund were to use the investment performance of a single class for the purpose of calculating the performance fee. In approving the use of a class, the board of directors of the fund should consider all of the relevant factors, including the proposed performance fee schedule, the effect that using one class instead of another would have on the fees to be paid, the anticipated relative size of each class, the expense ratio of each class, the effect of any waiver or reimbursement of expenses on the performance of that class, the nature of the index to which the fund's performance will be compared and, if the index is comprised of comparable funds, the average expense ratio of those funds. For instance, it would appear difficult for a board to justify basing the calculation of a performance fee on the performance of a class with the lowest expenses if the result would be that shareholders of another class would pay a higher advisory fee than would be warranted given that class's performance.

[13] The board should monitor whether the fund's allocations have complied with the requirements of paragraph (a)(1)(ii) when the board reviews the fund's plan. *See* section II.A.5., *infra.*

[14] Paragraph (a)(1)(ii) as adopted has been reworded to delete subparagraph (A) of the proposed rule text. Under proposed paragraph (a)(1)(A), expenses could have been treated as belonging to a class if they were directly related to the arrangement of that class for shareholder services or distribution. The proposal did not provide any guidance for determining whether an expense was ''directly related,'' nor did it explain how these expenses were to be distinguished from expenses of an arrangement under paragraph (a)(1)(i), or other expenses under paragraph (a)(1)(ii)(B). Therefore, the Commission has deleted this provision as unnecessary.

[15] *E.g.,* Letter from Ropes & Gray to Jonathan G. Katz, Secretary, SEC 7 (Feb. 21, 1994); Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC 2 (Feb. 15, 1994).

[16] ICI Comment Letter, *supra* note , at 21.

[17] Letter from the American Bar Association to Jonathan G. Katz, Secretary, SEC 12 (Mar. 15, 1994).

[18] Letter from Fidelity Management and Research Company to Jonathan G. Katz, Secretary, SEC A–1 (May 13, 1994).

[19] *E.g.,* ICI Comment Letter, *supra* note 11, at 21.

pay for them with federal funds.[20] According to the commenter, because an investor's money is not available for investment by a fund until federal funds have been received, the payment of dividends to the investor before receipt of federal funds would dilute the holdings of other shareholders.[21]

Therefore, the rule as adopted allows different methods of allocation for daily distribution funds than for non-daily distribution funds. Non-daily distribution funds must allocate these items based on the relative net assets. Money market funds (including those calculating net assets on an amortized cost basis) and other funds making daily distributions of their net investment income may allocate these items to each share regardless of class,[22] or based on the relative net assets (settled shares).[23] The parenthetical reference in the rule to calculation of net assets using amortized cost recognizes that money market funds may allocate fund expenses based on the relative amortized cost net assets.[24] The allocation method selected by the fund must be applied consistently.

A commenter requested that the Commission provide guidance about the allocation of costs of implementing a multiple class structure.[25] If a fund is organized initially with a multiple class structure, these costs are part of the fund's organization expenses and usually are capitalized. Funds may allocate the amortization of these expenses among the classes like other expenses under paragraph (c) of the rule. If the class structure is added after the fund has been organized, or if new classes are added, these expenditures would not be capitalized. Instead, they would be expenses of the class or classes in existence before the addition of the class structure or the new classes,[26] and therefore would be recognized by, and allocated to, those existing classes as an expense under paragraph (c) and not charged to the new class or classes.[27]

c. Accountant's Report on System of Internal Control. The Commission is not adopting the proposed amendment to Form N–SAR, relating to an accountant's report on a fund's system of internal controls. As proposed, Item 77B would have required accountants preparing the report on a multiple class fund's system of accounting controls to refer expressly to the procedures for calculating the classes' net asset values. This provision was intended to replace the requirement in the exemptive orders that an expert file a separate report on the adequacy of accounting procedures of multiple class funds. One commenter supported the proposal's omission of a requirement for the expert's report as no longer necessary. It believed that the orders granted to date, and the additional guidance in rule 18f–3, adequately define the methodology that a fund should follow in allocating income, realized and unrealized capital gains and losses, and expenses of the company to a class of shares.[28] The commenter, however, disagreed with the proposal's requirement of a specific reference in the internal controls report to the procedures for calculating multiple class net assets, arguing that because the internal control structure, required to be reviewed by Statement on Auditing Standards No. 55,[29] includes the procedures for calculating multiple class net assets, the report required by Item 77B need not be modified to emphasize only one of the aspects of the internal control structure. The Commission believes that since under current accounting standards, a review of the fund's internal control structure must include a review of procedures for calculating multiple class net assets, it is unnecessary to require the independent accountant's report to include such a reference.

d. Waivers and Reimbursements of Expenses. As adopted, rule 18f–3(b) expressly allows a fund's underwriter, adviser, or other provider of services to waive or reimburse the expenses of a specific class or classes. The proposal would have permitted only waivers or reimbursements by the fund's adviser or underwriter of class expenses, and would not have permitted waivers or reimbursements for specific classes of fund expenses, such as advisory fees. Despite the prohibition on differential waivers of fund expenses, fund sponsors could have achieved the same result indirectly by waiving or reimbursing class expenses. Therefore, the Commission is deleting the restrictions on waivers in the final rule. This modification is not intended to allow reimbursements or waivers to become *de facto* modifications of the fees provided for in advisory or other contracts so as to provide a means for cross-subsidization between classes.[30] Consistent with its oversight of the class system and its independent fiduciary obligations to each class, the board must monitor the use of waivers or reimbursements to guard against cross-subsidization between classes.[31]

3. Voting and Other Rights and Obligations

The Commission is adopting the provisions relating to shareholder voting substantially as proposed.[32] These provisions elicited little comment. Paragraph (a)(2), which provides that each class must have exclusive voting rights on any matter submitted to

[20] Memorandum to file from Karrie McMillan regarding telephone conversation with Richard Peteka, Oppenheimer Management Corporation (May 11, 1994) (Peteka Comment Memorandum). The term ''net assets'' includes the value of any receivables, including subscriptions to purchase shares for which the fund has not yet received payment. *See* AICPA Audit Guide, *supra* note 26, at ¶ 2.22. Because daily distribution fund portfolio transactions settle daily against federal funds (in contrast to other securities that have ''regular way'' (*e.g.*, currently T+5) settlement), many of these funds only record income and expenses on their books for shareholders whose subscriptions have cleared in federal funds. *See* T. Rowe Price Associates, Inc. (pub. avail. Dec. 22, 1986). Thus, allocating on the basis of relative net assets would be in conflict with typical daily distribution fund allocations.

[21] According to the commenter, this problem is exacerbated when a large disparity exists between the size of the classes or feeder funds, as each subscription to the smaller class or feeder fund will be large relative to the size of the other classes or feeder funds, and will dilute the classes or feeder funds having greater assets. Peteka Comment Memorandum, *supra* note 20.

[22] Like some exemptive orders, paragraph (c)(2)(i) requires funds allocating these items equally to all shares regardless of class to obtain the agreement of their service providers that, to the extent necessary to assure that all classes maintain the same net asset value, the providers will waive or reimburse class expenses.

[23] The rule defines ''relative net assets (settled shares)'' to mean net assets valued in accordance with generally accepted accounting principles, but excluding the value of subscriptions receivable, in relation to the net assets of the fund.

[24] *See* Fidelity Comment Letter, *supra* note 18, at A–2.

[25] *Id.* at 3.

[26] *See* Financial Accounting Standards Board, Financial Accounting Standards No. 7, §§ 8 and 9, Accounting and Reporting by Development Stage Enterprises, and AICPA, Audits of Investment Companies: Audit and Accounting Guide ¶ 8.10 (May 1993).

[27] Organization expenses should be distinguished from other expenses, such as printing of prospectuses. These other non-organizational expenses may appropriately be capitalized and amortized in accordance with the provisions of generally accepted accounting principles. The amortization of these expenses would be allocated to all classes which benefit from the expense.

[28] Letter from the American Institute of Certified Public Accountants to Jonathan G. Katz, Secretary, SEC 2 (Mar. 18, 1994).

[29] Codification of Statements on Auditing Standards, American Institute of Certified Public Accountants, AU § 319 (1994).

[30] Rule 18f–3 is only a limited exemption from the literal application of the prohibitions of section 18 and may not be used to undermine that section's role in effecting the statutory purpose of preventing the issuance of ''securities containing inequitable or discriminatory provisions.'' 15 U.S.C. § 80a–1(b)(3).

[31] *See infra* section II.A.5.

[32] Paragraphs (a)(2) and (a)(3) of the final rule were paragraphs (a)(3) and (a)(4), respectively, in the rule as proposed. They have been renumbered as a result of the transfer of certain provisions of proposed paragraph (a)(2) into paragraph (b) of the final rule.

shareholders that relates solely to the arrangement of that class, governs which class of shareholders may vote on a matter, but does not affect whether the matter is one that requires a shareholder vote. Paragraph (a)(3) requires that each class have the right to vote separately on matters in which its interests are different from those of other classes.

The Commission is adopting as proposed paragraph (a)(4), which states that except as provided in the previous paragraphs, each class of a fund relying on the rule must have the same rights and obligations as each other class.[33] Among other things, this paragraph effectively requires multiple class funds to allocate voting rights that affect all fund shareholders equally to all shareholders. The Commission had requested comment on whether to require that voting be allocated based on relative net asset value per share, rather than one vote per share.[34] All of the commenters addressing the issue opposed such a requirement. These commenters suggested that the proposal's more flexible approach of allowing a fund to select the method most suitable for it would provide the best result for each fund.[35] Several commenters noted that many funds would be required to hold shareholder meetings in order to amend their charters to comply with such a requirement, thus incurring additional expense.[36] Therefore, the Commission is not requiring voting based on relative net asset value per share, but believes that such voting is permissible under section 18(i) of the Investment Company Act.[37]

4. Exchange Privileges and Conversions

The Commission is adopting provisions relating to conversions and exchanges of shares substantially as proposed.[38] The rule as adopted also includes a provision allowing conversions when a shareholder is no longer eligible to invest in a particular class.[39]

Paragraph (e)(1) allows funds to offer different exchange privileges to different classes.[40] Paragraph (e)(2) permits funds to offer one or more classes with conversion features that allow for automatic conversions into another class after a specified period, if the conversions are made at net asset value without the imposition of any sales load, fee or other charge upon the conversion. As suggested by a commenter, paragraph (e)(2) as adopted provides that total expenses (not just those associated with a rule 12b–1 plan) may not be higher for the new class than for the old class.[41]

The Commission has added paragraph (e)(3), which allows, under limited circumstances, conversions that occur whenever a shareholder ceases to be eligible to invest in a class. Unlike paragraph (e)(2), this provision does not require that the new class have the same or lower expenses. A commenter objected that the expense limitation in paragraph (e)(2) would not accommodate situations in which a shareholder may no longer be eligible to participate in the class in which he or she originally invested, and therefore need or wish to be placed into a class that may have higher expenses.[42] For example, an investor in a class offered only to trust customers may cease to be a trust customer, and thus no longer be eligible to invest in that class.[43] In this event, the commenter suggested that the rule permit the new class to assess higher rule 12b–1 fees. Paragraph (e)(3) allows these conversions to occur, if the conversion is effected at net asset value without the imposition of any sales load, fee, or other charge upon the conversion and the investor is given advance notice of the conversion.

5. Board Review of Plans

The Commission is adopting paragraph (d), governing the adoption and approval of multiple class plans by boards of directors, with modifications in view of comments received. Rule 18f–3 gives the board of directors, particularly the independent directors, significant responsibility to approve a fund's plan and oversee its operation. Paragraph (d) requires that a fund adopt a written plan specifying all of the differences among classes, including the various services offered to shareholders, different distribution arrangements for each class, methods for allocating expenses relating to those differences, and any conversion features or exchange privileges.[44] The plan should provide a detailed statement of the differences among the classes.

The rule requires that the board, including a majority of the independent directors, find that the plan is in the best interests of each class individually and the fund as a whole.[45] This approval requirement replaces the several board reviews under the exemptive orders. The orders required boards of directors to approve the issuance of multiple classes of shares, review and approve specific allocations of class expenses,

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[33] This provision was paragraph (a)(5) in the rule as proposed.

[34] *See* footnote 42 of the Proposing Release.

[35] *E.g.*, ICI Comment Letter, *supra* note 11, at 22; Fidelity Comment Letter, *supra* note 18, at A–2 (Fidelity stated that dollar-based voting may not be consistent with state law).

[36] *E.g.*, Letter from the Chicago Bar Association, Subcommittee of the Securities Law Committee to Jonathan G. Katz, Secretary, SEC 3 (Feb. 21, 1994); Letter from Federated Investors to Jonathan G. Katz, Secretary, SEC 3 (Feb. 15, 1994).

[37] *See* Sentinel Group Funds, Inc. (pub. avail. Oct. 27, 1992) (under section 18(i), voting rights of different series in a fund may be tied to the relative net asset value of each series to avoid vesting unfair voting power in series with per share net asset values that are significantly lower than those of other series). In discussing the meaning of ''equal voting rights'' under section 18(i), the Commission has noted that:

Problems of interpretation may very well arise from defining with exactitude what constitutes ''equal voting rights'' within the meaning of Section 18(i). It is apparent that in certain cases an inflexible adherence to any rigid interpretation could produce grave distortions of the apparent intent of Congress to require a reasonably equitable distribution of voting power consistent with the applicable provisions pertaining to the different classes of stock. *The Solvay American Corp.*, 27 SEC 971, 974 n.9 (1948).

The Commission also believes that voting based on relative net asset value is consistent with the definition of ''the vote of a majority of the outstanding voting securities'' in section 2(a)(42) of the Investment Company Act [15 U.S.C. § 80a–2(a)(42)]. That provision does not specify whether the prescribed percentages are to be determined on the basis of the number of securities, or the value of the securities.

[38] Exchanges are subject to section 11 of the Investment Company Act and the rules thereunder. *See* 15 U.S.C. § 80a–11(a); 17 CFR 270.11a–1, –2 and –3 (requiring offers of exchange to be made on the basis of net asset value, with certain exceptions).

[39] The Commission also is amending Form N–1A to require prospectus disclosure for multiple class funds allowing or requiring conversions or exchanges between classes. *See infra* section II.C.3. for a discussion of the amendment.

[40] For example, when shares of one class of a fund may be exchanged for shares of the same class in another fund, but not for shares of other classes.

[41] ICI Comment Letter, *supra* note 11, at 23–24.

[42] Letter from Hale and Dorr to Jonathan G. Katz, Secretary, SEC 7 (Feb. 22, 1994). *See* Ark Funds, Investment Company Act Release Nos. 19812 (Oct. 22, 1993), 58 FR 58025 (Oct. 28, 1993) (Notice of Application), and 19882 (Nov. 17, 1993), 55 SEC Docket 1541 (Order) (allowing automatic conversions when a shareholder in one class becomes ineligible to purchase shares of the class originally held); Federated Securities Corp. (pub. avail. Jan. 14, 1992) (permitting shareholders to switch from one class to another class where, because of a change in circumstances, such shareholders would no longer be eligible to invest in a particular class of shares).

[43] Although some fees may be lower for classes whose shareholders have certain other relationships with a financial institution that provides services to fund shareholders, these investors may also be paying other fees directly to the institution in addition to paying expenses at the fund level.

[44] Forms N–1A and N–14 have been amended to require that a copy of the plan be filed as an exhibit to the forms.

[45] In making its findings, the board should focus, among other things, on the relationship among the classes and examine potential conflicts of interest among classes regarding the allocation of fees, services, waivers and reimbursements of expenses, and voting rights. Most significantly, the board should evaluate the level of services provided to each class and the cost of those services to ensure that the services are appropriate and that the allocation of expenses is reasonable.

monitor for conflicts of interest among classes and take any action necessary to eliminate conflicts.

Paragraph (d) as adopted requires the board to approve a plan initially and before any material change. The Commission is not requiring annual approval of the board, which was proposed. Many commenters objected to the annual review requirement and argued that it runs counter to the Commission's recent elimination of certain annual review requirements.[46]

Paragraph (d) as adopted does not require the board to approve the initial adoption of a plan if the plan merely reproduces without change a fund's existing multiple class structure that the board has approved under an existing exemptive order. One commenter requested that the Commission amend the rule to clarify that board approval is not required for existing classes that intend to rely on the rule if the board has already approved a multiple class structure under an order.[47] Although the rule as adopted does not require a vote of the board of directors under these circumstances, a fund with an existing order that seeks to rely on rule 18f–3 must create a plan setting forth the fund's current separate arrangements, expense allocation procedures and exchange and conversion privileges[48] and file a copy of the plan with the Commission as an exhibit to the fund's registration statement under new Item 24(b)(18). These plans create a cohesive structure for monitoring the operation of the class system, rather than having procedures scattered among exemptive orders and their amendments, prospectuses and internal guidelines, and the formulation of a plan from these source materials should not impose a significant burden.

Finally, the rule text as adopted omits the proposed requirement that boards find that plans are ''fair.'' This change recognizes that the term was not a condition of the exemptive applications, and that the requirement that a board find a plan to be in the best interests of each class individually and of the fund as a whole provides the same protection as a separate fairness requirement.

[46] *E.g.,* ABA Comment Letter, *supra* note 17, at 4; Federated Investors Comment Letter, *supra* note 15, at 2; Hale and Dorr Comment Letter, *supra* note 42, at 4–5; ICI Comment Letter, *supra* note 11, at 23; Letter from Dechert Price & Rhoades to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See* Proposing Release at 21 n.48, 58 FR at 68080 n.48, for a discussion of recent Commission actions to reduce the burdens on boards of directors.

[47] ICI Comment Letter, *supra* note 11, at 23.

[48] Board approval of the plan is required, though, if it contains any material deviations from current practice.

B. Rule 12b–1

The Commission is adopting new paragraph (g) of rule 12b–1 substantially as proposed. It provides that if a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and any action taken on the plan must be taken separately for each class. The board would be required to make the finding, separately for each class, that a distribution plan presents a ''reasonable likelihood of benefit'' to the company and its shareholders. Similarly, the amendment requires shareholder approval by the outstanding voting securities of each separate class when rule 12b–1 requires that a plan for the distribution of securities be approved by a majority of the fund's outstanding voting securities. Paragraph (g) also contains a cross-reference to rule 18f–3 to address the limited exception that under paragraph (e)(2) of that rule, any shareholder vote on the rule 12b–1 plan of a target class would also require a separate vote of any purchase class.[49]

C. Disclosure

The Commission is adopting disclosure requirements for registration statements of master-feeder and multiple class funds with substantial modifications from the proposal, and is not adopting any disclosure requirements for advertisements and sales literature.[50] New Item 6(h) provides that multiple class and master-feeder funds should describe the salient features of the multiple class or master-feeder structure. Feeder funds should also disclose the circumstances under which the feeder fund could no longer invest in the master fund, and the consequences to shareholders of such an event. Item 6(h) also requires prospectuses used in connection with a public offering to disclose that there are other classes or other feeder funds that invest in the same master fund, and to include a telephone number investors can call to obtain additional information about other classes or feeder funds available through their sales representative.[51] These provisions should give funds flexibility in drafting disclosure while making available to investors the means to obtain additional information about other classes or feeder funds investing in the same master fund. These disclosure requirements are consistent with the Commission's goals of promoting prospectus simplification and the use of plain language.[52]

Funds must provide more extensive prospectus disclosure about other classes or feeder funds only in two cases. First, under new staff Guide 34 to Form N–1A, if a prospectus offers more than one class or feeder fund, it must discuss briefly the differences between the classes or feeder funds, and arrange the fee table to facilitate a comparison by shareholders of the different fee structures.[53] Second, under new General Instruction I to Form N–1A, if a fund is offering a class that will or may convert or be exchanged into other classes of the same fund, the prospectus must provide disclosure about the other classes.

The Commission is not adopting most of the proposed disclosure requirements; nearly all commenters expressed strong opposition to the extent and the details of these requirements.[54] As discussed in more detail below, commenters argued, among other things, that the proposed requirements would have imposed liability burdens and logistical difficulties on some funds.

The Commission recognizes that the complexity of distribution charge

[49] In light of the adoption of new paragraph (e)(3) of rule 18f–3, the Commission has modified rule 12b–1(g) from the proposal to limit the cross-reference to paragraph (e)(2). Whereas conversions under paragraph (e)(2) will occur if shareholders remain in a class for a specified period of time, conversions under paragraph (e)(3) will not occur except upon the happening of a specified contingency that is dependent upon the shareholder. Therefore, a vote of the class of shares that may convert is not required.

[50] In view of commenters' objections and recent industry initiatives, the Commission also is not imposing standardized class designations upon multiple class funds. *See* Memorandum of the ICI, Board of Governors Adopts Voluntary Nomenclature Standards of Multiple Class Funds (May 16, 1994); Jeff Kelly, *A Fine Mess,* Morningstar Mutual Funds, Nov. 25, 1994, at S1; ICI Comment Letter, *supra* note 11, at 19.

[51] This disclosure requirement was proposed as part of Instruction 1 to Item 2(a) of Form N–1A. Multiple class funds must comply with the disclosure requirements adopted today regardless of whether they rely on rule 18f–3 or continue to operate under and comply with all of the terms (including disclosure-related conditions) of an existing exemptive order. The disclosure requirements adopted today also do not alter feeder funds' existing disclosure obligations. Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, SEC, to Registrants (Feb. 22, 1993), Comment II.H (hereinafter ''1993 Generic Disclosure Comment Letter''). New Instruction 4A to Item 2(a) of Form N–1A codifies the requirement that the expenses of both the master fund and the feeder fund be reflected in a single fee table.

[52] *See, e.g.,* Arthur Levitt, Chairman, SEC, Taking the Mystery Out of the Marketplace: The SEC's Consumer Education Campaign, remarks before the National Press Club (Oct. 13, 1994).

[53] Funds may either use one fee table with separate and clearly labeled columns for each class or feeder fund, or may prepare separate fee tables for each class or feeder offered.

[54] A few commenters, however, supported requiring disclosure about other classes or feeder funds. *See, e.g.,* Hale and Dorr Comment Letter, *supra* note 42, at 8; Dechert Price Comment Letter, *supra* note 46, at 3.

options can be confusing to some investors. Instead of relying on prospectus disclosure, however, the Commission is addressing these concerns through consumer education and the promotion of good sales practices. In the proposal, the Commission requested comment on whether, instead of requiring extensive prospectus disclosure, it should work with the National Association of Securities Dealers, Inc. (''NASD'') to develop standards for basic information that representatives should communicate to their clients. Several commenters endorsed this approach as an alternative to cross-disclosure.[55] The Commission staff has been working, and will continue to work, with the NASD on providing guidance about the duties of sales representatives when recommending the purchase of multiple class and master-feeder funds.[56] Finally, the Commission expects to promote consumer education in this area through the development and publication of a brochure explaining the structures and expenses of multiple class and master-feeder funds.[57]

1. Prospectus Disclosure Concerning Other Classes or Feeder Funds

The Commission is adding new Item 6(h) to Form N–1A [58] to require prospectuses for multiple class and master-feeder funds to describe the salient features of the multiple class or master-feeder structure. In addition, Item 6(h) requires prospectuses of multiple class or master-feeder funds to include disclosure about other publicly offered [59] classes or feeder funds, unless all classes or all feeder funds are offered through the same prospectus.[60] A fund must disclose that it issues other classes or that other feeder funds invest in the master fund, and that the other classes or feeder funds may have different sales charges and expenses, which would affect performance. The disclosure must also provide a telephone number investors may call to obtain information concerning other classes or feeder funds available through their sales representative, and note that investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative, or any person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the securities offered in the prospectus. This disclosure should provide investors with access to information allowing them to compare the expenses and services of a given class or feeder fund to others that are available to them.

Although commenters strongly opposed the more extensive disclosure requirements in the proposal, they generally agreed that it is ''appropriate to require some disclosure as to the fact that there are other classes or feeder funds investing in the underlying portfolio.'' [61] Many agreed that alerting investors to the relationship between expenses and performance is appropriate.[62]

The Commission is not specifying how fund sponsors must respond to investors' calls. Unlike the requirements adopted today, the proposal would have required the statement to include the names of the other classes or feeder funds, and an undertaking to provide information over a toll-free number, and provide a prospectus for the other classes or feeder funds upon request. Commenters, however, vehemently objected to the proposed undertaking to provide additional information and prospectuses for other classes or feeder funds.[63] One commenter stated that independent mutual fund groups and their sponsors may be disproportionately affected by the undertaking. ''Whereas the toll-free number provided by broker-sponsored mutual funds will likely have to answer questions only about (and provide prospectuses for) that particular broker's family of funds, the Release imposes upon an independent mutual fund sponsor with a master-feeder structure the much broader obligation to provide information * * * about any other entity's proprietary feeder funds feeding into the same master fund.'' [64] Several commenters objected to the toll-free number requirement.[65] The Commission is continuing to require the inclusion of a telephone number, but is not requiring that the number be toll-free; the requirement of a telephone number is consistent with the disclosure guidelines of the Commission staff and state regulators, to which master-feeder funds are already subject. By not requiring any specific procedures with callers, the Commission is leaving fund sponsors the flexibility to determine how best to respond to inquiries.

A commenter noted that compliance with the proposed requirement to name other classes or feeder funds would be difficult for unaffiliated feeder funds; they would be required to keep abreast of the creation of or changes to other feeder funds and sticker their prospectuses to reflect such changes.[66] A commenter also speculated that mentioning feeder funds in states where they are not registered could create problems under state securities laws because such a statement could be considered to be an offer.[67]

The disclosure requirement that the Commission is adopting is similar to the recommendations of some commenters. For example, one commenter suggested that the Commission require a narrative following the fee table stating that (i) the fund issues other classes or feeder funds that invest in the master fund; (ii) because sales charges and expenses vary, performance may also vary; and (iii) the customer may call a toll-free number to obtain further information

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[55] *E.g.,* Signature Group Comment Letter, *supra* note 59, at 14–15; ABA Comment Letter, *supra* note 17, at 10; Letter from the Investment Company Institute (attaching memorandum from Kirkpatrick and Lockhart) to Matthew A. Chambers, Associate Director, Division of Investment Management, SEC (Oct. 6, 1994).

[56] Since the proposal, the NASD has reminded members of ''their obligations to ensure that the investments are suitable for their customers and to disclose and discuss certain matters in the sale of mutual funds.'' These matters include the disclosure of ''all material facts to the customer'' and, in particular, sales charges. Notice to Members 94–16 (Mar. 1994).

[57] The Commission has previously published two brochures providing general information about investing.

[58] 17 CFR 239.15A, 274.11A.

[59] Item 6(h) refers to any publicly offered class or feeder fund; thus, no disclosure is required, for example, about offshore or private funds. *See, e.g.,* Letter from Kirkpatrick & Lockhart on behalf of Signature Financial Group and certain other companies to Jonathan G. Katz, Secretary, SEC 11–12 (Mar. 18, 1994) (expressing concern about disclosure regarding offshore funds), ICI Comment Letter, supra note 11, at 11 (expressing concern that disclosure would be required about private feeder funds).

[60] This requirement is more like the disclosure currently provided by master-feeder funds than that required under the exemptive orders for multi-class funds. The requirements adopted today treat multiple class and master-feeder disclosure in a consistent manner.

[61] ABA Comment Letter, *supra* note 17, at 8; *see also* Chicago Bar Comment Letter, *supra* note 36, at 2.

[62] *See, e.g.,* Hale and Dorr Comment Letter, *supra* note 42, at 9; Signature Group Comment Letter, *supra* note 59, at 5.

[63] *E.g.,* ABA Comment Letter, *supra* note 17, at 8–9; Signature Group Comment Letter, *supra* note 59, at 10; ICI Comment Letter, *supra* note 11, at 13 (''[s]uch a proposal ignores market realities, and would greatly limit the very benefits of multiple class and master-feeder structures that the Commission has itself commented on.'').

[64] Eaton Vance Comment Letter, *supra* note 66, at 8.

[65] *See* Chicago Bar Comment Letter, *supra* note 36, at 2 (a toll-free number should not be required); Fidelity Comment Letter, *supra* note 18, at 2 (the proposal's toll-free number requirement would cause an issuer to deal directly with investors, when it intended to sell through intermediaries, ''effectively chill[ing] the use of multi-class and feeder funds'').

[66] Signature Group Comment Letter, *supra* note 59, at 10. *See also* Letter from Eaton Vance Management to Jonathan G. Katz, Secretary, SEC 4 (Feb. 24, 1994).

[67] Eaton Vance Comment Letter, *supra* note 66, at 4 n.4.

about the other funds not offered through the prospectus but available through the same financial intermediary. The commenter also recommended that the prospectus should contain prominent disclosure recommending that the investor contact his or her broker or financial adviser for further information about suitable classes or feeder funds offered by the intermediary.[68]

Commenters suggested the above approach as an alternative to the proposed cross-disclosure requirements, which commenters strongly criticized and which the Commission is not adopting. The proposal would have required a prospectus for one class or feeder fund to provide full cross-disclosure [69] about all other classes or all other feeder funds investing in the same master fund that were not offered in the prospectus and that met two conditions. First, the classes or feeder funds had to be offered through the same financial intermediary.[70] Second, they had to permit investors to choose among alternative arrangements for sales and related charges.[71]

Many commenters argued that cross-disclosure would not achieve the Commission's goal of promoting investor understanding of multiple class and master-feeder funds because of the volume of disclosure that the proposal might require, arguing that ''the disclosure requirements of the Proposal run counter to the staff's professed desire for prospectus simplification and the desire to avoid 'prospectus creep.' '' [72] Several commenters cautioned that if the Commission adopted the proposed disclosure requirements, sponsors would not use the master-feeder form and would create ''less efficient and more expensive clone funds.'' [73] One commenter representing a fund family that offers both no-load and broker-sold products objected to requiring brokers to disclose that the same fund is available without a sales charge, arguing that if a client receives advice from a broker, the broker deserves to be paid for those services.[74]

Some commenters strongly criticized the proposal for requiring an issuer to provide prospectus disclosure about securities it does not intend to offer through that prospectus. Several expressed concern that feeder funds would have to assume liability for disclosure about unrelated feeder funds even though they are distinct entities and may have different advisers, underwriters, and boards of directors.[75]

Commenters also criticized the financial intermediary test—one of the proposal's two triggers for cross-disclosure.[76] One commenter stated, for example, that ''[t]he Proposal erroneously assumes that all financial intermediaries are homogeneous organizations, serving only a single market or customer base.'' [77] Much of the commenters' concern centered on the effect of the proposed requirement on independent sponsors of feeder funds and on financial intermediaries with more than one distribution network. One commenter noted that ''feeder funds, unlike different classes of shares, often are organized to serve customers of unaffiliated third party banks, insurance companies or brokerage firms who are competitors of each other and, in many cases, of the master fund.'' [78]

One independent sponsor of mutual funds argued that the proposal would create unique problems for independent mutual fund groups, and would discourage brokers from offering funds if prospectuses must describe funds offered by unaffiliated brokers.[79] This commenter asserted that fund sponsors would have to create a different prospectus for each possible combination of the different classes or feeder funds that in theory a broker might offer; therefore, the preparation of numerous prospectuses would create increased costs for these funds and an ''administrative nightmare'' for their sponsors, while in-house master-feeder or multiple class funds and their sponsors would not face comparable burdens.

The disclosure requirement as adopted addresses the commenters' concerns. The disclosure that investors may ask their sales representatives about other classes or feeder funds should alleviate the concern that the disclosure would encourage investors to deal directly with issuers, rather than their intermediaries. This dialogue should further investor understanding of the different fee arrangements or distribution possibilities associated with the fund without imposing a burden on issuers. Retaining a telephone number requirement, but not requiring the other disclosure or obligations should provide investors with a source for obtaining more information about other classes or feeder funds available through their sales representative without raising the practical concerns voiced by many commenters. Not requiring cross-disclosure about other classes or feeder funds not offered through the prospectus removes the logistical and competitive concerns voiced by many commenters. This approach is also consistent with the Commission's goals of promoting prospectus simplification.

2. Discussion of Classes or Feeder Funds Offered in Prospectus

New staff Guide 34 to Form N–1A requires a discussion of the differences between classes or feeder funds whenever two or more classes or feeder funds are offered through the same prospectus. In addition, new Guide 34 advises that if a single prospectus is used to offer more than one class or feeder fund, and the classes or feeder funds have different expense and/or sales load arrangements, the prospectus should clearly explain the differences in the features, and should provide a separate response to Item 2(a)(i) for each class or feeder. These requirements are

[68] *Id.* at 9.

[69] Disclosure responding to Items 2 through 9 of Form N–1A.

[70] The Proposing Release listed as examples of ''financial intermediaries'' brokers, dealers, banks and any other entities that act as agents or principals in the sale of a fund's shares, or that, like some banks, provide shareholder services under an agreement with a fund. *See* 58 FR 68083, n.69.

[71] Although the Commission is not adopting the proposed cross-disclosure requirement, it believes that disclosure about more than one class or feeder fund in the same prospectus can be consistent with clear, simple, and effective disclosure and prospectus simplification. Similarly, Guide 34 expressly contemplates that more than one class or feeder fund may be offered in the same prospectus. *See* discussion of Guide 34, *infra* at section II.C.2.

[72] Chicago Bar Comment Letter, *supra* note 36, at 2; *see also* ICI Comment Letter, *supra* note 11, at 5–7; Signature Group Comment Letter, *supra* note 59, at 6–8 (disputing the proposal's assumption that investor confusion about these instruments ''is a serious and widespread problem'').

[73] *E.g.*, Signature Group Comment Letter, *supra* note 59 at 5; *see also* letter from Fidelity Investments to Barry Barbash, Director, Division of Investment Management, SEC 1–2 (July 22, 1994).

[74] *See* Letter and memorandum from Robert Pozen, General Counsel and Managing Director, FMR Corp. to Arthur Levitt, Chairman, SEC 2 (Nov. 18, 1994) (''This would be the equivalent of requiring Filenes to tell all of its customers that the same goods may be purchased at a discount in the basement or from a competitor.'').

[75] *E.g.*, ICI Comment Letter, *supra* note 11, at 7. *See also* ABA Comment Letter, *supra* note 17, at 8–9; Signature Group Comment Letter, *supra* note 59, at 5 and 9 (''[s]uch a requirement of disclosure about products offered by competitors and the assumption of liability for such disclosures would be entirely unprecedented in the securities industry'') (emphasis deleted).

[76] The proposal would have required cross-disclosure only about classes or feeder funds both offered through the same financial intermediary and with alternative arrangements for sales and related charges, and made clear that not all cases would involve alternative arrangements. *See* text accompanying notes 70–72 of the Proposing Release, 58 FR at 68083. Most commenters, however, appeared to assume that there would be alternative sales charges in all cases.

[77] Signature Group Comment Letter, *supra* note 59, at 5.

[78] *Id.* at 8.

[79] Eaton Vance Comment Letter, *supra* note 66.

intended to inform investors about the differences between the investment options offered together to them.

The proposal would have required that whenever a prospectus offered two or more classes or feeder funds, or provided cross-disclosure about one or more classes or feeder funds, it must also contain a discussion of the differences between the classes or feeder funds. This aspect of the proposal elicited little comment. The proposal also would have required a line graph comparing the feeder funds' or classes' performance over a hypothetical ten-year period, assuming an initial investment of $10,000 and a 5% rate of return.[80] The Commission intended that the graph demonstrate the circumstances under which holding shares of each class or feeder fund for various lengths of time would produce the highest return. The Commission is not adopting this aspect of the proposal. The narrative discussion called for by Guide 34 should provide investors with similar information. Moreover, the line graph proposal was predicated upon the cross-disclosure requirement, which the Commission is not adopting.

The proposed line graph met with significant opposition from a number of commenters, many of which conjectured that it could mislead investors into believing that the ''market always goes up.'' [81] One commenter expressed concern that the graph creates a ''significant potential for litigation.'' [82] Another commenter observed that, except for variable life illustrations, ''the Commission has not previously used these investment assumptions to project hypothetical future performance.'' [83] Many commenters raised numerous concerns regarding the accuracy of the graphs given the myriad redemption possibilities, expenses, sales charges, and exchange privileges.[84] A commenter also argued that much of the information would duplicate disclosure in the fee table, and thus would be contrary to the goal of prospectus simplification.[85]

3. Discussion of Classes Into Which Shares May Convert or Be Exchanged

The Commission is adopting new General Instruction I to Form N–1A. This Instruction states that multiple class funds that provide for conversions or exchanges of shares from one class to another should provide disclosure in the prospectus about all other classes into which the shares may be converted or exchanged. Although Instruction I does not specify a particular format, it states that the disclosure should be designed to aid investor comprehension, and when appropriate, should use tables, side-by-side comparisons, or other parallel presentations to assist an investor's understanding of the other class or classes.

4. Advertising and Sales Literature

The Commission is not adopting requirements for advertisements or sales literature about multiple class or master-feeder funds. The Commission had proposed amending rules 134 and 482 under the Securities Act and rule 34b–1 under the Investment Company Act to require multiple class and master-feeder fund advertisements to contain a prominent legend substantially similar to that proposed for prospectus disclosure. In addition, the Commission had proposed amending rules 482 and 34b–1 to require multiple class and master-feeder fund advertisements that contain performance figures to include, with equal prominence, the performance of all classes and feeder funds that would have been subject to the proposed prospectus cross-disclosure requirement. The proposal would also have required that when an advertisement contains performance figures for a class or feeder fund for which average annual total return information is not available for one, five, and ten year periods, and this information is available for another class, feeder or master fund, then the advertisement must include quotations of average annual total return for the securities of the other class, feeder or master fund together with any necessary explanation.

Commenters opposed the requirement of disclosure about other classes or feeder funds in advertisements.[86] One stated that ''[i]n many respects, these requirements are so onerous that they are unworkable'' and that ''[t]he volume of disclosure required by the Proposal and the equal prominence requirement would make advertising prohibitively expensive as well as highly impractical for funds in the master-feeder fund structure.'' [87] Some commenters objected to the requirement because of the amount of space the disclosure would occupy in an average advertisement.[88]

In view of those objections, the Commission has determined not to adopt the proposed advertising disclosure requirements.[89] Instead, the Commission will address disclosure of performance under the general anti-fraud provisions of the federal securities laws [90] and expects that the staff will continue to address issues relating to performance disclosure on an interpretive or no-action basis.[91]

D. Effective Dates

Rule 18f–3 and the amendment to rule 12b–1 will become effective April 3, 1995. Registration statements and post-effective amendments filed with the Commission after April 3, 1995 must be in compliance with the amendments to Forms N–1A and N–14.

III. Cost/Benefit of the Proposals

Rule 18f–3 and the rule and form amendments adopted today should impose less of a reporting or recordkeeping burden and less regulatory compliance cost on multiple class funds than those imposed by the multiple class exemptive orders. Under rule 18f–3 and the form amendments,

[80] Both of these requirements would have been contained in a new Item 6(h) of Form N–1A.

[81] Chicago Bar Comment Letter, *supra* note 36, at 3; *See also* Signature Group Comment Letter, *supra* note 59, at 16; Fidelity Comment Letter, *supra* note 18, at 2.

[82] Federated Investors Comment Letter, *supra* note 15, at 3.

[83] Chicago Bar Comment Letter, *supra* note 36, at 2–3.

[84] *E.g.*, Signature Group Comment Letter, *supra* note, 59, at 15–16; ICI Comment Letter, *supra* note 11, at 15–16 (the ICI also suggested that the line graph requirement could pose problems for EDGAR filers, since the EDGAR system cannot recognize more than a limited set of characters, *id*. at 16 n.20).

[85] Letter from IDS Financial Corporation to Jonathan G. Katz, Secretary, SEC 2 (Feb. 22, 1994). *See also* ICI Comment Letter, *supra* note 11, at 14.

[86] *See, e.g.*, Fidelity Comment Letter, *supra* note 18, at 3 (''cross-disclosure is particularly burdensome in advertisements''); ICI Comment Letter, *supra* note 11, at 17–18.

[87] Signature Group Comment Letter, *supra* note 59, at 16–17.

[88] *Id.*; ICI Comment Letter, *supra* note 11, at 17–18 (the expense of cross-disclosure, together with the equal prominence requirement, would place multiple class and master-feeder funds at a competitive disadvantage).

[89] Footnote 88 in the proposing release erroneously stated that ''rule 134 advertisements, however, may include rankings based on performance data.'' 58 FR at 68085, n.88. Rule 134 advertisements may not contain performance rankings.

[90] Therefore, funds relying on rule 18f–3 will not be required to quote the performance of all classes when they quote performance in advertisements under rule 482, as was required generally under the exemptive orders. The Commission cautions multiple class funds to use care not to mislead investors in advertising the performance of one class when multiple classes are being offered to the same persons. For example, it may be misleading to quote only performance of a class for institutional or inside investors (with low expenses) in a publication with a retail readership.

[91] *See, e.g.*, IDS Financial Corp. (pub. avail. Dec. 19, 1994) (allowing a multiple class fund to calculate standardized total return of a new class following a merger based upon the performance of the acquiring (and surviving) fund, adjusted to reflect differences in the sales load, but not differences in rule 12b–1 fees).

multiple class funds would be subject to fewer disclosure requirements and lower costs than under the exemptive orders. Any additional time required to comply with the rule's written plan requirement should be minimal because multiple class funds already would have to commit material class differences to writing in order to enter into distribution or service agreements, or to disclose their terms. The prospectus disclosure should impose little burden, and in fact requires less disclosure than currently required for multiple class funds. The disclosure is similar to that presently required for master-feeder funds, and thus should impose little or no additional burden on those funds.

The amendment to rule 12b–1 should not impose any additional costs because it essentially would incorporate in the rule existing requirements in the exemptive orders for multiple class funds.

IV. Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by writing to Karrie McMillan, Esq., Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W. 20549.

V. Statutory Authority

The Commission is adopting rule 18f–3 under the authority in sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. §§ 6(c), 18(i), and 37(a)], and the amendment to rule 12b–1 under section 12(b) of the Investment Company Act [15 U.S.C. § 12(b)]. The Commission is adopting the amendments to Form N–1A under sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77g(a), 77j, and 77s(a)], and sections 8(b), 24(a), and 38(a) of the Investment Company Act [15 U.S.C. §§ 80a–8(b), 24(a), and 37(a)], and the amendments to Form N–14 under sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77h, 77j and 77s(a)] and sections 14(a), 14(c) and 23(a) of the Exchange Act of 1934 [15 U.S.C. 78n(a), 78n(c) and 78w].

VI. Text of Adopted Rule and Rule and Form Amendments

List of Subjects in 17 CFR Parts 239, 270, and 274

Investment Companies, Reporting and record keeping requirements, Securities.

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

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

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

Authority: 15 U.S.C. 80a–1, *et seq.,* 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.12b-1 is amended by adding paragraph (g) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one class of shares, the provisions of the plan must be severable for each class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each class, *provided, however,* that under § 270.18f–3(e)(2), any shareholder vote on a plan of a target class must also require a vote of any purchase class.

3. By adding § 270.18f–3 to read as follows:

§ 270.18f–3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a–18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] (''company'') may issue more than one class of voting stock, *provided* that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, underwriter, or any other provider of services to the company.

(c) Income, realized and unrealized capital gains and losses, and expenses of the company not allocated to a particular class pursuant to paragraph (a) of this section:

(1) Except as permitted in paragraph (c)(2) of this section, shall be allocated to each class on the basis of the net asset value of that class in relation to the net asset value of the company; or

(2) For companies operating under § 270.2a–7 (including the provision allowing the calculation of net assets on an amortized cost basis), and for other companies declaring distributions of net investment income daily that maintain the same net asset value per share in each class, may be allocated:

(i) To each share without regard to class, *provided* that the company has received undertakings from its adviser, underwriter or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; or

(ii) On the basis of relative net assets (settled shares). For purposes of this section, ''relative net assets (settled shares)'' are net assets valued in accordance with generally accepted accounting principles but excluding the value of subscriptions receivable, in relation to the net assets of the company.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in

the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an existing order of exemption. Before any vote on the plan, the directors shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

(e) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege providing that securities of the class may be exchanged for certain securities of another company; or

(2) A conversion feature providing that shares of one class of the company (the ''purchase class'') will be exchanged automatically for shares of another class of the company (the ''target class'') after a specified period of time, *provided that*:

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

(ii) The expenses, including payments authorized under a plan adopted pursuant to § 270.12b–1 (''rule 12b–1 plan''), for the target class are not higher than the expenses, including payments authorized under a rule 12b–1 plan, for the purchase class; and

(iii) If the amount of expenses, including payments authorized under a rule 12b–1 plan, for the target class is increased materially without approval of the shareholders of the purchase class, the fund will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

(3) A conversion feature providing that shares of a class in which an investor is no longer eligible to participate may be converted to shares of a class in which that investor is eligible to participate, *provided that*:

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

4. The authority citation of Part 239 continues to read, in part, as follows:

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

* * * * *

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

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

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

6. By adding new General Instruction I to Form N–1A [referenced in §§ 239.15A and 274.11A] to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

I. Multiple Class and Master-Feeder Funds

Registrants issuing multiple classes of shares that provide for conversions of exchanges of shares from one class to another class of the same fund should disclose the information required by Form N–1A about all other classes into which the shares may be converted or exchanged. This information should be presented in a format designed to facilitate comprehension by investors, and when appropriate, should use tables, side-by-side comparisons, or other presentations to assist an investor's understanding of the other class or classes. A ''multiple class fund'' is an open-end management investment company that issues more than one class of shares, each of which represents interests in the same portfolio of securities, and either meets the requirements of rule 18f–3 under the Act [17 CFR 270.18f–3] or operates pursuant to an exemptive order. A ''feeder fund'' is an open-end management investment company, except a company that issues periodic payment plan certificates, that holds shares of a single open-end management investment company (the ''master fund'') as its only investment securities.

7. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding Instruction 4A to Item 2(a)(i), to read as follows:

Form N–1A

* * * * *

Item 2. Synopsis

(a)(i) * * *

Instructions:

* * * * *

4A. If the prospectus offers shares of a feeder fund, reflect the expenses of both the feeder fund and the master fund in which the feeder fund invests in a single fee table using the captions provided. In the brief narrative following the fee table, state that the fee table reflects the expenses of both Registrants.

* * * * *

8. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding Item 6(h) to read as follows:

Form N–1A

* * * * *

Item 6. Capital Stock and Other Securities

* * * * *

(h) Registrants that offer multiple classes of shares or that are feeder funds should briefly describe the salient features of the multiple class or master-feeder structure. In the case of a feeder fund, explain the circumstances under which the feeder fund could no longer invest in the master fund (*e.g.*, if the master fund changed its investment objectives to be inconsistent with those of the feeder fund), and the consequences to shareholders of such an event. If the Registrant has publicly offered any class of shares of the same series not offered through the prospectus, or if any publicly offered feeder fund not offered through the prospectus invests in the same master fund as the Registrant, include the following disclosure: (i) that the Registrant issues other classes or that other funds invest in the same master fund (using the same terminology for classes or master and feeder funds as elsewhere in the prospectus), (ii) that those other classes or feeder funds may have different sales charges and other expenses, which may affect performance, (iii) a telephone number investors may call to obtain more information concerning the other classes or feeder funds available to them through their sales representative, and (iv) that investors may obtain information concerning those classes or feeder funds from (as applicable) their sales representative, or any person, such as the principal underwriter, a broker-dealer or bank, which is offering or making available to them the securities offered in the prospectus.

9. By amending Form N–1A [referenced in §§ 239.15A and 274.11A] by adding paragraph (b)(18) to Item 24 before the Instructions to read as follows:

Form N–1A

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

(b) * * *

(18) copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act, any agreement with any person relating to the implementation of a plan, any amendment to a plan or agreement, and a copy of the portion of the minutes of a meeting of the Registrant's directors describing any action taken to revoke a plan.

* * * * *

10. By adding Guide 34 to the Guidelines for Form N–1A [referenced in §§ 239.15A and 274.11A] to read as follows:

Guidelines for Form N–1A

* * * * *

Guide 34. Multiple Class and Master-Feeder Structures

In response to Item 6, if a single prospectus is used to offer more than one class of a multiple class fund or more than one feeder fund that invests in the same master fund, the prospectus should provide a separate response to Item 2(a)(i) (the fee table requirement) for each class or feeder fund and should clearly explain the differences between the expense and/or sales load arrangements of the classes or feeder funds. The fee table information should be arranged to facilitate a comparison by shareholders of the different fee structures.

11. By amending Form N–14 [referenced in § 239.23] by revising Item 16(10) to read as follows:

Note: Form N–14 does not, and the amendment to Form N–14 will not, appear in the Code of Federal Regulations.

Form N–14

* * * * *

Item 16. Exhibits

* * * * *

(10) copies of any plan entered into by registrant pursuant to rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] and any agreements with any person relating to implementation of the plan, and copies of any plan entered into by Registrant pursuant to Rule 18f–3 under the 1940 Act [17 CFR 270.18f–3], any agreement with any person relating to implementation of the plan, any amendment to the plan, and a copy of the portion of a meeting of the minutes of the Registrant's directors describing any action taken to revoke the plan;

* * * * *

Dated: February 23, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4997 Filed 3–1–95; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–20916; File No. S7–24–88]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies To Impose Contingent Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule under the Investment Company Act of 1940 to permit certain registered open-end management investment companies (''mutual funds'') to impose contingent deferred sales loads (''CDSLs''). A CDSL is a sales charge that is paid at redemption; its amount declines over several years until it reaches zero. The adoption of the rule is intended to allow mutual funds to offer investors the choice of an additional form of sales load without applying to the Commission for exemptive relief.

EFFECTIVE DATE: The new rule will become effective April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Staff Attorney, (202) 942–0693, or Robert G. Bagnall, Assistant Chief, (202) 942–0686, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting rule 6c–10 [17 CFR 270.6c–10] under the Investment Company Act of 1940 [15 U.S.C. § 80a] (the ''Investment Company Act'' or the ''Act''). The Commission is not adopting the amendments that were proposed to Form N–1A [17 CFR 239.15A, 274.11A]. In a companion release, the Commission is proposing amendments to rule 6c–10 that would permit mutual funds to impose deferred sales loads generally, including loads payable in installments (''installment loads''); the amendments also would modify most of the substantive requirements of rule 6c–10 as adopted here.[1]

A condition in many CDSL exemptive orders granted to date requires applicants to comply with rule 6c–10 as originally proposed or as it may be reproposed, adopted, or amended. Rule 6c–10 as adopted here constitutes the rule as adopted within the meaning of that condition; the amendments that the Commission is proposing in the companion release do not constitute the rule as reproposed or amended within the meaning of that condition and may not be relied upon by those applicants.

I. Introduction and Background

The Commission proposed rule 6c–10 in 1988 to allow mutual funds to impose deferred sales loads generally, including CDSLs, as well as other loads paid at redemption and sales loads payable in installments.[2] The Commission received 33 comment letters.[3] Although the commenters generally supported the proposal to allow CDSLs, some commenters questioned the need for certain substantive requirements in the rule. Commenters had mixed reactions to the proposed provisions for installment loads.

Since the proposal of rule 6c–10, the Commission (or the Division of Investment Management exercising delegated authority) has issued almost 200 exemptive orders permitting funds to impose CDSLs and continues to receive such applications. Also since the original proposal, the National Association of Securities Dealers, Inc. (''NASD'') has amended the provisions of its Rules of Fair Practice that govern mutual fund sales charges (''NASD Sales Charge Rule''). The amendments address certain deferred sales charges, including CDSLs, and distribution charges paid by funds in accordance with rule 12b–1 under the Investment Company Act.[4]

The Commission has considered the comments on the proposal and the implications of the amendments to the NASD Sales Charge Rule and has concluded that it may be appropriate to modify the rule to eliminate most of the substantive requirements in the original proposal and rely upon the roles of disclosure and the overall limits in the NASD Sales Charge Rule. Instead of adopting rule 6c–10 with these changes, the Commission is proposing modifications to rule 6c–10 to obtain the benefit of public comment on this approach and on issues raised by deferred loads other than CDSLs.

In light of the Commission's extensive experience under the CDSL exemptive

[1] Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995).

[2] Exemptions for Certain Registered Open-End Management Investment Companies To Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 [hereinafter Proposing Release].

[3] The commenters included the American Bar Association Subcommittee on Investment Companies and Investment Advisers (the ''ABA Subcommittee''); the American Council of Life Insurance; Deutsche Bank AG New York Branch (''Deutsche Bank'') (commenting outside the comment period); Fidelity Management and Research Company; Gaston & Snow; IDS Financial Services, Inc. (''IDS Financial''); IDS Mutual Fund Group; the Investment Company Institute (the ''ICI'') (commenting both within and outside the comment period); the Keystone Group, Inc.; the National Association of Securities Dealers, Inc.; NASL Financial Services, Inc. (commenting outside the comment period); NYLIFE Securities, Inc.; Simpson, Thacher & Bartlett (''Simpson Thacher'') (commenting outside the comment period); Templeton Funds Management, Inc.; and 19 individual investors. The comment letters are available for public inspection and copying at the Commission's public reference room in File No. S7–24–88.

[4] 17 CFR 270.12b-1.