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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 270 and 274

[Release No. IC-23786; File No. S7-31-98]

RIN 3235-AG29

Deregistration of Certain Registered Investment Companies

AGENCY: Securities and Exchange
Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule and form under the Investment Company Act of 1940 that govern the deregistration of registered investment companies. The Commission also is adopting amendments that require investment companies to file the form electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. The amendments are designed to expedite the process for deregistering investment companies.

EFFECTIVE DATE: The rule amendments will become effective June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robin Gross Lehv, Staff Attorney, or Penelope Saltzman, Senior Counsel, at (202) 942-0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W.,

Washington, D.C. 20549-0506. For additional information, including questions about filing Form N-8F, contact the Office of Investment Company Regulation, Division of Investment Management, at (202) 942-0564, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 8f-1 [17 CFR 270.8f-1] and Form N-8F [17 CFR 274.218] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or "Act"), and to rule 101 of the Commission's Regulation S-T [17 CFR 232.101].

I. Discussion

Under section 8(f) of the Investment Company Act, the Commission may deregister a registered investment company ("fund") if it determines the fund is no longer an "investment company."¹ In order to expedite the deregistration process and assist funds in preparing their applications, in 1978 the Commission adopted rule 8f-1 and Form N-8F.² Rule 8f-1 describes the circumstances in which funds may use Form N-8F to apply for a deregistration order, and Form N-8F specifies the information that a fund must provide.

In December 1998, the Commission proposed to revise Form N-8F to simplify the form, eliminate unnecessary items, and refocus the questions to better elicit the information we need to make the finding under section 8(f) to deregister a fund.³ We also proposed to amend rule 8f-1 to expand the types of circumstances in which a fund may use Form N-8F to apply for a deregistration order.⁴ Finally, we proposed to require that Form N-8F, like most other documents filed by funds, be submitted

¹ 15 U.S.C. 80a-8(f).

² See Deregistration of Certain Investment Companies and Quarterly Reports of Management Investment Companies, Investment Company Act Release No. 10237 (May 11, 1978) [43 FR 21664 (May 19, 1978)].

³ See Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23588 (Dec. 4, 1998) [63 FR 69236 (Dec. 16, 1998)] ("Proposing Release").

⁴ Under the proposed amendments, a fund could use the form if it (i) has sold substantially all of its assets to another fund or merged into or consolidated with another fund, (ii) has distributed substantially all of its assets to its shareholders and completed, or is in the process of, winding up its affairs, (iii) qualifies for an exclusion from the definition of investment company under section 3(c)(1) or section 3(c)(7) of the Act, or (iv) has decided to become a business development company.

electronically through the Commission's EDGAR system.

The Commission received one comment letter, which supported the proposed amendments and urged their prompt adoption.⁵ The commenter agreed that the amendments would facilitate completion of the form and expedite the deregistration process. We are adopting the amendments substantially as proposed, with minor technical modifications⁶ in response to issues raised by the commenter.⁷

II. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. The rule and form amendments are designed to decrease the regulatory burdens for funds that apply for a deregistration order. The amendments (i) revise the content and format of Form N-8F, making it easier to understand and complete, (ii) expand the circumstances under which funds may use the form to apply to deregister, and (iii) require the form to be filed electronically.

As explained in greater detail in the cost-benefit analysis of the Proposing Release, the Commission believes these changes will result in cost and time savings for registered investment companies. Specifically, we estimated that the amendments will reduce the average time that it takes to complete the form by about 50 percent, and will similarly reduce the number of applications that require the applicant to provide additional or clarifying information.⁸ The one comment letter we received agreed that the proposed amendments would expedite the registration process, but did not provide

⁵ See Letter from Investment Company Institute (Feb. 5, 1999) (placed in File No. S7-31-98).

⁶ Among other technical changes, we deleted the question requesting the date that the fund filed a notice of registration, because that information is not necessary to our determination under section 8(f) if the fund provides its registration number, as requested by the form. See Proposed Form N-8F, item 10; Amended Form N-8F, item 3.

⁷ Form N-8F contains a reminder, but not a requirement, that a deregistering fund must file a final Form N-SAR [17 CFR 274.101] in accordance with other rules under the Act. See Amended Form N-8F, instruction 6. The commenter suggested that the Commission eliminate the obligation to file a final Form N-SAR in certain circumstances. We are considering amendments to Form N-SAR, and will consider the commenter's suggestion in the context of that rulemaking.

⁸ The Commission believes the form typically is completed by support staff. Based on an estimated cost of \$15 per hour for a clerical worker to complete Form N-8F and an estimate of 130 applications filed each year, the Commission estimates the current total annual cost of filing the form is \$11,700 (130 × \$15 × 6 hrs.), while the total annual cost of filing the amended form would be \$5,850 (130 × \$15 × 3 hrs.).

specific estimates of any costs or benefits of the amendments.

III. Paperwork Reduction Act

Certain provisions of the amendments to rule 8f-1 and Form N-8F constitute a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501-3520]. The Commission solicited, but did not receive, comments on the collection of information requirements in the Proposing Release. The Commission submitted the proposed amendments to the Office of Management and Budget ("OMB") pursuant to 44 U.S.C. 3507(d) and received approval of the amendments' collection of information requirements (OMB control number 3235-0157).⁹ An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information is not mandatory but is recommended for all funds that seek to deregister under the circumstances described in rule 8f-1. The amended rule does not require that the collection of information be made public or kept confidential by the parties.

IV. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") concerning rule 8f-1 and Form N-8F has been prepared in accordance with 5 U.S.C. 604. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with 5 U.S.C. 603, and a summary of the IRFA was included in the Proposing Release. The Commission received no comments on the IRFA.

The FRFA notes that the amendments are intended to improve the quality of information provided on the form and to reduce the time and effort required to complete the form. The amendments do not impose new burdens on respondents other than the requirement that the form be filed through the EDGAR system. The amendments will not impose any new reporting or recordkeeping requirements.

As discussed more fully in the FRFA, the amendments will affect small

⁹ As stated in the Proposing Release, the Commission estimates that the amendments will reduce the reporting and recordkeeping burden of the rule and form to 3 hours per respondent. Based on past experience, we estimate that each year approximately 130 funds will apply to deregister, and that each applicant will apply only once. Therefore, we estimate that the annual reporting and recordkeeping burden for the amended form will be 3 hours per applicant, and 390 hours total for all applicants.

businesses or small organizations (collectively, "small entities"), as defined by the Commission's rules, in the same manner as all other entities who use Form N-8F to deregister. The Commission believes the amendments will decrease burdens on all funds by facilitating and expediting the deregistration process, saving them time and money.

The FRFA states that for purposes of the Investment Company Act and the Regulatory Flexibility Act, a small entity is a fund that, together with other funds in the same group of related funds, has net assets of \$50 million or less as of the end of its most recent fiscal year.¹⁰ Of approximately 3900 active funds (including business development companies), 339 funds are small entities. Any of these 339 funds that applies to deregister under circumstances described in amended rule 8f-1 could use Form N-8F.

Finally, the FRFA notes that the Commission considered various alternatives that might minimize the economic impact of the amendments on small entities. These include: (i) The establishment of differing compliance requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. The FRFA concludes that alternative requirements or simplification or consolidation of the requirements is unnecessary because the amendments are designed to reduce the compliance burdens for all funds, including small entities. In addition, an exemption from any of the requirements for small entities would increase their regulatory burden rather than decrease it.

A copy of the FRFA may be obtained by contacting Robin Gross Lehv, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0506.

V. Statutory Authority

The Commission is amending rule 8f-1 and Form N-8F pursuant to the authority set forth in section 38(a) [15 U.S.C. 80a-37(a)] of the Investment Company Act.

List of Subjects

17 CFR Part 232

Reporting and recordkeeping requirements.

17 CFR Part 270

Investment companies, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements.

Text of Rule and Form Amendments

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

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80-30 and 80a-37.

§ 232.101 [Amended]

2. Section 232.101 is amended in paragraph (a)(1)(iv) by removing the phrase ", 8(f)" and by removing the phrase ", 80a-8(f)".

3. Section 232.101 is amended in paragraph (c)(11) by removing the phrase "8(f)," and by removing the phrase "80a-8(f),".

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

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

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39 unless otherwise noted;

* * * * *

5. Section 270.8f-1 is revised to read as follows:

§ 270.8f-1 Deregistration of certain registered investment companies.

A registered investment company that seeks a Commission order declaring that it is no longer an investment company may file an application with the Commission on Form N-8F (17 CFR 274.218) if the investment company:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of "investment company" under section 3(c)(1) (15 U.S.C. 80a-3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a-3(c)(7)) of the Act; or

(d) Has become a business development company.

Note to § 270.8f-1: Applicants who are not eligible to use Form N-8F to file an application to deregister may follow the general guidance for filing applications under rule 0-2 (17 CFR 270.0-2) of this chapter.

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

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

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

7. Section 274.218 and Form N-8F are revised to read as follows:

§ 274.218 Form N-8F, application for deregistration of certain registered investment companies.

This form must be used as the application for an order of the Commission in cases in which the applicant is a registered investment company that:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of "investment company" under section 3(c)(1) (15 U.S.C. 80a-3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a-3(c)(7)) of the Act; or

(d) Has become a business development company.

Note: Form N-8F does not, and the amendments will not, appear in the Code of Federal Regulations. A copy of Form N-8F is attached as an Appendix to this document.

Dated: April 15, 1999.

By the Commission.

Jonathan G. Katz,
Secretary.

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¹⁰ Rule 0-10 under the Investment Company Act [17 CFR 270.0-10].

OMB APPROVAL

OMB Number: 3235-0157

Expires: March 31, 2002Estimated average burden
hours per response.....3

APPENDIX

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form N-8F

Application for Deregistration of Certain Registered Investment Companies.**Instructions for using Form N- 8F**

This form may be filed by an investment company (“fund”) that is currently registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (“Act”), is seeking to deregister, and is in one of the four categories in Instruction 1 below.

1. To use this form, the fund must be seeking to deregister under one of the following circumstances identified in rule 8f-1 [17 CFR 270.8f-1]:
 - (a) The fund has (i) sold substantially all of its assets to another registered fund or (ii) merged into or consolidated with another registered fund (“**Merger**”);
 - (b) The fund has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs (“**Liquidation**”);
 - (c) The fund qualifies for an exclusion from the definition of “investment company” under section 3(c)(1) or section 3(c)(7) of the Act (“**Abandonment of Registration**”); or
 - (d) The fund has become a business development company (“**Business Development Company**”).
2. If the fund is not eligible to use this form, refer to rule 0-2 under the Act [17 CFR 270.0-2] for general instructions on filing an application with the Commission. Applications for deregistration pursuant to rule 0-2 must be submitted electronically in accordance with rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] and the EDGAR Filer Manual.
3. This form and all exhibits must be submitted electronically to the Commission in accordance with rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] and the EDGAR Filer Manual.
4. Amendments to this form also must be filed electronically (see Instruction 3 above), and must include a verification identical to the one that appears at the end of this form.

5. No fee is required to submit this form or any amendments.
6. Funds are reminded of the requirement to timely file a final Form N-SAR with the Commission. See rule 30b1-1 under the Act [17 CFR 270.30b1-1]; Form N-SAR [17 CFR 274.101].

SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. A fund that wishes to deregister and is in one of the four categories in Instruction 1 may use this form. The principal purpose of this collection of information is to enable the Commission to determine that a registered investment company has ceased to be an investment company as defined by the Act or is a business development company. The Commission estimates that the burden for completing this form will be approximately 3 hours per filing. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. Responses to this collection of information will not be kept confidential.

TEXT OF THE FORM BEGINS ON THE NEXT PAGE

I. General Identifying Information

1. Reason fund is applying to deregister (check only one; for descriptions, see Instruction 1 above):

Merger

Liquidation

Abandonment of Registration

(Note: Abandonments of Registration answer only questions 1 through 15, 24 and 25 of this form and complete verification at the end of the form.)

Election of status as a Business Development Company

(Note: Business Development Companies answer only questions 1 through 10 of this form and complete verification at the end of the form.)

2. Name of fund:

3. Securities and Exchange Commission File No.: 811-_____

4. Is this an initial Form N-8F or an amendment to a previously filed Form N-8F?

Initial Application Amendment

5. Address of Principal Executive Office (include No. & Street, City, State, Zip Code):

6. Name, address and telephone number of individual the Commission staff should contact with any questions regarding this form:

7. Name, address and telephone number of individual or entity responsible for maintenance and preservation of fund records in accordance with rules 31a-1 and 31a-2 under the Act [17 CFR 270.31a-1, .31a-2]:

NOTE: Once deregistered, a fund is still required to maintain and preserve the records described in rules 31a-1 and 31a-2 for the periods specified in those rules.

8. Classification of fund (check only one):

Management company;

Unit investment trust; or

Face-amount certificate company.

9. Subclassification if the fund is a management company (check only one):
- Open-end Closed-end
10. State law under which the fund was organized or formed (e.g., Delaware, Massachusetts):
11. Provide the name and address of each investment adviser of the fund (including sub-advisers) during the last five years, even if the fund's contracts with those advisers have been terminated:
12. Provide the name and address of each principal underwriter of the fund during the last five years, even if the fund's contracts with those underwriters have been terminated:
13. If the fund is a unit investment trust ("UIT") provide:
- (a) Depositor's name(s) and address(es):
- (b) Trustee's name(s) and address(es):
14. Is there a UIT registered under the Act that served as a vehicle for investment in the fund (e.g., an insurance company separate account)?
- Yes No
- If Yes, for each UIT state:
- Name(s):
- File No.: 811-_____
- Business Address:
15. (a) Did the fund obtain approval from the board of directors concerning the decision to engage in a Merger, Liquidation or Abandonment of Registration?
- Yes No
- If Yes, state the date on which the board vote took place:
- If No, explain:
- (b) Did the fund obtain approval from the shareholders concerning the decision to engage in a Merger, Liquidation or Abandonment of Registration?
- Yes No
- If Yes, state the date on which the shareholder vote took place:

If No, explain:

II. Distributions to Shareholders

16. Has the fund distributed any assets to its shareholders in connection with the Merger or Liquidation?

Yes No

(a) If Yes, list the date(s) on which the fund made those distributions:

(b) Were the distributions made on the basis of net assets?

Yes No

(c) Were the distributions made pro rata based on share ownership?

Yes No

(d) If No to (b) or (c) above, describe the method of distributions to shareholders. For Mergers, provide the exchange ratio(s) used and explain how it was calculated:

(e) Liquidations only:

Were any distributions to shareholders made in kind?

Yes No

If Yes, indicate the percentage of fund shares owned by affiliates, or any other affiliation of shareholders:

17. Closed-end funds only:
Has the fund issued senior securities?

Yes No

If Yes, describe the method of calculating payments to senior securityholders and distributions to other shareholders:

18. Has the fund distributed all of its assets to the fund's shareholders?

Yes No

If No,

(a) How many shareholders does the fund have as of the date this form is filed?

(b) Describe the relationship of each remaining shareholder to the fund:

19. Are there any shareholders who have not yet received distributions in complete liquidation of their interests?

Yes No

If Yes, describe briefly the plans (if any) for distributing to, or preserving the interests of, those shareholders:

III. Assets and Liabilities

20. Does the fund have any assets as of the date this form is filed?

(See question 18 above)

Yes No

If Yes,

(a) Describe the type and amount of each asset retained by the fund as of the date this form is filed:

(b) Why has the fund retained the remaining assets?

(c) Will the remaining assets be invested in securities?

Yes No

21. Does the fund have any outstanding debts (other than face-amount certificates if the fund is a face-amount certificate company) or any other liabilities?

Yes No

If Yes,

(a) Describe the type and amount of each debt or other liability:

(b) How does the fund intend to pay these outstanding debts or other liabilities?

IV. Information About Event(s) Leading to Request For Deregistration

22. (a) List the expenses incurred in connection with the Merger or Liquidation:
- (i) Legal expenses:
 - (ii) Accounting expenses:
 - (iii) Other expenses (list and identify separately):
 - (iv) Total expenses (sum of lines (i)-(iii) above):
- (b) How were those expenses allocated?
- (c) Who paid those expenses?
- (d) How did the fund pay for unamortized expenses (if any)?
23. Has the fund previously filed an application for an order of the Commission regarding the Merger or Liquidation?

Yes No

If Yes, cite the release numbers of the Commission's notice and order or, if no notice or order has been issued, the file number and date the application was filed:

V. Conclusion of Fund Business

24. Is the fund a party to any litigation or administrative proceeding?

Yes No

If Yes, describe the nature of any litigation or proceeding and the position taken by the fund in that litigation:

25. Is the fund now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs?

Yes No

If Yes, describe the nature and extent of those activities:

VI. Mergers Only

26. (a) State the name of the fund surviving the Merger:
- (b) State the Investment Company Act file number of the fund surviving the Merger:
811-_____
- (c) If the merger or reorganization agreement has been filed with the Commission, state the file number(s), form type used and date the agreement was filed:
- (d) If the merger or reorganization agreement has not been filed with the Commission, provide a copy of the agreement as an exhibit to this form.

VERIFICATION

The undersigned states that (i) he or she has executed this Form N-8F application for an order under section 8(f) of the Investment Company Act of 1940 on behalf of _____,
(Name of Fund)

(ii) he or she is the _____ of _____, and (iii) all actions by
(Title) (Name of Fund)

shareholders, directors, and any other body necessary to authorize the undersigned to execute and file this Form N-8F application have been taken. The undersigned also states that the facts set forth in this Form N-8F application are true to the best of his or her knowledge, information and belief.

(Signature)
