

B and Class C shares of the Acquiring Funds, shareholders of the Acquired Funds will be deemed to have held the shares of the Acquiring Funds since the date the shareholders initially purchased the shares of the Acquired Fund.

6. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are similar, and in some cases identical, to those of the corresponding Acquiring Fund. Applicants state that the rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. USBAM will bear the costs associated with the Reorganizations.

7. The Board, including a majority of the Disinterested Directors, determined that the Reorganization is in the best interests of each Fund and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganizations, the Board considered various factors, including: (a) The terms and conditions of the Reorganizations; (b) the compatibility of the Funds' investment objectives, policies and limitations; (c) the potential opportunity for better investment performance of the Funds; (d) the potential for reduced operating expenses; (e) the potential elimination of confusion among shareholders with respect to products that may be considered duplicative; (f) the tax-free nature of the proposed Reorganizations; and (g) the fact that Reorganization expenses will be borne by USBAM.

8. Each Reorganization is subject to a number of conditions precedent, including: (a) Approval by the shareholders of each Acquired Fund; (b) receipt of certain opinions of counsel that the Reorganizations will be tax-free for the Funds' shareholders; (c) receipt from the Commission of an exemption from section 17(a) of the Act for the Reorganization; and (d) that the registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective. Each Acquired Fund will declared dividend(s) or distribution(s) which, together with all previous dividends and distributions, shall have the effect of distributing to its shareholders all investment company taxable income for all taxable periods ending on the Closing Date (computed without regard to any deduction for dividends paid) and all of its net capital gains realized in all taxable periods ending on the Closing Date (after reductions for any capital loss carryovers). Each Reorganization Agreement provides that

the Reorganization may be terminated by mutual consent by both parties or by either party upon breach or failure to satisfy a condition precedent by the other party at or before the Closing Date. Applicants agree not to make any material changes to the Reorganization Agreements without prior Commission approval.

9. Registration statements on Form N-14 (each containing a combined proxy prospectus/proxy statement) were filed with the Commission on March 4 and 6, 2002 with respect to the Reorganizations. Prospectus/proxy statements have been sent to shareholders beginning April 8, 2002. A special meeting of shareholders of the Acquired Funds to consider the Reorganizations is scheduled for May 14, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a-8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that rule 17a-8 may not be available to exempt the Reorganizations because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that Bancorp Affiliates hold of record 5% or more (and more than 25%) of the outstanding voting securities of each of the Funds, hold or share voting power and/or investment discretion with respect to a portion of these shares, and may be deemed to

have an indirect pecuniary interest in the performance of all but one of the Funds by virtue of ownership in excess of 5% of the shares of those Funds by defined benefit and defined contribution plans sponsored by the U.S. Bancorp Affiliates. As a result, each Fund may be deemed to be an affiliated person of an affiliated person of each other Fund.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganizations. Applicants submit that the Reorganizations satisfy the conditions of section 17(b) of the Act. Applicants state that the Board, including a majority of the Disinterested Directors, has determined that the participation of each of the Funds in the Reorganizations is in the best interests of the Fund and that such participation will not dilute the interests of the existing shareholders of each Fund. Applicants also state that the Reorganizations will be effected on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-10866 Filed 5-1-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 20194, April 24, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, April 24, 2002, at 9:30 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item was added to the closed meeting held on Wednesday, April 24, 2002: an adjudicatory matter.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

For further information please contact the Office of the Secretary at (202) 942-7070.

Dated: April 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-10974 Filed 4-29-02; 4:53 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8095 and 34-45842/April 29, 2002]

Order Making Fiscal 2003 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 ("Securities Act") requires the Commission to collect fees from issuers on the registration of securities.¹ of the Securities Exchange Act of 1934 ("Exchange Act" requires the Commission to collect fees on certain repurchases of securities.² Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.³ Fiscally, sections 31(b) and (c) of the Exchange Act require the Commission to collect fees from national securities exchanges and national securities associations, respectively, on transactions.⁴

On January 16, 2002, the President signed the Investor and Capital Markets Fee Relief Act ("Fee Relief Act").⁵ The Fee Relief Act reduced that fee rates applicable under section 6(b) of the Securities 13(e), 14(g), 31(b) and 31(c) of the Exchange Act. The Fee Relief Act also amended these sections to require the Commission to make annual adjustments to the fee rates applicable

under these sections for each of the fiscal years 2003 through 2011, and one final adjustments to fix the fee rates under these sections for fiscal year 2012 and beyond.⁶

II. Fiscal 2002 Annual Adjustment to the Fee Rates Applicable Under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Paragraph 6(b)(2) of the Securities Act requires an issuer to pay to the Commission a fee at an initial rate of \$92 per million of the maximum aggregate offering price at which securities are proposed to be offered. This same fee rate applies to certain repurchases of securities under section 13(e) of the Exchange Act and proxy solicitations and statements in corporate control transactions under section 14(g) of the Exchange Act.

Paragraph 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under paragraph 6(b)(2) of the Securities Act in each of the fiscal years 2003 through 2011.⁷ In those same fiscal years, paragraphs 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under sections 13(e) and 14(g) of the Exchange Act.

Paragraph 6(b)(5) specifies the method for determining the annual adjustment to the fee rate Section 6(b) for fiscal 2003. Specifically, the Commission must adjust the fee rate under Section 6(b) to a "rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2003], is reasonable likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal 2003]." That is, the adjusted rate is determined by dividing the "target offsetting collection amount" for fiscal 2003 by the "baseline estimate of the

⁶ See 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(6), 78n(g)(5) 78ee(j)(1), and 78ee(j)(3). Paragraph 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal 2002 through fiscal 2011.

⁷ The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the "target offsetting collection amount" specified in Section 6(b)(11)(A) for that fiscal year.

aggregate maximum offering prices" for fiscal 2003.

Paragraph 6(b)(11)(A) specifies that the "target offsetting collection amount" for fiscal 2003 is \$435,000,000.⁸ Paragraph 6(b)(11)(B) defines the "baseline estimate of the aggregate maximum offering price" for fiscal 2003 as the "baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal 2003] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget.

* * *

Using a methodology developed in consultation with the Congressional Budget Office ("CBO") and Office of Management and Budget ("OMB"), the Commission determines the "baseline estimate of the aggregate maximum offering price" for fiscal 2003 to be \$5,379,329,602,021.⁹ Based on this estimate, the Commission calculates the annual adjustment for fiscal 2003 to be \$80.90 per million. This adjusted fee rate applies to section 6(b) of the Securities Act, as well as to sections 13(e) and 14(g) of the Exchange Act.

III. Fiscal 2003 Annual Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to paragraph 31(j)(2), of \$30.10 per million of the aggregate dollar amount of sales of certain securities transacted on the exchange.¹⁰ Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of

⁸ Congress determined the target offsetting collection amounts by applying reduced fee rates to the CBO's January 2001 projection of the aggregate maximum offering prices for fiscal years 2002 through 2011. In any fiscal year through fiscal 2011, the annual adjustment mechanism will result in additional fee reductions if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of the aggregate maximum offering prices for the fiscal year proves to be too high.

⁹ Appendix A explains how we determined the "baseline estimate of the aggregate maximum offering price" for fiscal 2003 using our methodology, and then shows the purely arithmetical process of calculating the fiscal 2003 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its "baseline estimate of the aggregate maximum offering price" for fiscal 2003.

¹⁰ Exchange Act Release No. 45489 (March 1, 2002), 67 FR 10239 (March 6, 2002).

¹ 15 U.S.C. 77f(b).

² 15 U.S.C. 78m(e).

³ 15 U.S.C. 78n(g).

⁴ 15 U.S.C. 77ee(j)(1) and (j)(3). Section 31(d) of the Exchange Act also requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures.

⁵ Pub. L. No. 107-123, 115 Stat. 2390 (2002).