

based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a significant regulatory action under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and States, or on the distribution or power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 140

Administrative practice and procedure, Aliens, Immigration.

Accordingly, part 240 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

1. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

2. Section 240.21 is added to read as follows:

§ 240.21 Suspension of deportation and adjustment under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment under section 240A(b) of the Act for certain nonpermanent residents.

(a) Applications for suspension of deportation under section 244(a) of the Act (as in effect before April 1, 1997) or cancellation of removal and adjustment of status under section 240A(b) of the Act that meet the statutory requirements and warrant a favorable exercise of discretion may be granted only on a conditional basis. The order conditionally granting relief shall state which paragraph of section 244(a) of the Act (as in effect before April 1, 1997) or section 240A(b) of the Act applies. No application for suspension or

cancellation shall receive a favorable exercise of discretion where the applicant has been granted asylum or adjustment of status while the suspension or cancellation application is pending. A decision to deny as a matter of discretion an application for suspension or cancellation on this basis shall be reconsidered where an appeal of a decision granting asylum or adjustment is sustained by the Board of Immigration Appeals.

(b) An alternate order of voluntary departure, deportation, or removal must be entered when there is a conditional grant of suspension or cancellation. The alternate order shall take effect if the condition is not ultimately removed.

(c) An order conditionally granting an application for suspension or cancellation is appealable to the Board pursuant to the procedures set forth in this chapter, and the time for appeal by the Service of the conditional grant or for appeal by the alien of the finding of deportability or of any denial of other relief by the immigration judge shall run from the date of such order.

(d) If, on appeal, the Board determines that an application for suspension of deportation or cancellation of removal meets the statutory requirements and warrants a favorable exercise of discretion, such application shall be granted on a conditional basis, even if an immigration judge granted the application without condition.

Dated: October 1, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97-26385 Filed 10-1-97; 11:36 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-22835; File No. S7-24-96]

RIN 3235-AG72

Rule Amendments Relating to Multiple Class and Series Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits open-end management investment companies ("funds") to issue multiple classes of shares representing interests in the same portfolio. The amendments expand and

clarify the methods by which a multiple class fund may allocate among its classes income, gains and losses, and expenses not allocated to a particular class, and clarify the shareholder voting provisions of the rule. The Commission also is adopting a technical amendment that clarifies the application to series funds of the rule under the Investment Company Act that governs the use of fund assets to pay for the distribution of fund shares.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas M. J. Kerwin, Senior Counsel, Office of Regulatory Policy, at (202) 942-0690, or, regarding accounting issues, John S. Capone, Assistant Chief Accountant, Office of the Chief Accountant, at (202) 942-0590, in the Division of Investment Management, Mail Stop 10-2, Securities and Exchange Commission, 450 Fifth Street, N.W., 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, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rules 18f-3 [17 CFR 270.18f-3] and 12b-1 [17 CFR 270.12b-1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").

Executive Summary

The Commission is adopting amendments to rule 18f-3 under the Investment Company Act, the rule that permits a fund to issue multiple classes of shares representing interests in the same investment portfolio. The amendments expand the specified methods a multiple class fund may use to allocate among its classes income, gains and losses (including unrealized appreciation or depreciation), and expenses not allocated to a particular class. The amendments also permit a fund to use any other allocation method that the fund's board of directors determines is fair to the shareholders of each class. In addition, the amendments clarify the shareholder voting rights provision of the rule.

The Commission also is adopting a technical amendment to rule 12b-1 under the Investment Company Act, the rule that governs the use of fund assets to pay for the distribution of fund shares in accordance with a "rule 12b-1 plan." The amendment codifies existing interpretations of how various provisions of the rule apply to a "series"

fund (*i.e.*, a fund that offers investors an opportunity to invest in one or more portfolios, each of which has a specific investment objective).

I. Discussion

A. Rule 18f-3

Rule 18f-3 under the Investment Company Act establishes a framework for a fund's issuance of multiple classes of shares representing interests in the same portfolio. A fund generally establishes a multiple class arrangement to offer investors a choice of methods for paying distribution costs or to allow the fund to use alternative distribution channels more efficiently. Rule 18f-3 addresses issues that may create conflicts among multiple classes, including how a fund must allocate to each class its share of income, gains and losses, and expenses that are not allocated to a particular class ("fundwide expenses").¹

Rule 18f-3(c) permits a fund generally to allocate income, gains and losses, and fundwide expenses based on the ratio of class net assets to fund net assets ("relative net assets").² The rule also permits a fund that declares dividends daily (a "daily dividend fund"), such as a money market fund, to select either of two alternative allocation methods.³ A daily dividend fund that maintains the same net asset value ("NAV") per share in each class may allocate income, gains and losses, and fundwide expenses to each share without regard to class.⁴ A

¹ In this release, "gains and losses" include both realized gains and losses and unrealized appreciation and depreciation. "Fundwide expenses" may include expenses that are attributable to more than one class but fewer than all classes, such as the costs of adding new classes to an existing multiple class structure. See 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, Investment Company Act Release No. 20915 at nn.26-27 and accompanying text (Feb. 23, 1995) [60 FR 11876 (Mar. 2, 1995)] [hereinafter 1995 Release].

² Rule 18f-3(c)(1) [17 CFR 270.18f-3(c)(1)]; see amended rule 18f-3(c)(1)(i) [17 CFR 270.18f-3(c)(1)(i)].

³ Rule 18f-3(c)(2) [17 CFR 270.18f-3(c)(2)]; see amended rule 18f-3(c)(2)(i) [17 CFR 270.18f-3(c)(2)(i)] (defining a daily dividend fund as "any company that has a policy of declaring distributions of net investment income daily, including any money market fund that determines net asset value using the amortized cost method permitted by section 270.2a-7 [rule 2a-7]").

⁴ Rule 18f-3(c)(2)(i) [17 CFR 270.18f-3(c)(2)(i)]; see amended rule 18f-3(c)(1)(iv) [17 CFR 270.18f-3(c)(1)(iv)]. Use of this method in those circumstances is equivalent to allocation based on relative net assets. The rule also requires funds using this method to obtain the agreement of their service providers that, to the extent necessary to assure that all classes maintain the same NAV per share, providers will waive or reimburse class expenses. Rule 18f-3(c)(2)(i). The amended rule clarifies that amounts waived or reimbursed by

daily dividend fund that maintains the same NAV per share in each class may also make these allocations to each class based on relative net assets after subtracting the value of subscriptions for non-settled shares (*i.e.*, shares for which payment in federal funds has not been received) (the "settled shares method").⁵

In September 1996 the Commission proposed amendments to rule 18f-3 to give daily dividend funds greater flexibility in using the settled shares method, to permit funds to use a new allocation method (the "simultaneous equations method"), and to clarify certain other aspects of the rule.⁶ The Commission received letters from two commenters in response to the proposal, both generally favoring the proposed amendments.⁷ The Commission is adopting the proposed amendments with certain revisions, as described below.

1. Expanded Allocation Methods

a. Settled Shares Method. Some daily dividend funds use the settled shares method in reliance upon exemptive orders that predate the adoption of rule 18f-3.⁸ These funds have been unable to rely on rule 18f-3 because they do not maintain the same NAV per share in each class, a condition for use of the settled shares method under the rule.

service providers under these agreements may not be carried forward or recouped later. Amended rule 18f-3(c)(1)(iv).

⁵ Rule 18f-3(c)(2)(ii) [17 CFR 270.18f-3(c)(2)(ii)]; see amended rule 18f-3(c)(1)(iii), (c)(2)(iii) [17 CFR 270.18f-3(c)(1)(iii), (c)(2)(iii)]. The settled shares method is consistent with the policy of many daily dividend funds to withhold dividends from non-settled shares. Payment of dividends on non-settled shares would dilute dividends paid on settled shares, since fund income is attributable only to settled shares. See Rule Amendments Relating to Multiple Class and Series Investment Companies, Investment Company Act Release No. 22203 at n.7 (Sept. 9, 1996) [61 FR 49022 (Sept. 17, 1996)] [hereinafter Proposing Release] (investor's payment in federal funds may not be collected until three days after share purchase; at time of purchase fund may buy portfolio securities to be paid for in three days, but fund does not earn interest on securities until it makes payment; buying other portfolio securities that settle daily against federal funds is not feasible until investor's payment has been collected).

⁶ See Proposing Release, *supra* note 5.

⁷ See Letter from Subcommittee on Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association ("ABA"), to Jonathan G. Katz, Secretary, SEC (Nov. 19, 1996) (hereinafter "ABA Letter"); Letter from Gregory M. Smith, Director-Operations, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC (Nov. 18, 1996) (hereinafter "ICI Letter").

⁸ Such orders may require compliance with conditions, such as disclosure of differences among multiple classes, that do not apply to multiple class funds that rely on rule 18f-3 and related requirements of Form N-1A [17 CFR 239.15A, 274.11A].

Because the settled shares method produces appropriate allocations even if NAV per share differs among classes, the Commission proposed to amend rule 18f-3 to permit a daily dividend fund to use the settled shares method without maintaining the same NAV per share in each class. Commenters supported the amendment, which the Commission is adopting as proposed.⁹

The Commission is also amending rule 18f-3 to clarify that a daily dividend fund may simultaneously use the settled shares method to allocate income and fundwide expenses and use the relative net assets method to allocate gains and losses.¹⁰ This combination of methods is consistent with fund policies that commonly permit the participation of non-settled shares in any increase or decrease in NAV that results from appreciation or depreciation of portfolio securities, while excluding non-settled shares from participation in daily dividends.¹¹

b. Simultaneous Equations Method. The Commission is adopting, as proposed, an amendment to rule 18f-3 to permit any fund to allocate income, gains and losses, and fundwide expenses based on an additional method, the "simultaneous equations method."¹² Under this method, allocations are based on simultaneous equations designed to produce an annualized rate of return of each class that generally differs from that of the other classes only by the expense differentials among the classes.¹³ A fund

⁹ See amended rule 18f-3(c)(1)(iii).

¹⁰ Amended rule 18f-3(c)(1)(iii). The staff of the Commission previously approved use of this combination of methods. See Letter from the Division of Investment Management to Investment Company Chief Financial Officers at 5 (Nov. 2, 1995).

¹¹ See ICI Letter, *supra* note 7, at 2 (daily dividend funds generally process purchase orders when received, before the collection of payment in federal funds, to enable the purchaser of non-settled shares to participate in changes in NAV per share from appreciation or depreciation of portfolio securities during collection period; most funds nevertheless pay dividends only on settled shares). Combining these methods may be essential if a fund maintains the same NAV per share for all classes, since allocating gains and losses (which affect NAV) based only on settled shares could cause a divergence in NAV among classes. See Proposing Release, *supra* note 5, at n.11 (use of settled shares method requires reduction of net assets of fund and each class by unpaid subscriptions; percentage reduction of each class's net assets would vary for each class because of differing amounts of non-settled shares; resulting different allocations of gains and losses to each class would affect NAV differently).

¹² Amended rule 18f-3(c)(1)(ii), (c)(2)(iv) [17 CFR 270.18f-3(c)(1)(ii), (c)(2)(iv)].

¹³ Amended rule 18f-3(c)(2)(iv). For example, if fundwide expenses amounted to .75% of net assets for each class on average, and Class A were assessed a class expense ratio of .30% of net assets annually

using this method would allocate each day's income, gains and losses, and fundwide expenses to each class, and simultaneously reallocate cumulative undistributed income and undistributed or unrealized capital items among the classes.¹⁴ Commenters agreed that the results derived from this method are consistent with the purpose of the rule's allocation provisions.

The amended rule does not specify particular equations to be used in implementing this method.¹⁵ Appropriate equations may vary depending on the number of classes offered and other factors such as whether expense differentials among classes are fixed or variable. Commenters also confirmed the Commission's understanding that equations may be further refined as funds gain more experience in using this method.¹⁶

c. Other Allocation Methods. The Commission is also amending rule 18f-3 to permit a fund to use any appropriate allocation method not specified in the rule if the fund's directors, including a majority of directors who are not interested persons of the fund, determine that the method is fair to each class of shareholders.¹⁷ The amendment also would require directors to determine that under the new method, the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.¹⁸ This amendment will provide funds with flexibility and avoid the possible need for further administrative relief to permit new allocation methods that may be developed. The Commission believes it is appropriate to require a specific board determination

and Class B were assessed .80% for class expenses, use of the simultaneous equations method during a full year that produced gross returns of 10.75% should result in an annualized rate of return of approximately 9.70% for Class A and 9.20% for Class B.

¹⁴ The equations should allocate the day's income, realized gains (or losses), unrealized appreciation (or depreciation), and fundwide expenses and reallocate each class's undistributed net investment income, undistributed realized gains (or losses), and unrealized appreciation (or depreciation).

¹⁵ An example of equations for a fund having two classes of shares appeared in an appendix to the Proposing Release, and is attached to this release as Appendix A.

¹⁶ See ICI Letter, *supra* note 7, at 2 (recommending that Commission not specify particular equations). Any equations selected generally should be applied on a consistent basis. See *infra* note 21 and accompanying text.

¹⁷ Amended rule 18f-3(c)(1)(v) [17 CFR 270.18f-3(c)(1)(v)]; see section 2(a)(19) of the Investment Company Act [15 U.S.C. 80a-2(a)(19)] (defining "interested person" of a fund).

¹⁸ See *supra* note 13 and accompanying text.

concerning the fairness of an alternative allocation method to assure that the selection of such a method is fair to each class.¹⁹ In making this determination, the fund board may reasonably rely on the opinions of experts such as accounting firms.²⁰ A fund would be expected to apply on a consistent basis any allocation method selected under this or any other provision of the rule.²¹

2. Voting Rights

Rule 18f-3 contains certain conditions that are applicable to arrangements involving a class of shares with one type of distribution charge (the "purchase class") that automatically convert into another class (the "target class") after a specified period of time.²² The rule requires a fund having such an arrangement to obtain the approval of the shareholders of the purchase class whenever the fund materially increases expenses for the target class.²³ The amended rule, as proposed, clarifies that this provision applies only if the expense increase is submitted for a separate vote of target class shareholders.²⁴

B. Rule 12b-1

The Commission also is adopting as proposed a technical amendment to rule 12b-1 that clarifies the rule's application to separate series or portfolios of a fund.²⁵ Rule 12b-1 permits the use of fund assets to finance

¹⁹ The allocation methods specified in the rule provide standards for determining whether a new allocation method is fair to shareholders.

²⁰ The amended rule should not impose significant additional burdens on fund boards, which remain free to permit only the use of one of the allocation methods specified in the rule.

²¹ Amended rule 18f-3(c)(1) [17 CFR 270.18f-3(c)(1)]; see also 1995 Release, *supra* note 1, at text accompanying nn. 24-25. Because the selected allocation method should be consistently applied from period to period, changes in the method are expected to be rare. See also rule 18f-3(d) [17 CFR 270.18f-3(d)] (before any material amendment of a plan governing a multiple class arrangement, the fund's directors must determine that the plan as proposed to be amended, including the expense allocation, is in the best interests of each class individually and the fund as a whole).

²² The purchase class typically pays an asset-based distribution fee and a contingent deferred sales charge. The conversion feature is intended to permit long-term shareholders to receive the benefit of a lower distribution fee (or no fee) charged to the target class. See Proposing Release, *supra* note 5, at n.16 and accompanying text.

²³ In the alternative, the fund could establish a new target class for purchase class shareholders on the same terms that applied to the target class before the increase.

²⁴ Amended rule 18f-3(e)(2)(iii) [17 CFR 270.18f-3(e)(2)(iii)]. An increase that implicates this provision would include, for example, a proposal to increase distribution fees materially for the target class under a rule 12b-1 plan or certain shareholder services plans.

²⁵ Amended rule 12b-1(g) [17 CFR 270.12b-1(g)].

the distribution of fund shares pursuant to a written plan that describes the distribution financing arrangement and contains certain conditions.²⁶ Among other conditions, the rule 12b-1 plan must allow fund shareholders to vote on certain matters including approval, amendment, or termination of the plan.²⁷ Rule 12b-1 provides that a plan may cover more than one class of shares if the plan's provisions are severable for each class and if votes by shareholders and other required actions are taken separately for each class.²⁸ The amendment codifies prior interpretations that a rule 12b-1 plan also may cover more than one series or portfolio under the same conditions applicable when a plan covers more than one class.²⁹

II. Cost/Benefit Analysis and Effects On Competition, Efficiency, And Capital Formation

In the proposing release, the Commission provided a Cost-Benefit Analysis on the amendments and requested comments. No comments were received on the analysis. The Commission is sensitive to the costs and benefits imposed by its rules. The amendments to rule 18f-3 provide greater flexibility to multiple class funds in allocating to each class its proportionate share of income, gains and losses, and fundwide expenses. The amended rule gives every fund a selection of one or more new specified methods without limiting the use of previously authorized methods. The amended rule also authorizes the use of an unspecified method selected by the fund subject to appropriate safeguards. A fund's selection of any method permitted by the amendments should not substantially increase the fund's costs in making allocations. The amended rule also reduces costs by allowing more funds to rely on the rule instead of obtaining and complying with exemptive orders, and by eliminating

²⁶ Rule 12b-1(b) [17 CFR 270.12b-1(b)].

²⁷ See rule 12b-1(b)(1), (b)(3)(iii) to (iv)(A), (b)(4), (g) [17 CFR 270.12b-1(b)(1), (b)(3)(iii) to (iv)(A), (b)(4), (g)].

²⁸ Rule 12b-1(g).

²⁹ Amended rule 12b-1(g); see Distribution of Shares by Registered Open-End Management Investment Company, Investment Company Act Release No. 22201 at n.7 and accompanying text (Sept. 9, 1996) [61 FR 49010 (Sept. 17, 1996)] (rule 12b-1 has been interpreted to treat each series of a fund as a separate fund; a series or class not publicly offered should be treated in same way as a fund not publicly offered). The amended rule also deletes current rule 12b-1(g)'s description of certain voting rights of purchase class shareholders under rule 18f-3, which is a matter addressed by rule 18f-3 itself. The amended rule substitutes a reference to amended rule 18f-3(e)(2)(iii). Amended rule 12b-1(g).

unnecessary requirements to solicit votes of purchase class shareholders. The amendment to rule 12b-1 does not impose a burden because it codifies an existing interpretation of the rule.

Section 2(c) of the Investment Company Act provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.³⁰ The Commission has considered the amendments to rule 18f-3 and rule 12b-1 in light of these standards. The Commission believes the amendments to rule 18f-3 are consistent with the public interest and may promote efficiency and competition because they broaden the scope and flexibility of an exemptive rule, may reduce costs and other burdens for funds, and may thereby encourage more funds to offer multiple classes of shares. The Commission believes that the amendments will have no adverse effect on capital formation. The amendment to rule 12b-1, as a codification of an existing interpretation of the rule, will not have significant effects on efficiency, competition, or capital formation.

III. Summary of Final Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 22203. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604. The FRFA indicates that the amendments to rule 18f-3 enable multiple class funds, including small entities, to rely on the rule instead of exemptive orders and to benefit from more flexible compliance requirements by expanding specified allocation methods and permitting the use of an unspecified method if directors determine that it is fair. In addition, the FRFA states that the amendments clarify compliance requirements by eliminating unnecessary voting provisions consistent with the Commission's original intent. The FRFA explains that the amendment to rule 12b-1 codifies existing interpretations treating multiple series of a series fund like multiple classes of a portfolio.

The FRFA notes that in response to comments from the public, the Commission modified the amendments to permit the selection of unspecified methods. The FRFA also discusses the amendments' effect on small entities that are registered open-end management investment companies. For purposes of the amendments, small entities are those having net assets of \$50 million or less as of the end of their most recent fiscal year. The Commission estimates that there are 500 small entities out of 3000 active open-end management investment companies, and that 43 of those 500 offer multiple classes of shares. The FRFA states that the rules do not impose any new reporting, recordkeeping, or other compliance requirements.

The FRFA also discusses the Commission's efforts to minimize significant economic impact on small entities, noting that the amendments' effect is generally positive for all affected funds including small entities. The FRFA notes that the Commission considered several alternatives that might minimize any effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rules or any part of the rules for small entities. The FRFA states that the amendments generally increase flexibility, simplify or clarify existing compliance requirements, and introduce performance standards by permitting the use of an unspecified allocation method determined to be fair. In light of these considerations, the FRFA states that it would be inconsistent with the purposes of the Act to exempt small entities from the amendments or to specify different requirements for small entities. Different compliance or reporting requirements for small entities are not necessary because the rules do not establish any new reporting, recordkeeping, or compliance requirements. The Commission has determined that it is not feasible to further clarify, consolidate, or simplify the rules for small entities consistently with the protection of investors.

Cost-benefit information in the "Cost/Benefit Analysis" section of this Release is reflected in the Analysis. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Thomas M. J. Kerwin, Mail Stop 10-2, Securities

and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IV. Statutory Authority

The Commission is amending rule 12b-1 pursuant to the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a-12(b), -37(a)], and is amending rule 18f-3 under sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. 80a-6(c), -18(i), -37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text Of Rule Amendments

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 revising 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 series or class of shares, the provisions of the plan must be severable for each series or 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 series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f-3(e)(2)(iii).

3. Section 270.18f-3 is amended by revising paragraphs (c) and (e)(2)(iii) to read as follows:

§ 270.18f-3 Multiple class companies.

* * * * *

(c) (1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company ("relative net assets");

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided that* the

³⁰ 15 U.S.C. 80a-2(c).

company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each share without regard to class, *provided that* the company is a Daily Dividend Fund that maintains the same net asset value per share in each class; 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; and that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, *provided that* a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net investment income daily, including any money market fund that determines net asset value using the amortized cost method permitted by § 270.2a-7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the value of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses and reallocation to each class of undistributed net investment income, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs

from that of the other classes only by the expense differentials among the classes.

* * * * *

(e) * * *

(2) * * *

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

* * * * *

Dated: September 26, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Appendix A—Simultaneous Equations Method

The equations set forth below are examples of a set of simultaneous equations that could be used as an allocation method in a multiple class fund with two classes at the end of day t. The inception date of class B shares is assumed to be on or after the inception date of class A shares.

Equation 1: $A_t + B_t = G_t + C_t$

Equation 2: $A_t/S_{at} - B_t/S_{bt} = dx(NAV_0)$

where:

A_t: the total net assets to be allocated to class A at the end of day t

B_t: the total net assets to be allocated to class B at the end of day t

G_t: the cumulative undistributed net change in assets from operations for the fund at the end of day t

C_t: the cumulative capital for the fund at the end of day t

S_{at}: the number of shares in class A at the end of day t

S_{bt}: the number of shares in class B at the end of day t

d: the time adjustment factor, calculated as the number of days since the inception of class B or the ex-dividend date of the last income distribution, whichever is more recent, divided by 365

x: the differential in expense ratios between the two classes

NAV₀: the NAV per share for class A and class B on day 0, where day 0 is either the day class B commences trading or the ex-dividend date of the last income distribution, whichever is more recent.

[FR Doc. 97-26145 Filed 10-2-97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191

[T.D. 97-82]

Technical Amendments to the Customs Regulations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes various minor technical changes and corrections to the Customs Regulations, in accordance with the Customs policy of periodically reviewing its regulations to ensure that they are current.

EFFECTIVE DATE: October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Regulations Branch, Office of Regulations and Rulings (202-927-2268).

SUPPLEMENTARY INFORMATION:

Background

The technical amendments set forth in this document involve Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191 of the Customs Regulations (19 CFR Parts 4, 10, 11, 12, 18, 24, 103, 112, 122, 127, 133, 141, 143, 148, 151, 152, 159, 171, 177 and 191) and are summarized below.

Discussion of Changes

Part 4

1. In the table set forth under § 4.20(c), in the column headed "Light money", the second figure (".05") is corrected to read ".50".

2. At the end of § 4.80(a)(3), the reference to "46 CFR subpart 67.03" is corrected to read "46 CFR 67.3".

Part 10

1. In the third sentence of § 10.1(i), the reference to "§ 142.11(b)" is corrected to read "§ 141.11(b)".

2. In the last sentence of § 10.7(d), the reference to "§ 10.6(c)" is corrected to reflect that present § 10.6 (which corresponds in substance to former § 10.6(c)) is not subdivided.

3. In the second sentence of § 10.11(b), the reference to "item 807.00" is replaced by the appropriate Harmonized Tariff Schedule of the United States (HTSUS) reference which appears correctly in the first sentence.

4. In § 10.41b, the number "12" appearing in the first sentence of the introductory text of paragraph (b) and