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# MERGERS OF INVESTMENT COMPANIES

10th EDITION

STRADLEY RONON
ATTORNEYS AT LAW

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**February 2018**

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**KRISTIN H. IVES** (B.A. 1982, Kenyon College; J.D. 1985, Ohio State University) is a partner in Stradley Ronon's Investment Management Practice Group. Ms. Ives advises clients on all aspects of the Investment Company Act of 1940 and the Investment Advisers Act of 1940. She counsels investment companies and their boards of directors/trustees and investment advisers on securities, transactional and corporate matters relating to pooled investment products, including registered open-end and closed-end investment companies. Some of the matters on which Ms. Ives has assisted clients include: advising investment companies on structuring and ongoing operations of multi-manager funds employing alternative investment strategies; drafting and implementing complex compliance programs and procedures to bring clients into compliance with the SEC's recent regulatory initiatives; advising investment companies regarding all aspects of a wide array of derivative instruments under the Investment Company Act of 1940, including managing complex-wide revisions to disclosure and preparation of related compliance policies

and procedures; managing complex-wide proxy solicitation projects, including one involving more than 120 mutual funds and four proxy statements in which an entire complex moved its funds to the Delaware business trust format, adopted updated charter documents and modernized all of the funds' investment restrictions; advising and assisting money market funds in connection with recent regulatory initiatives and market events; and managing multiple reorganizations of open-end funds into both affiliated and unaffiliated open-end funds. Prior to joining Stradley Ronon, Ms. Ives was a partner in the Columbus, Ohio law office of a national law firm.

**NICOLE M. KALAJIAN** (B.A., 2002, DePaul University; J.D. and LLM 2006, Chicago Kent College of Law) is counsel in Stradley Ronon's Investment Management Practice Group. Mrs. Kalajian represents securities and commodities professionals in a variety of regulatory, compliance and corporate matters. She has extensive experience with respect to hedge funds, commodity pools, private equity funds, venture capital funds, real estate funds, fund of funds, cryptocurrency funds and socially responsible investment (SRI) vehicles. Mrs. Kalajian provides legal and compliance guidance to registered and exempt investment advisers, commodity pool operators (CPOs), commodity trading advisers (CTAs), introducing brokers (IBs), forex (FX) firms, proprietary trading firms and broker-dealers (BDs). She also serves as counsel to boards, mutual funds and exchange-traded funds (ETFs). Mrs. Kalajian drafts and develops offering documents, compliance manuals, policies and procedures, corporate materials, contracts/investment agreements and advertising materials. She also provides legal and structuring guidance concerning master-feeder structures, domestic and foreign funds, international offerings and separately managed accounts. Mrs. Kalajian counsels clients in compliance and regulatory matters involving the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), National Futures Association (NFA), Financial Industry Regulatory Authority (FINRA), Environmental Protection Agency (EPA), exchange and State regulatory authorities. She advises institutional investors in connection with their investments in third-parties and private funds. Mrs. Kalajian is a former Co-Chairman of the Chicago Bar Association's Financial Investment Services Committee, as well as the Futures & Derivatives Law Committee. She was selected by Super Lawyers as a 2016, 2017 and 2018 Rising Star in Securities and Corporate Finance.

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such as SEC inspections, compliance policies and procedures, soft dollars and valuation of securities. He has assisted investment company and investment adviser clients in responding to SEC inquiries. Prior to joining Stradley Ronon, Mr. Kopcsik was an associate with another Philadelphia law firm.

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**BRUCE G. LETO** (B.A. 1983, Haverford College; J.D. 1986, Villanova University) is co-chair of Stradley Ronon's Investment Management Practice Group and former chair of the group from 1994 through 2017. Mr. Leto counsels investment companies, investment advisers, independent trustees and broker-dealers on securities and corporate matters relating to pooled investment products, including registered and unregistered, open- and closed-end investment companies. He advises such clients on registration, transactional and compliance matters. Among many other projects, Mr. Leto recently supervised proxy solicitations for two large investment company complexes involving several hundred funds. Mr. Leto was involved in obtaining cutting edge no-action relief for a large investment company complex, allowing the funds to participate in the Term Asset-Backed Securities Loan Facility (TALF), and also helped obtain regulatory relief for that complex permitting the establishment of a $1 billion syndicated line of credit with global banks for use of its U.S. and non-U.S. funds alike. Mr. Leto has been included in the annual editions of The Best Lawyers in America consecutively since 2007, and was named as a leader nationally (ranked in "Band One" beginning in 2014) in "investment funds: registered funds" in the 2009 through 2017 editions of Chambers USA: America's Leading lawyers for Business. Mr. Leto's peers named him a Pennsylvania Super Lawyer® consecutively since 2004, and he was also named to SmartCEO magazine's 2010, 2011 and 2012 (last year published) Legal Elite List. Mr. Leto has also been given special mention in the Legal 500 from 2010 to 2017. Notably, in 2017, The Mutual Fund Wire named Mr. Leto as one of the "Most Influential People in the Mutual Funds Industry" and in 2010, as one of the "100 Most Influential People in '40 Act Funds." He was also selected by Ignites as a 2009 "Fund Titan." Mr. Leto was also appointed to

the Advisory Board of Board IQ in 2007 and has served in that capacity since then. Mr. Leto lectures extensively at seminars sponsored by the Investment Company Institute, Independent Directors Council, and other organizations. In September 2009, he was a panelist at a Roundtable conducted by the SEC on the topic of securities lending. He is a member of Stradley Ronon's Board of Directors.

**CILLIAN LYNCH** (B.A. 2001, Georgetown University; J.D. 2006, Georgetown University Law Center) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Lynch advises investment companies, investment advisers and independent directors in connection with regulatory, compliance and transactional issues. He also counsels clients on fund restructurings, compliance policies and procedures, questions related to custody of client assets, and exemptive applications to the SEC. Mr. Lynch also has experience advising fund boards and their independent directors on issues relating to fiduciary duties, audit matter, compliance, and fund governance. Prior to pursuing his J.D. at Georgetown University Law Center, Mr. Lynch worked in the legal advisory department of Merrill Lynch Investment Managers. While there, his responsibilities included researching issues arising under federal securities laws and preparing documents in connection with the organization and registration of investment companies.

**MICHAEL D. MABRY** (B.G.S. 1984, University of Michigan; M.A. 1985, Bowling Green State University; J.D. 1991, University of Virginia) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Mabry counsels investment companies, investment advisers, broker-dealers and other financial service providers on a variety of securities and corporate matters. He regularly works with mutual funds, closed-end funds, exchange-traded funds, unit investment trusts, variable insurance products, offshore funds, hedge funds and investment adviser separate accounts. He has counseled boards of directors and investment advisers on regulatory and litigation matters, including SEC examinations, closed-end fund proxy fights, rescissions, and market-timing class-action suits, and has helped establish compliance programs for investment advisers and fund complexes of all sizes. He frequently helps clients develop and launch new and innovative investment products, and assists investment advisers and funds in complex transactions and instruments, including derivatives, credit arrangements, fund mergers, proxy solicitations, and closed-end and ETF IPOs. From 2007-2012, Mr. Mabry served as co-chair of the Investment Companies Committee of the Philadelphia Bar Association. He holds a Masters Degree in Economics and was a research assistant with the Division of International Finance of the Board of Governors of the Federal Reserve System from 1985 to 1988.

**PRUFESH R. MODHERA** (B.A. 1986, Rutgers University; M.B.A. 1990, Georgetown University; J.D. 1999, American University) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Modhera's practice involves counseling investment companies, investment advisers and independent directors on federal securities law matters. More specifically, Mr. Modhera counsels investment advisers on various compliance issues under the Investment Advisers Act of 1940, including Form ADV disclosure, personal securities trading, trade allocation practices, best execution, soft dollars, proxy voting and performance advertising. In

addition, he advises clients on various issues under the Investment Company Act of 1940 including the formation, registration, regulation and reorganization of investment companies, assists investment company and investment adviser clients in responding to SEC inquiries, and advises boards of directors on governance issues. Mr. Modhera also advises clients on the formation of domestic and offshore private-equity funds, hedge funds and fund of hedge funds, including preparing private placement memoranda, operating agreements and subscription documents, preparing and/or reviewing contracts with service providers, and complying with state blue sky filing requirements. Mr. Modhera is the partner-in-charge of Stradley Ronon's Washington, D.C. office.

**MICHAEL W. MUNDT** (B.A. 1986, M.A. 1989 Louisiana State University; J.D. 1993, Georgetown University) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Mundt counsels investment companies and investment advisers on matters relating to legal issues under federal securities laws, with a particular focus on exchange-traded funds. Prior to joining Stradley Ronon, Mr. Mundt served for 13 years in various capacities at the U.S. Securities and Exchange Commission, including as Assistant Director of the Office of Investment Company Regulation in the Division of Investment Management. In that capacity, Mr. Mundt supervised the review of applications for a wide range of orders under the Investment Company Act of 1940, including complex matters relating to funds of funds and affiliated transactions. Most notably, Mr. Mundt was responsible for the regulatory review of all major ETF product innovations from 1999 until 2011. In recognition of his ETF work, Mr. Mundt received the SEC's prestigious Paul R. Carey Award, which honors a staff member who demonstrates exceptional personal commitment to a significant policy matter. Mr. Mundt received a number of additional awards while at the SEC, including the Martha Platt Award, which is presented to a member of the Division of Investment Management who displays outstanding dedication, enthusiasm and commitment to the mission of the SEC. Before working at the SEC, Mr. Mundt served as assistant counsel at ICI Mutual Insurance Company, the captive insurance company for the mutual fund industry, where he worked on insurance and risk management issues for funds and their investment advisers.

**MICHAEL P. O'HARE** (B.S. 1990, LaSalle University; J.D. 1994, Temple University) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. O'Hare represents investment companies, investment advisers and broker dealers with regard to securities, compliance and corporate law matters. In addition to serving the firm's traditional mutual fund clientele, Mr. O'Hare has helped a number of established investment firms launch their first registered and unregistered investment company products. He also is experienced in counseling clients on regulatory and compliance matters, restructurings, acquisitions and other corporate transactions, and structuring and negotiating new products and business relationships. Mr. O'Hare's clients include: multi-manager funds, broker-sold funds, bank-sponsored funds and no-load funds marketed through financial adviser channels.

**ERIC S. PURPLE** (B.A. 1990, Vanderbilt University; J.D. 1993, University of Alabama School of Law; LL.M. (Securities and Financial Regulation) 1996, Georgetown University Law Center) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Purple represents a broad range of exchange-traded funds, mutual funds, closed-end investment companies, business development companies, and other pooled investment vehicles (as well as their investment advisers) on matters arising under the U.S. federal securities laws. He also serves as a trusted counselor to the independent directors or trustees of a number of investment companies. Prior to entering private practice, Mr. Purple served for eight years in the U.S. Securities and Exchange Commission's Division of Investment Management in both the Office of Chief Counsel and the Office of Disclosure and Review. Prior to his government service, Mr. Purple served as the Chief Compliance Officer of a mutual fund complex, and was the lead in-house counsel for, and part of the original management team of, an internet financial services start-up that was subsequently acquired by a major on-line brokerage house. Mr. Purple sits on the editorial board of the Investment Lawyer, and has been included in both Best Lawyers in America for his work in mutual funds law and in Washington, DC Super Lawyers in the category of Securities and Corporate Finance.

**MARK A. SHEEHAN** (B.A. 1984, University of Virginia; J.D. 1989, University of Pittsburgh) is a partner in Stradley Ronon's Investment Management Practice Group. Mr. Sheehan focuses his practice on issues arising under the Investment Company Act of 1940, and the 1933 and 1934 Acts. Mr. Sheehan represents investment company and investment adviser clients in all facets of their operations and advises them on their legal requirements. Mr. Sheehan works closely with open- and closed-end investment companies, unregistered investment vehicles (such as hedge funds), and investment advisers. He also works extensively with master-feeder and multiple class structures in the context of investment companies. Prior to joining Stradley Ronon in 1995, Mr. Sheehan worked as an associate corporate counsel at Federated Investors in Pittsburgh, Pa. He was also an associate with a Washington, D.C., law firm practicing in the 1940 Act area.

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**LAWRENCE P. STADULIS** (B.A. 1986, Boston College; J.D. 1989, Boston College) is a partner in the Washington, D.C. office of Stradley Ronon Stevens & Young, LLP. Mr. Stadulis advises clients in matters pertaining to the registration and regulation of investment advisers and investment companies under federal and state securities laws. He also manages related issues pertaining to investment advisers and investment companies including matters involving ERISA, broker-dealer regulation and banking laws. Mr. Stadulis is a frequent lecturer and author on legal matters pertaining to the investment management industry. He prepares a monthly column on recent SEC developments for *The Investment Lawyer*, a legal publication that focuses on the investment management industry. Before joining Stradley Ronon, Mr. Stadulis was a partner with another law firm. Prior to that, he was special counsel in the Office of Chief Counsel, Division of Investment Management, U.S. Securities and Exchange Commission. As special counsel, Mr. Stadulis was principally responsible for responding to no-action and interpretive requests under the Investment Company Act of 1940 and Investment Advisers Act of 1940. Mr. Stadulis was recommended as a national leader in "investment funds: registered funds" in the 2011, 2010, 2009 and 2008 editions of Chambers USA: America's Leading Lawyers for Business.

**JOAN OHLBAUM SWIRSKY** (A.B. 1978, Cornell University; J.D. 1981, Harvard University) is counsel in Stradley Ronon's Investment Management Practice Group. Ms. Swirsky has counseled clients for more than 30 years, including more than 20 years advising investment companies on regulatory compliance and general corporate matters under the Investment Company Act of 1940. Ms. Swirsky represents clients on a diverse range of investment company matters, with a specialty in issues related to money market funds operated in accordance with Rule 2a-7 under the Investment Company Act of 1940. Ms. Swirsky's projects relating to money market funds include: review securities for eligibility under Rule 2a-7 as money market fund investments; advise issuers desiring to structure Rule 2a-7 eligible securities; address troubled holdings in money market portfolios, including related communications with the SEC staff; develop and review money market compliance checklists and procedures; advise regarding responses to SEC examinations and inquiries relating to money market funds; present training sessions to portfolio personnel, board members and others relating to money market fund compliance; and handle day-to-day portfolio compliance issues for money market funds.

Additionally, Ms. Swirsky has counseled investment company clients regarding governance and federal securities law issues, reorganization and start-up of new portfolios, issues concerning exemptive applications under the Investment Company Act, the preparation of registration statements, compliance policies and procedures, reports to shareholders and board meeting materials, SEC filings, proxy statements and staff examinations. Ms. Swirsky is the author of *The Guide to Rule 2a-7: A Map Through the Maze for the Money Market Professional*, which is now in its third edition—a 350+-page handbook that addresses the complex requirements of Rule 2a-7 and offers direction on investments by money funds. She is frequently quoted by national media on money market fund issues. Ms. Swirsky is a frequent lecturer and author on matters related to money market funds operated in accordance with Rule 2a-7 under the Investment Company Act of 1940. Prior to joining Stradley Ronon, Ms. Swirsky was investment management counsel at another Philadelphia firm.

**PETER L. TSIRIGOTIS** (B.A. 1990, Boston University; J.D. 1997, Catholic University; L.L.M. International Business and Economic Law 2018 (expected), Georgetown University) is counsel in Stradley Ronon's Investment Management Group. Mr. Tsirigotis' practice focuses on providing legal advice to financial institutions, asset managers and investment advisers to help them develop and maintain various investment management products while navigating the regulatory landscape.

He brings to each client representation a unique perspective on the financial services industry, having served in several senior-level legal, compliance, operations and risk roles, including as regulator, inside counsel, outside counsel, chief compliance officer and chief operating officer. He has advised clients on a broad spectrum of products including: separately managed accounts, registered investment companies, hedge funds, private equity funds, business development companies, UCITS, etc. Prior to joining Stradley Ronon, Mr. Tsirigotis was senior vice president at Brown Brothers Harriman & Co ("BBH"), where he led the investment management funds risk, operations and governance group and was responsible for the structuring and launch of BBH's proprietary funds. Mr. Tsirigotis has also served as chief operating officer and chief compliance officer for a Greenwich based hedge fund. He was senior vice president and associate general counsel for U.S. Trust Company, where he oversaw U.S. Trust's private funds and registered funds and served on U.S. Trust's private funds investment company, and became assistant general counsel for Bank of America when it acquired U.S. Trust Company in 2007. Mr. Tsirigotis also worked as corporate counsel for Prudential Financial and as an attorney in the SEC's Division of Investment Management.

**CHRISTOPHER J. ZIMMERMAN** (B.A. 1998, University of Maryland—College Park; J.D. 2003, American University) is a partner in Stradley Ronon's Investment Management Group/Mutual Funds Practice Group. He focuses his practice on assisting investment companies, investment advisers, and independent directors/trustees on federal and state securities law matters. Mr. Zimmerman provides advice and counsel for investment management clients on various issues arising under these securities laws. Among other things, he advises investment companies and investment advisers with respect to their organization, registration and regulation. In addition, he counsels investment advisers on issues under the Investment Adviser Act of 1940, including with respect to best execution and soft dollars. He counsels investment companies on issues under the Investment Company Act of 1940, including with respect to changes in control, securities lending, and derivatives, and further counsels boards of directors/trustees on governance and other issues.

## INTRODUCTION

Effective February 1, 1986, the Securities and Exchange Commission ("SEC") adopted Form N-14 as the principal means by which open-end investment companies, closed-end investment companies, business development companies and variable life and variable annuity separate accounts must register securities to be sold in certain business combination transactions. We refer to those business combination transactions in this book as mutual fund mergers. Form N-14 was designed to improve the usefulness of the prospectus used to inform shareholders about a fund merger by requiring that information be presented in a shorter and more meaningful format.

Investment company mergers may be undertaken for a variety of reasons. Management may propose a merger to change the form of the mutual fund entity from a corporation to a statutory trust, for example, or to domicile the fund in another state. This may be done to take advantage of greater flexibility with respect to administration of the mutual fund entity, thereby reducing costs, or to obtain more favorable tax treatment in another state.

Fund mergers may be proposed within existing mutual fund complexes to rationalize their line of mutual fund product offerings or to eliminate a fund that has not been successful in the marketplace. The expansion of the mutual fund industry has resulted in the creation of many mutual funds that do not produce an attractive investment return for their shareholders or that have not attracted sufficient shareholder interest. These mutual funds may have an investment focus in a limited industry segment that is currently out of favor or may follow investment strategies that are similar to those of other funds in a fund complex. Other funds may not have been able to achieve an asset base that gives rise to economies of scale, resulting in expense ratios that may impede long-term performance. The investment advisers and distributors of these mutual funds may be losing money because they are subsidizing fund expenses. In addition, the existence of multiple mutual funds following similar investment strategies in a fund complex may clutter up the product line distracting investors from better performing funds.

Mutual fund merger activity may also be driven by market participants' assessments of the desirability of being in the business of advising and distributing shares of mutual funds. Increased compliance costs can cause smaller organizations to decide to leave the industry. Large financial services firms may become sellers because of the perceived risks and potential conflicts of interest that may arise from being a mutual fund adviser or distributor. Other participants will see continued opportunities in the mutual fund industry and will be interested in making acquisitions to increase their market share or to compliment an existing offering of financial services.

We developed this book to provide a guide to investment company mergers and to Form N-14. Each transaction requires experienced securities and tax counsel because of the particular facts and circumstances of each merger and the ever-occurring changes in the securities and tax

laws. However, a convenient guide that pulls together the relevant items in Form N-14 and the pertinent sections of the Securities Act of 1933 (the "Securities Act"), the Securities Exchange Act of 1934 (the "Securities Exchange Act") and the Investment Company Act of 1940 (the "1940 Act") can be helpful to both practitioners and senior executives in the investment company industry.

In preparing this book, we have included relevant sections of statutes and rules to which Form N-14 refers, along with the text of the Form and its instructions. In addition, where we thought it useful, commentaries follow the particular disclosure items in the Form to which they relate. We begin the book with a discussion of issues and disclosure items of particular significance to fund mergers that should be considered early in the process of structuring a fund merger. Following the preliminary considerations is a discussion of additional issues that can arise in connection with acquisitions of mutual fund complexes, particularly with respect to the surrounding organizational requirements and compliance issues. A general discussion of the Federal tax issues involved in fund mergers is included following Form N-14 and the commentaries.

Form N-14 incorporates many of the disclosure items contained in other SEC registration forms, such as Form N-1A. The relevant disclosure items are summarized in the commentaries and are provided in full text in the Appendices.

The editor wishes to thank Robert Dillon, Matthew Gabalawi, Jennifer Hillman, Mac Laban, Kristin McKenna, Claire Olivar, Paul Pan, Christopher Scarpa, Mark Schapiro, Kathleen Sheehy, and Pamela Wade for their assistance in updating this book in 2018.

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## PRELIMINARY CONSIDERATIONS

There are several issues and disclosure items that should be considered early in the process of developing a fund merger proposal. By addressing these matters at the start of the process, the transaction will proceed more efficiently and unnecessary delays and added expense can be avoided. Where appropriate we have included commentaries to some of the disclosure items in Form N-14 that address some of those subjects. These commentaries are intended to identify issues of particular significance and to provide relevant interpretative guidance based on SEC pronouncements and our experience with fund mergers. The following discussion summarizes certain of the commentaries.

**Use of Form N-14.** Mutual fund combinations for which Form N-14 is required include both those that in accordance with the organizational documents of the funds involved require shareholder approval (under state law or under the Investment Company Act of 1940, as amended (the "1940 Act")) of the shareholders and those that do not require shareholder approval. Under certain circumstances, however, fund mergers and combinations of separate accounts have been viewed by the SEC as transactions not involving a new investment decision by affected shareholders. In such cases, a separate registration statement on Form N-14 has not been required. *See* Comments: Business Combinations; Rule 145—Transactions not Requiring Registration of Shares; and Separate Accounts at pages 12 and 13.

**Incorporation by Reference.** In order to maintain a continuous offering of its shares, a mutual fund must keep its registration statement on Form N-1A current at all times. If a mutual fund that maintains an effective prospectus becomes involved in a business combination that requires the registration of securities on Form N-14, it is likely that the acquiring mutual fund will have two effective prospectuses during the period that approval of shareholders of the target fund is being sought. Under these circumstances, use of the incorporation by reference procedure described in General Instruction G may be easy and economical. *See* Comments: Incorporation by Reference at pages 32-36 and Financial Statements and Regulation S-X at page 78.

**Statement of Additional Information Delivery.** The Statement of Additional Information ("SAI") must be physically included in the prospectus or accompany the prospectus when sent to shareholders if the Form N-14 prospectus is not mailed to shareholders at least 20 business days before the shareholder meeting. If the prospectus is sent at least 20 business days prior to the shareholder meeting and no SAI is included, the cover page of the prospectus must both state that the SAI is available without charge upon oral or written request and include any toll-free telephone number for use by prospective investors. If the registrant does not have a toll-free number, a self-addressed card to request the SAI must accompany the prospectus. Moreover, the SAI must be sent within one business day of receipt of any such request. *See* Comment: Statement of Additional Information Delivery at page 30.

**Synopsis of the Transaction.** Item 3 of Form N-14 requires a synopsis of the transaction that addresses key features of the transaction and provides a brief description of the funds involved.

The information that must be provided should be designed to enable investors to compare the "fit" of the two funds to be combined and to make informed investment decisions about the consequences of the proposed transaction. For example, investment objectives and policies of the two funds should be compared, and the relative expenses and performance of the two funds should be described. Investors should be informed of significant federal tax consequences of the transaction. *See* Comment: Synopsis of Transaction at page 40.

**Risk Factors.** Immediately following the synopsis should be a brief comparison of the principal risk factors associated with investing in the acquiring fund. Emphasis should be given to those risk factors associated with the acquiring fund that are not associated with the target fund and those risk factors associated with the target fund but not the acquiring fund. For example, if the registrant invests or intends to invest 10% or more of its assets in foreign securities not publicly traded in the United States (other than dollar-denominated American Depository Receipts), such a practice or intention should be disclosed. Disclosure should also be included if the registrant engages in investment practices such as investment in foreign securities, the use of leverage, entering into options, futures or other derivatives transactions or purchases of non-investment grade bonds. *See* Comment: Risk Factors at page 40.

**Reasons for the Transaction.** Item 4 of Form N-14, among other things, requires disclosure of the reasons for the transaction. Examples of possible reasons include achieving economies of scale, similar investment objectives, policies, and portfolio characteristics, increased investment opportunities due to a larger asset base, or elimination of funds that have not attracted sufficient assets to remain viable. A description of the factors the target fund board of directors* considered in approving the transaction should also be included in this section. The reasons given for the transaction should be consistent with other information in the N-14 prospectus or SAI. For example, if the registrant states that the merger would result in economies of scale, the pro forma expense ratio for the combined funds should reflect lower expenses. *See* Comment: Reasons For Transaction at page 41.

**Merger of Affiliated Funds.** Section 17 of the 1940 Act generally prohibits transactions between mutual funds and their affiliated persons. When mutual funds that are parties to a proposed merger are affiliated, they may be able to rely on the provisions of Rule 17a-8 under the 1940 Act. Rule 17a-8 requires specific findings by the boards of directors of the funds, and may require that the transaction be approved by a "majority of the outstanding voting securities" of the target fund (as defined in Section 2(a)(42) of the 1940 Act). *See* Comment: Merger of Affiliated Funds at page 41.

**Board of Director Deliberations.** A mutual fund merger must be approved by the board of directors of each party to the transaction. The board generally has a duty to evaluate the proposed transaction and to determine whether, in the exercise of their business judgment, the pro-

* The term "board of directors" is used herein to refer to a fund's board of directors or trustees, as applicable.

posed transaction is in the best interests of the fund. The considerations of the board of the Fund that is acquired in approving the merger will be disclosed in the N-14 prospectus. *See* Comment: Board of Director Deliberations at page 41.

**Accounting Survivor and Performance Reporting.** In each fund merger transaction, it is necessary to determine which fund will be the surviving fund for accounting purposes. The accounting survivor's historical financial statements will be utilized for post-merger financial reporting purposes. Moreover, the SEC has stated that the accounting survivor's historical performance data is to be utilized for post-merger performance calculations. The accounting survivor determination is dependent upon a number of factors and should be considered by the Board as part of its consideration of whether the proposed transaction is in the best interests of a fund. The accounting survivor determination should also be made independent of the determination of which fund will be the legal survivor in the merger. *See* Comment: Accounting Survivor and Performance Reporting at page 43.

**Acquiring Fund Information.** Item 5 is designed to provide shareholders whose fund is being acquired by another fund in a business combination with essential information about the fund whose shares they will own if the proposed transaction is approved. Item 5 does not itself detail specific information to be included in the N-14 prospectus, but rather references specific items of registration forms for various types of investment companies. Much of the information required in response to this item may already be included in the effective prospectus of the acquiring fund. *See* Comment: Introduction to Item 5 at page 44.

**Voting Requirements.** If Rule 17a-8 is not applicable to the proposed merger, the voting standard for shareholder approval of the fund merger will generally be set by state law and the organizational documents (e.g., the charter and/or by-laws) of the target fund. Rule 17a-8 will generally require that the merger transaction be approved by the target fund's shareholders unless certain conditions are met. Under Rule 18f-3, however, class voting may be required if one class of shares is affected by the merger differently than other classes of shares. *See* Comment: Voting Requirements at pages 58-59.

**Financial Statements.** A registration statement on Form N-14 must include a full set of financial statements for the acquiring company, and may require pro forma financial information for the combined funds. Care must be taken to assure that financial statements incorporated by reference into a Registration Statement on Form N-14 do not go stale prior to the expected effective date of the registration statement. In certain circumstances, a summary pro forma narrative may be used in lieu of pro forma financial statements. *See* Comment: Financial Statements and Regulation S-X at page 78.

The following commentaries were prepared based upon the extensive experience we have in advising clients on investment company mergers and acquisitions. Obviously, they are not meant to encompass all the problem areas and issues, nor are they meant to substitute for experienced securities counsel preparing the appropriate regulatory and tax filings. Counsel should be actively involved in the early stages of any merger or acquisition negotiations.

## ACQUISITION OF MUTUAL FUND COMPLEXES

Generally when a mutual fund complex is "acquired," the purchaser buys assets or stock of the investment adviser and/or the principal underwriter/distributor. In connection with the acquisition, the services of numerous other service providers to the funds (such as accountants, custodians, transfer agents, etc.) have to be continued or altered. Many compliance issues can arise from the transaction and from the future relationship between the new parent and the fund complex. We have addressed some of those issues below.

### *Assignment of Advisory Contracts*

Section 15(a) of the 1940 Act requires that when there is an "assignment" of an investment advisory agreement, the old investment advisory agreement terminates and a new investment advisory agreement must be submitted to both the investment company's board of directors and shareholders for approval. An "assignment" of an investment advisory agreement can arise from a change in control of the adviser. Under Rule 15a-4 under the 1940 Act, notwithstanding the prohibition of Section 15(a), an investment adviser may provide services to a mutual fund pursuant to an interim contract when the fund's previous advisory contract terminated as a result of an assignment in a transaction in which a previous investment adviser receives money or other benefit. The interim contract may not have a term greater than 150 days following the date of the termination of the prior advisory contract. The interim contract must also have terms and conditions (including fee levels) that are the same as the prior contract and it must be approved by the independent members of the board of directors of the fund at an in-person meeting.

When a mutual fund complex is acquired, the investment adviser of the complex often may have investment advisory contracts with non-fund clients. These investment advisory contracts are subject to the provisions of Section 205 of the Investment Advisers Act of 1940. Section 205 requires that an investment advisory agreement contain a provision that requires a client to consent to any assignment of the contracts. Therefore, as a condition of the acquisition, the new investment adviser must solicit the consent to these assignments from the investment advisory clients.

### *Section 15(f) of the 1940 Act*

In 1975, Section 15(f) was added to the 1940 Act and addressed the profits realized upon the sale of an investment adviser. In a previous court decision (Rosenfeld v. Black, 445 F. 2d 1337 (2d Cir. 1971)), an adviser was prevented from benefiting from the sale of its fiduciary office when it sold at a profit its relationship with an investment company. The "safe harbor" provision of Section 15(f) protects a profit on the sale of an interest in an investment adviser, but imposes a number of procedural protections in order to shelter the mutual fund shareholders from burdens that could result from the sale of the investment adviser. So long as these procedural protections are satisfied, the adviser may sell its position at a profit. Section 15(f) requires, among other things, that for a period of three years after the transfer of control, at least 75% of the board of directors of the investment company must consist of directors who are not

interested persons of the old or the new investment adviser. Section 15(f) also prohibits the imposition of an "unfair burden" on the investment company as a result of the transaction. An "unfair burden" includes, but is not limited to, any arrangement during the two year period after the transaction whereby the former or new investment adviser (or any interested person of such advisers) receives any compensation directly or indirectly (i) in connection with the purchase or sale of securities to, from or on behalf of the investment company, other than bona fide ordinary compensation as principal underwriter for such company; or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

The unfair burden standard can give rise to a number of issues. For example, if the new investment adviser is affiliated with a broker-dealer that previously engaged in principal trades with the mutual fund (*e.g.*, block positioning, over-the-counter, fixed-income and/or preferred stock), the broker-dealer is now barred by Section 17(a) of the 1940 Act from engaging in such transactions with the affiliated fund. This prohibition itself may result in an unfair burden on the mutual fund, particularly if it results in the mutual fund being deprived of a valuable source of portfolio liquidity and investment opportunities that the broker-dealer previously provided. In addition, the broker-dealer may have provided extensive brokerage research services to the mutual fund's adviser; such services may diminish or cease when the flow of brokerage commissions stops because of the new relationship.

Even if the requirements of Section 15(f) are satisfied, there are a number of common law issues that may remain. If the fiduciary sells its investment advisory position to an unqualified purchaser, there is the potential for liability for mismanagement by the new adviser, or a potential question of whether "profit" from the sale is protected. Also, if the purchaser subsequently imposes an "unfair burden," the selling fiduciary may have his "profit" subject to recapture. To prevent this situation, at a minimum the seller should insist on undertakings by the buyer that the buyer will not impose any unfair burden upon the mutual fund and that, if the buyer is found to have imposed such a burden, the buyer will indemnify the seller for any resulting liability.

### *Disqualified Affiliate*

Section 9(a) of the 1940 Act disqualifies an entity from serving as an investment adviser or principal underwriter of a registered investment company if the entity or an affiliate has been enjoined, because of misconduct, from serving, among other things, as an investment adviser or broker-dealer. When a large diversified conglomerate acquires a mutual fund investment adviser or principal underwriter, there is a possibility that within the complex there may be individuals or entities subject to the disqualifications enumerated in Section 9(a). This might include an officer, director or employee of the parent holding company or of its subsidiaries. Therefore, a thorough due diligence review of the acquiring complex for such disqualified persons should be undertaken as part of the acquisition negotiations. While the SEC has granted relief from the prohibitions of Section 9(a), it has been particularly critical about the internal compliance

weaknesses that have permitted such disqualifications to go undetected or unreported. The consequence of not complying with the Section 9(a) provisions is to jeopardize all revenues received by the investment adviser and the principal underwriter for the entire period during which the disqualification persists.

### *Affiliated Brokerage Transactions*

When the acquiring company either is a broker-dealer or has a broker-dealer subsidiary, internal compliance procedures need to be developed to avoid inadvertent violations of Sections 10(f), 17(a) and 17(e) of the 1940 Act. Section 10(f) prohibits an investment company from purchasing any security in an underwritten offering where an affiliate is a principal underwriter of the offering. Section 17(a) prohibits an affiliate from selling as principal any securities or other property to a registered investment company. Section 17(e) prohibits, subject to certain exceptions, an affiliated broker from selling securities to a registered investment company where the affiliate acts as agent and receives compensation.

### *Corporate Name Issues*

When a fund complex is acquired by another entity the name of the complex and of the mutual funds themselves may need to be changed. For example, the complex may have had a prior identified relationship with another entity; therefore, the complex's name will have to be changed so as to disassociate itself from the former owner. Because most investment companies do business in many states, clearing a new name in the context of an acquisition vote may present particular legal and administrative problems in obtaining clearance and in avoiding conflict of names with other entities and other trademark owners. The selection of the new name, including the change of the name of the underlying investment companies, may raise issues about the appropriateness of the name under Section 35 of the 1940 Act, and about the ownership of a fund name. (*Cf.* Taussig v. Wellington, 313 F.2d 472 (3d Cir. 1963), in which shareholders of mutual funds asserted the funds' ownership right to the name of the complex, rather than giving the adviser the right to the name.)

### *Acquisition Structuring*

In structuring the acquisition of a mutual fund complex, it is important for the purchaser to focus specifically on each of the entities being acquired. Within a mutual fund complex there are a number of critical entities: the investment adviser, the principal underwriter and possibly a transfer agent and service provider supporting the entity (*i.e.,* a trust company). While the 1940 Act requirements focus on the transfer of control of the investment adviser, in many circumstances the acquisition of the sales organization (*i.e.,* the principal underwriter) may be the strongest element within the group.

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

# FORM N-14

## REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

☐ Pre-Effective Amendment No. _____ ☐ Post-Effective Amendment No. _____

(Check appropriate box or boxes)

| Exact Name of Registrant as Specified in Charter: | Area Code and Telephone Number: |
|---|---|
| Address of Principal Executive Offices: (Number, Street, City, State, Zip Code) | |
| Name and Address of Agent for Service: | Approximate Date of Proposed Public Offering: |
| (Number and Street) (City) (State) (Zip Code) | |

Calculation of Registration Fee under the Securities Act of 1933:

| Title of Securities Being Registered | Amount Being Registered | Proposed Maximum Offering Price per Unit | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|---|---|---|---|
| | | | | |

[If the registration statement is filed pursuant to Rule 488, include the following information:]

| It is proposed that this filing will become effective on _____ pursuant to Rule 488. (date) |
|---|

**Instruction**

Registrants relying on Section 24(f) of the Investment Company Act of 1940, which permits registration of an indefinite number of securities, need not include the Securities Act registration fee table, but must provide the Title of Securities Being Registered and state that no filing fee is due because of reliance on Section 24(f).

**Comment:**

**Filing Form N-14.** Form N-14 serves as both a registration statement and if a shareholder vote is need for approval of the combination, a proxy statement and if no shareholder vote is needed, an information statement. Its use permits, in a single document, the acquiring company to register securities to be issued in connection with the transaction to the target company and to solicit the votes of its shareholders for approval of the combination.

Registrants are generally required to file registration statements on Form N-14 under the usual filing procedures set forth in the Securities Act and Regulation C. Alternatively, open-end funds may elect to use the filing procedure set forth in Rule 488 under the Securities Act, which provides that a registration statement on Form N-14 will automatically become effective on the 30th day after the filing date, or on any specified day within 50 days of the filing date. The filing procedure for Rule 488, however, is not available if approval of any proposal other than the described business combination, uncontested election of directors, ratification of selection of accountants, continuation of current advisory and distribution contracts or an increase in authorized shares is being solicited. Moreover, Rule 488(b) provides that no registration statement filed pursuant to Rule 488(a) may become effective if it is incomplete or inaccurate in any material respect. The SEC staff has taken the position that the failure to include required pro forma, audited annual or unaudited semi-annual financial statements renders the filing materially incomplete and Rule 488's filing procedure therefore unavailable. *See* 2001 Annual Investment Company CFO Letter (February 14, 2001).

**Related Statutory Material**

**Rule 488** of the 1933 Act is set forth below:

(a) A registration statement filed on Form N-14 by a registered open-end management investment company for the purpose of registering securities to be issued in an exchange offer or other business combination transaction pursuant to Rule 145 under the Securities Act of 1933 shall become effective on the thirtieth day after the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the registration statement, which date shall be not later than fifty days after the date on which the registration statement is filed, unless the Commission having due regard to the public interest and the protection of investors declares such amendment effective on an earlier date, provided the following conditions are met:

(1) Any prospectus filed as a part of the registration statement does not include disclosure relating to any other proposal to be acted on at a meeting of the shareholders of either company other than proposals related to an exchange offer, or a business combination transaction pursuant to Rule 145(a), and any other proposal relating to: (i) uncontested election of directors, (ii) ratification of the selection of accountants, (iii) the continuation of a current advisory contract, (iv) increases in the number or amount of shares authorized to be issued by the registrant; and (v) continuation of any current contract relating to the distribution of shares issued by the registrant; and

(2) The registration statement recites on the facing sheet that the registrant proposes that the filing become effective pursuant to this rule.

(b) No registration statement shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of the registration statement, it should appear to the Commission that the registration statement may be incomplete or inaccurate in any material respect and the Commission furnishes to the registrant written notice that the effective date is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of the registration statement, it shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(c) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

## GENERAL INSTRUCTIONS

### *A. Who May Use Form N-14*

*Form N-14 may be used by all management investment companies registered under the Investment Company Act of 1940 (the "1940 Act" or "Investment Company Act") and business development companies as defined by Section 2(a)(48) of the 1940 Act to register under the Securities Act of 1933 ("1933 Act" or "Securities Act") securities to be issued in (1) a transaction of the type specified in Securities Act Rule 145(a); (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N-14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement.*

**Comments:**

**Business Combinations.** Form N-14 is the means by which open-end funds, closed-end funds, business development companies and variable life and variable annuity separate accounts must register securities to be sold in certain business combinations described in Rule 145 under the Securities Act. The transaction may involve the combination of two separate entities (*e.g.*, the merger of two business corporations registered as investment companies) or the combination of two or more funds established as separate series of shares of a series investment company under Rule 18f-2 of the 1940 Act.

Rule 145, which is reproduced below, generally provides that transactions involving mergers or consolidations, or the transfer of assets in consideration of the issuance of securities, involve a sale or offer to sell securities that must be registered under the Securities Act. The obligation to register securities issued in connection with business combinations arises even in cases where an indefinite number of shares of the same issuer was previously registered on Form N-1A. The SEC has taken the position that, because business combinations require shareholders of the target fund to elect whether to accept a different security, typically issued by the acquiring fund, in exchange for an existing security, there is a new investment decision involved and further that the disclosure policies underlying the Securities Act are applicable. *See* 1940 Act Release No. 14796, (November 14, 1985) adopting Form N-14. This policy apparently extends even to the case of a short-form merger (i.e., a merger where minority shareholders have appraisal rights under applicable state law but their approval is not required to consummate the merger). *See* 1940 Act Release No. 7405 (October 6, 1972) adopting Rule 145.

**Legal Structure of the Transaction.** Rule 145 applies to fund combinations that are structured as statutory mergers or consolidations, or as transfers of assets in consideration of the issuance of securities. The underlying legal structure of a fund combination from a state law perspective is an important matter that should be considered at an early stage of a proposed transaction.

Generally, fund mergers are structured under state law as either a statutory merger or consolidation, or as an acquisition of the target fund's assets in exchange for shares of stock or beneficial interest of the acquiring fund. In each case, the requirements of state law, in addition to the requirements of the 1940 Act, will govern the consummation of the transaction. As a result, the applicable state laws for each constituent fund should be reviewed to ensure compliance with transactional and filing requirements.

Most often, mutual fund combinations are structured as a transfer of the target fund's assets to the acquiring fund. In such a reorganization, all or substantially all of the target fund's assets (i.e., portfolio securities, cash, etc.) are transferred to the acquiring fund in exchange for shares of stock or beneficial interest (depending upon the entity structure of the acquiring fund) and the assumption of some or all of the target fund's liabilities. The target fund then distributes the acquiring fund shares it receives to its shareholders on a *pro rata* basis in exchange for such shareholders' interests in the target fund. The target fund is then liquidated or dissolved under applicable state law. Transfers between separate series of the same registrant are structured as transfers of the target fund's assets because state merger or consolidation statutes do not contemplate transactions involving separate series of a series investment company.

When a mutual fund reorganization is structured as a statutory merger or consolidation, the acquiring fund acquires all of the assets and liabilities of the target fund and the target fund is merged with and into the acquiring fund. Such a merger or consolidation must be effected in accordance with state law requirements for such a transaction. Articles of merger are usually required to be filed and, as a result, state law filing requirements should be reviewed and confirmed early in the process.

**Rule 145—Transactions not Requiring Registration of Shares.** Rule 145(a)(2) provides that a merger or consolidation undertaken solely for the purpose of changing an issuer's domicile within the United States is not a transaction within the rule. Although the language of Rule 145(a)(2) specifies that the sole purpose of an exempted transaction is to be a change in domicile, no-action relief has been granted where the change in domicile is accompanied by a change in legal form and the reorganization is effected through a sale of assets and assumption of liabilities. *See,* PEMCO (pub. avail. May 31, 1988); Ivy Fund, Inc. (pub. avail. Mar. 5, 1984). No-action relief has also been granted to permit other changes. *See*, Advance Investors Corporation (pub. avail. Sep. 29, 1976) (change in fund's directors and administrator); Scudder Common Stock Fund (pub. avail. Oct. 10, 1984) (change in investment objective and fundamental investment policies). In such exempted transactions, Rule 414 may be available to allow the succeeding entity in the transaction to adopt the registration statement of the existing entity.

**Separate Accounts.** Under certain circumstances, combinations of separate accounts have been viewed by the SEC as combinations not involving a new investment decision by security holders and therefore not requiring separate registration on Form N-14. *See, e.g.*, Massachusetts

Mutual Life Ins. Co. (pub. avail. Feb. 15, 1996) (transfer of separate accounts in connection with mergers of insurance companies); The Great-West Life Assurance Company (pub. avail. Dec. 27, 1991) (transfer of separate account by parent to subsidiary); and Anchor National Life Insurance Company (pub. avail. Nov. 8, 1989) (transfer of separate accounts by an insurance company to an unaffiliated insurance company pursuant to a reinsurance arrangement). A managed separate account may also be restructured as a unit investment trust with an underlying fund without registration of the shares of the unit investment trust on Form N-14. Rydex Advisor (pub. avail. Sep. 29, 1998). In each of these cases, very specific requirements had to be satisfied, including a requirement that the combination not result in any new or different investment option.

**Related Statutory Material**

**Rule 145(a)** of the 1933 Act, together with the SEC's preliminary note, is set forth below:

Preliminary Note. Rule 145 is designed to make available the protection provided by registration under the Securities Act of 1933, as amended (the "Act"), to persons who are offered securities in a business combination of the type described in paragraphs (a)(1), (2) and (3) of the rule. The thrust of the rule is that an "offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision, whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no-sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. *See* Release No. 33-5316 (October 6, 1972) [37 FR 23631]. Securities issued in transactions described in paragraph (a) of Rule 145 may be registered on Form S-4 or F-4 (§ 239.25 or § 239.34 of this chapter) or Form N-14 (§ 239.23 of this chapter) under the Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a)(9), (10), and (11) and 4(a)(2), are otherwise available are not affected by Rule 145.

NOTE 1: Reference is made to Rule 153a (230.153a of this chapter) describing the prospectus delivery required in a transaction of the type referred to in Rule 145.

NOTE 2: A reclassification of securities covered by Rule 145 would be exempt from registration pursuant to Section 3(a)(9) or (11) of the Act if the conditions of either of these sections are satisfied.

(a) *Transactions Within this section.* An "offer," "offer to sell," "offer for sale" or "sale" shall be deemed to be involved, within the meaning of Section 2(3) of the Act, so far as the security holders of a corporation or other person are concerned where, pursuant to statutory provisions of the jurisdiction under which such corporation or other person is or-

ganized, or pursuant to provisions contained in its certificate of incorporation or similar controlling instruments, or otherwise, there is submitted for the vote or consent of such security holders a plan or agreement for—

(1) *Reclassifications*. A reclassification of securities of such corporation or other person, other than a stock split, reverse stock split, or change in par value, which involves the substitution of a security for another security;

(2) *Mergers or Consolidations*. A statutory merger or consolidation or similar plan or acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person, unless the sole purpose of the transaction is to change an issuer's domicile solely within the United States; or

(3) *Transfers of Assets*. A transfer of assets of such corporation or other person, to another person in consideration of the issuance of securities of such other person or any of its affiliates, if:

(i) such plan or agreement provides for dissolution of the corporation or other person whose security holders are voting or consenting; or

(ii) such plan or agreement provides for a pro rata or similar distribution of such securities to the security holders voting or consenting; or

(iii) the board of directors or similar representatives of such corporation or other person, adopts resolutions relative to paragraph (a)(3)(i) or (ii) of this section within one year after the taking of such vote or consent; or

(iv) the transfer of assets is part of a pre-existing plan for distribution of such securities, notwithstanding paragraph (a)(3)(i), (ii), or (iii) of this section.

(b) *Communications before a Registration Statement is filed*. Communications made in connection with or relating to a transaction described in paragraph (a) of this section that will be registered under the 1933 Act may be made under Rule 135, Rule 165 or Rule 166 of the 1933 Act.

(c) *Persons and parties deemed to be underwriters*. For purposes of this section, if any party to a transaction specified in paragraph (a), of this section is a shell company, other than a business combination related shell company, as those terms are defined in Rule 405, any party to that transaction, other than the issuer, or any person who is an affiliate of such party at the time such transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with any such transaction, shall be deemed to, be engaged in a distribution and therefore to be an underwriter thereof within the meaning of Section 2(a)(11) of the 1933 Act.

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c), a person or party specified in that paragraph shall not be deemed to be engaged in a distribution and therefore not to be an underwriter of securities acquired in a transaction specified in paragraph (a) that was registered under the 1933 Act if:

(1) The issuer has met the requirements applicable to an issuer of securities in paragraph (i)(2) of Rule 144; and

(2) One of the following three conditions is met:

(i) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f), and (g) of Rule 144 and at least 90 days have elapsed since the date the securities were acquired from the issuer in such transaction; or

(ii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and at least six months, as determined in accordance with paragraph (d) of Rule 144, have elapsed since the date the securities were acquired from the issuer in such transaction, and the issuer meets the requirements of paragraph (c) of Rule 144; or

(iii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and at least one year, as determined in accordance with paragraph (d) of Rule 144, has elapsed since the date the securities were acquired from the issuer in such transaction.

***Note to Rule 145(c) and (d).***

Paragraph (d) is not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the 1933 Act.

(e) *Definitions.*

(1) The term *affiliate* as used in paragraphs (c) and (d) of this section shall have the same meaning as the definition of that term in Rule 144.

(2) The term *party* as used in paragraphs (c) and (d) of this section shall mean the corporations, business entities, or other persons, other than the issuer, whose assets or capital structure are affected by the transactions specified in paragraph (a) of this section.

(3) The term *person* as used in paragraphs (c) and (d) of this section, when used in reference to a person for whose account securities are to be sold, shall have the same meaning as the definition of that term in paragraph (a)(2) of Rule 144.

### *B. Registration Fee*

*Section 6(b) of the 1933 Act and Rule 457 thereunder set forth the fee requirements under the 1933 Act. Registrants relying on section 24(f) of the 1940 Act, which permits registration of an*

*indefinite number of shares, are directed to rule 24f-2 under the 1940 Act regarding payment of the registration fee. If, contemporaneous with a filing on Form N-14, an open-end management company is offering its securities to the public by means of a current prospectus under an effective registration statement, the prospectus included in a registration statement filed on Form N-14 may be used, under Rule 429(a), in connection with the securities covered by the earlier registration statement.*

**Comments:**

**Use of Two Prospectuses.** In order to maintain a continuous offering of its shares, a mutual fund must keep its registration statement on Form N-1A current at all times. If a fund that maintains such an "evergreen" registration statement becomes involved in a business combination that requires the registration of additional shares on Form N-14, the acquiring company will have two effective prospectuses during the period that approval of shareholders of the target company is sought: the "evergreen" prospectus on Form N-1A, offering shares at the public offering price listed in that prospectus, and the prospectus on Form N-14 describing an offer to sell shares on the basis of the terms set forth in the registration statement on Form N-14.

So long as the evergreen prospectus is effective, both the prospectus on Form N-1A and the statement of additional information on Form N-1A may be incorporated by reference into the registration statement on Form N-14, thus substantially reducing the size and complexity of the prospectus on Form N-14 itself. (*See* General Instruction G at page 31.) However, consideration must be given to the timing of the solicitation of shareholder approval of a fund merger in relation to the timing of the annual update of the registration statements of the funds involved. If the evergreen prospectus which would be incorporated by reference into the registration statement or Form N-14 will become "stale" during the period in which the approval of the target company's shareholders is being sought, it may not be possible to meet the requirements of General Instruction G and related regulations governing incorporation by reference. If the evergreen prospectus incorporated by reference into the registration statement on Form N-14 is replaced by an amended prospectus—whether such amendment is occasioned by the need to update financial statements or the occurrence of a material event—an analysis will need to be made regarding the materiality of the updated information and its relationship to the shareholder vote. Depending upon the analysis, a conclusion may be reached to merely provide shareholders with the updated prospectus or a determination may be made that a resolicitation of shareholder proxies may be required. If a determination is made that such a resolicitation is prudent, then the mechanics of accomplishing such a resolicitation—types of material to be sent, whether a new record date may be set and the effect of applicable state laws on shareholder voting and proxy longevity—must also be determined.

**Registration Fees for Open-End Funds.** If the acquiring company is an open-end fund or unit investment trust that previously registered an indefinite number of shares on Form N-1A under the 1933 Act pursuant to Section 24(f) under the 1940 Act, it may rely on the procedures described in Rule 24f-2 to pay the registration fee for the shares being registered on Form N-14.

This option permits shares issued as a result of the proposed business combination to be aggregated with shares sold through the acquiring company's normal distribution network. Payment of the registration fee applicable to that aggregate number of shares would then be due after the end of the company's fiscal year in accordance with Rule 24f-2. In order to use this procedure the facing page of the registration statement on Form N-14 must indicate the acquiring company's intention to rely upon Section 24(f) under the 1940 Act.

Under Rule 24f-2(b), if an issuer ceases operations in a business combination transaction, the date that the issuer ceases business operations (the date the transaction is consummated) will be deemed the end of its fiscal year for purposes of Section 24(f) under the 1940 Act. However, the target company in the transaction will not be deemed to have ceased operations, and the acquiring fund will assume the obligations, fees and redemption credits of the target company pursuant to Section 24(f) under the 1940 Act, if the acquiring fund:

- had no assets or liabilities, other than nominal assets or liabilities, and no operating history prior to the transaction;
- acquired substantially all of the assets and assumed substantially all of the liabilities of the target company; and
- the transaction is not designed to result in the target company combining with an issuer that would not meet the conditions described in the first point above.

**Registration Fees for Acquiring Companies Other Than Open-End Funds.** Acquiring companies that are not open-end funds or unit investment trusts must register a definite number of shares. In these cases, the registration fee is payable at the time the registration statement on Form N-14 is filed. The registration fee for a closed-end company is to be calculated pursuant to Rule 457 under the 1933 Act. The amount of the fee is to be based upon the value of the securities of the target company that will be canceled in the transaction.

**Registration Fees Payable by an Acquired Mutual Fund; Deregistration.** The target fund must file a final Rule 24f-2 Notice within 90 calendar days after the end of its fiscal year. In the case of a reorganization, the date of the transaction's consummation is deemed the fiscal year end of the target fund. In the case of a transaction in which the target fund is deemed to have ceased operations, the shares that are exchanged for or converted into shares of the acquiring fund should be treated as redemptions on the target fund's final Form 24F-2 (not the acquiring fund's Form 24F-2). However, under Rule 24f-2(b), the target fund shall not be deemed to have ceased operations and the acquiring company shall assume the obligations, fees and redemption credits of the target fund under Rule 24f-2 if the acquiring fund is a series of a series company (as defined in Rule 18f-2) and immediately prior to the transaction had only nominal assets and liabilities and no operating history.

A business combination between two open-end funds must be followed by the deregistration of the acquired or target fund pursuant to Section 8(f) of the 1940 Act. Deregistration requires

an order of the SEC. Form N-8F, the prescribed means of applying for such an order, must include information about the fund merger, the disposition of assets, liabilities and expenses and the manner in which the transaction was approved. Prior to deregistration, registration fees must be paid with respect to shares of the target fund issued during the relevant fiscal year. The target fund will not be entitled to any refund of fees paid if a definite number of shares was registered and all such registered shares have not been sold.

**Listing and Delisting Fees for Closed-End Companies Traded On a Securities Exchange.** Neither the New York Stock Exchange (the "NYSE") nor the NYSE MKT (formerly, NYSE AMEX) (the "MKT") imposes any special fees on listed companies involved in business combinations. However, the NYSE and the MKT are sensitive to so-called "back door listing." This occurs when an exchange-listed company combines with a non-listed company and the transaction is structured to make the listed company the surviving entity solely for the purpose of avoiding listing requirements, including fees. Both the NYSE and the MKT have adopted policies for dealing with this situation. Neither the NYSE nor the MKT will list additional shares of a listed company in connection with a back door listing with an unlisted company which results in the unlisted company acquiring the listed company. However, both the NYSE and the MKT normally approve the listing if the company resulting from the combination would meet the exchange's original listing standards and, in the case of the MKT, the listed company obtains shareholder approval. The NYSE will impose fees in accordance with its usual fee schedule in connection with a back door listing. MKT charges a one-time charge for listings of additional securities in connection with a back door listing and in some instances a per share fee for additional listings. (*See* Sections 703.08(E) and 801.00 of the NYSE *Listed Company Manual* and NYSE MKT *Company Guide* Section 341.)

There are no special fees for "delisting" a company. Both the NYSE and the MKT have adopted procedures permitting a company to be delisted if the company has disposed of its operating assets or ceased to be an operating company. As the NYSE and the MKT each require listed companies to file proxy material with the relevant exchange (*See* comment following Instruction D at page 24), each exchange can itself initiate the delisting process. For discussion of the procedures adopted by the NYSE in this regard, *see* Section 8 of the NYSE *Listed Company Manual*; for corresponding procedures adopted by the MKT, *see* Part 10 "Suspension and Delisting," of the NYSE MKT *Company Guide*.

**Related Statutory Materials**

**Section 6(b)** of the 1933 Act states:

(b) *Registration fee*

(1) *Fee payment required*

At the time of filing a registration statement, the applicant shall pay to the Commission a fee at a rate that shall be equal to $92 per $1,000,000 of the maximum aggregate price at

which such securities are proposed to be offered, except that during fiscal year 2003 and any succeeding fiscal year such fee shall be adjusted pursuant to paragraph (2).

(2) *Annual adjustment*

For each fiscal year, the Commission shall by order adjust the rate required by paragraph (1) for such fiscal year to a rate that, when applied to the baseline estimate of the aggregate maximum offering prices for such fiscal year, is reasonably likely to produce aggregate fee collections under this subsection that are equal to the target fee collection amount for such fiscal year.

(3) *Pro rata application*

The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(4) *Review and effective date*

In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (2) and published under paragraph (5) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (2) shall take effect on the first day of the fiscal year to which such rate applies.

(5) *Publication*

The Commission shall publish in the Federal Register notices of the rate applicable under this subsection and under sections 13 (e) and 14 (g) for each fiscal year not later than August 31 of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such rate is based.

(6) *Definitions*

For purposes of this subsection:

(A) *Target fee collection amount*

The target fee collection amount for each fiscal year is determined according to the following table:

| Fiscal Year | Target Fee Collection Amount |
|---|---|
| 2002 | $337,000,000 |
| 2003 | 435,000,000 |
| 2004 | 467,000,000 |
| 2005 | 570,000,000 |
| 2006 | 689,000,000 |
| 2007 | 214,000,000 |
| 2008 | 234,000,000 |
| 2009 | 284,000,000 |
| 2010 | 334,000,000 |
| 2011 | 394,000,000 |
| 2012 | 425,000,000 |
| 2013 | 455,000,000 |
| 2014 | 485,000,000 |
| 2015 | 515,000,000 |
| 2016 | 550,000,000 |
| 2017 | 585,000,000 |
| 2018 | 620,000,000 |
| 2019 | 660,000,000 |
| 2020 | 705,000,000 |
| 2021 and each fiscal year thereafter | An amount that is equal to the target fee collection amount for the prior fiscal year, adjusted by the rate of inflation. |

(B) *Baseline estimate of the aggregate maximum offering prices*

The baseline estimate of the aggregate maximum offering prices for any fiscal year is 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 such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for projections pursuant to section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985.

**Rule 457**, in relevant part, states:

(a) If a filing fee based on a bona fide estimate of the maximum offering price, computed in accordance with this rule where applicable, has been paid, no additional filing fee shall be required as a result of changes in the proposed offering price. If the number of shares or other units of securities, or the principal amount of debt securities to be offered is increased by an amendment filed prior to the effective date of the registration statement, an additional filing fee, computed on the basis of the offering price of the additional securities, shall be paid. There will be no refund once the statement is filed.

* * * * *

(c) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price of securities of the same class, as follows: either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the registration statement.

(d) Where securities are to be offered at varying prices based upon fluctuating values of underlying assets, the registration fee is to be calculated upon the basis of the market value of such assets as of a specified date within fifteen days prior to the date of filing, in accordance with the method to be used in calculating the daily offering price.

* * * * *

(f) Where securities are to be offered in exchange for other securities (except where such exchange results from the exercise of a conversion privilege) or in a reclassification or recapitalization which involves the substitution of a security for another security, a merger, a consolidation, or a similar plan of acquisition, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities to be received by the registrant or cancelled in the exchange or transaction as established by the price of securities of the same class, as determined in accordance with paragraph (c) of this section.

(2) If there is no market for the securities to be received by the registrant or cancelled in the exchange or transaction, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash is to be received by the registrant in connection with the exchange or transaction, the amount thereof shall be added to the value of the securities to be received by the registrant or cancelled as computed in accordance with (f)(1) or (2) of this

section. If any cash is to be paid by the registrant in connection with the exchange or transaction, the amount thereof shall be deducted from the value of the securities to be received by the registrant in exchange as computed in accordance with (f)(1) or (2) of this section.

(4) Securities to be offered directly or indirectly for certificates of deposit shall be deemed to be offered for the securities represented by the certificates of deposit.

**Rule 24f-2** states:

(a) *General*. Any face-amount certificate company, open-end management company or unit investment trust ("issuer") that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U .S.C. 80a-24(f)) must, not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F-2 (17 CFR 274.24) with the Commission. Form 24F-2 must be prepared in accordance with the requirements of that form, and must be accompanied by the payment of a registration fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An issuer that pays the registration fee more than 90 days after the end of its fiscal year must pay interest in the manner specified in section 24(f) of the Act and in Form 24F-2.

(b) *Issuer ceasing operations; mergers and other transactions*. For purposes of this rule, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets ("merger") of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; provided, however, that in the case of a merger of an issuer or a series of an issuer ("Predecessor Issuer") with another issuer or a series of an issuer ("Successor Issuer"), the Predecessor Issuer will not be deemed to have ceased operations and the Successor Issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred pursuant to section 24(f) of the Act and §270.24e-2 (as in effect prior to October 11, 1997; *see* 17 CFR part 240 to end, revised as of April 1 , 1997) if the Successor Issuer:

(1) had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(2) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(3) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (b)(1) of this rule.

(c) *Counting days*. To determine the date on which Form 24F-2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90-day period is the

first calendar day of the fiscal year following the fiscal year for which the Form is to be filed. If the last day of the 90-day period falls on a Saturday, Sunday, or federal holiday, the period ends on the first business day thereafter.

Note to paragraph (c): For example, a Form 24F-2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday or Sunday, the Form must be filed on the following Monday.

### C. *Application of Securities Act Rules*

*Attention is directed to the General Rules and Regulations under the 1933 Act, particularly Regulation C. That regulation contains general requirements regarding the preparation and filing of registration statements.*

### D. *Application of Exchange Act Rules*

*1. If the registrant or any other person which is a party to the transaction submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and that person's submission to its security holders is subject to (i) Regulation 14A or 14C under the Securities Exchange Act of 1934 ("1934 Act" or "Exchange Act") or (ii) the proxy rules under Section 20 of the Investment Company Act, then the provisions of those regulations shall apply in all respects to the submission, except that the prospectus, which may be in the form of a proxy or information statement, shall contain the information required by this Form in lieu of that required by (i) Schedule 14A of Regulation 14A or 14C and (ii) the proxy rules under Section 20 of the Investment Company Act. It should be noted, however, that if a separate proposal subject to those proxy requirements (for example, with respect to action to be taken on the election of directors or on an investment advisory contract), is submitted to security holders, the submission also must comply with the relevant information requirements of Schedule 14A or Schedule 14C of Regulation 14A or 14C and the Investment Company Act proxy rules. Copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as part of the registration statement shall be deemed filed pursuant to the requirements of those regulations. All other soliciting material shall be filed in accordance with that regulation.*

*2. If the proxy or information material sent to security holders is not subject to Regulation 14A or 14C, it shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto before the material is used.*

**Comments:**

**Applicability of 1934 Act Proxy Rules.** When Form N-14 was adopted in 1985, the proxy rules under the 1934 Act were amended to eliminate duplicate filing and reporting requirements. In effect, Form N-14 serves as a dual purpose document, and a prospectus on Form N-14 is of-

ten referred to in documents provided to shareholders as a "combined prospectus and proxy statement." Accordingly, Rule 14a-3(a) under the 1934 Act provides that registrants who have filed a registration statement on Form N-14 will not be required to meet separately the requirements of Regulation 14A of the proxy rules. Rule 14a-6(j) provides that any proxy statement, form of proxy or other soliciting material required to be filed under Rule 14a-6 that is also included in a registration statement on Form N-14 or filed under various 1933 Act Rules such as Rule 424, Rule 425 (used in connection with communications relating to a business combination transaction under Rule 165) and Rule 497 (used for filing the definitive proxy statement/prospectus) shall be deemed filed under the proxy rules if such material is properly filed under the 1933 Act. Corresponding provisions of Regulation 14C, relating to materials provided to shareholders in connection with annual meetings for which proxies are not solicited, were likewise amended. Rule 14c-2(a) under the 1934 Act provides that a registration statement on Form N-14 will be deemed to meet the requirements of that rule when delivered to shareholders prior to an annual meeting, and Rule 14c-5(f) provides that a properly filed registration statement on Form N-14 will meet the filing requirements of Regulation 14C. Rule 14a-16 of the 1934 Act related to internet availability of proxy materials does not apply to business combination transactions.

**Shell Company Transactions.** Transactions are often structured such that the assets of an existing investment company are to be acquired by a newly organized company which has yet to commence a public offering of its shares. The Staff of the SEC has stated in no-action letters that it will not raise any objections if immediately before the effective date of the transaction, the "shell" company does not have a net worth of $100,000 as required by section 14(a) of the 1940 Act. *See, e.g.,* CIGNA Aggressive Growth Fund, Inc. (pub. avail. Feb. 15, 1985).

**Exchange Requirements Relating to Proxy Statements of Closed-End Companies.** Closed-end companies with shares listed on the NYSE must comply with the rules set forth in Section 4 of the *Listed Company Manual* published by the NYSE. Among other things, these rules require immediate notification of the NYSE of the meeting date and a description of any matters upon which action will be taken; immediate publicity of matters affecting the rights or privileges of shareholders; and the filing of three copies of any material sent to security holders with the NYSE not later than the date that the material is sent to any shareholders. Closed-end companies listed on the MKT must comply with the rules listed in Part 7 of the NYSE MKT *Company Guide* which require listed companies, among other things, to file five copies of all proxy material no later than the date on which the material is mailed to the shareholders. Both the NYSE and the MKT impose specific requirements on issuers that request brokers to distribute proxy or information materials to beneficial owners.

**Related Statutory Material**

**Section 20(a)** of the 1940 Act states:

> It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce or otherwise, to solicit or to permit the use of his name to solicit any

proxy or consent or authorization in respect to any security of which a registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

**Rule 20a-1** under the 1940 Act states:

(a) No person shall solicit or permit the use of his or her name to solicit any proxy, consent or authorization with respect to any security issued by a registered Fund, except upon compliance with Regulation 14A, Schedule 14A, and all other rules and regulations adopted pursuant to Section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered pursuant to Section 12 of the Securities and Exchange Act of 1934. Unless the solicitation is made in respect of a security registered on a national securities exchange, none of the soliciting material need be filed with such exchange.

(b) If the solicitation is made by or on behalf of the management of the investment company, then the investment adviser or any prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the investment company promptly transmit to the investment company all information necessary to enable the management of such company to comply with the rules and regulations applicable to such solicitation. If the solicitation is made by any person other than the management of the investment company, on behalf of and with the consent of the investment adviser or prospective investment adviser, then the investment adviser or prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the person making the solicitation promptly transmit to such person all information necessary to enable such person to comply with the rules and regulations applicable to the solicitation.

*Instruction.* Registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited pursuant to the requirements of this section should refer to Section 14(c) of the Securities Exchange Act of 1934 and the information statement requirements set forth in the rules thereunder.

**Rule 165 under the 1933 Act states:** *Preliminary Note:* This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.

(a) *Communications before a registration statement is filed.* Notwithstanding Section 5(c) of the 1933 Act, the offeror of securities in a business combination transaction to be registered under the 1933 Act may make an offer to sell or solicit an offer to buy those securities from and including the first public announcement until the filing of a registration

statement related to the transaction, so long as any written communication (other than non-public communications among participants) made in connection with or relating to the transaction (*i.e.*, prospectus) is filed in accordance with Rule 425 and the conditions in paragraph (c) of this section are satisfied.

(b) *Communications after a registration statement is filed*. Notwithstanding Section 5(b)(1) of the 1933 Act, any written communication (other than non-public communications among participants) made in connection with or relating to a business combination transaction (*i.e.*, prospectus) after the filing of a registration statement related to the transaction need not satisfy the requirements of Section 10 of the 1933 Act, so long as the prospectus is filed in accordance with Rule 424 or Rule 425 and the conditions in paragraph (c) of this section are satisfied.

(c) *Conditions*. To rely on paragraphs (a) and (b) of this section:

(1) Each prospectus must contain a prominent legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's web site and describe which documents are available free from the offeror; and

(2) In an exchange offer, the offer must be made in accordance with the applicable tender offer rules (Rule 14d-l through Rule 14e-8 of the 1934 Act); and, in a transaction involving the vote of security holders, the offer must be made in accordance with the applicable proxy or information-statement rules (Rule 14a-l through Rule 14a-101 and Rule 14c-l through Rule 14c-101 of the 1934 Act).

(d) *Applicability*. This section is applicable not only to the offeror of securities in a business combination transaction, but also to any other participant that may need to rely on and complies with this section in communicating about the transaction.

(e) *Failure to file or delay in filing*. An immaterial or unintentional failure to file or delay in filing a prospectus described in this section will not result in a violation of Section 5(b)(1) or (c) of the 1933 Act, so long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The prospectus is filed as soon as practicable after discovery of the failure to file.

(f) *Definitions*.

(1) *A business combination transaction* means any transaction specified in Rule 145(a) under the 1933 Act or exchange offer;

(2) *A participant* is any person or entity that is a party to the business combination transaction and any persons authorized to act on their behalf; and

(3) *Public announcement* is any oral or written communication by a participant that is reasonably designed to, or has the effect of, informing the public or security holders in general about the business combination transaction

**Rule 166 under the 1933 Act states:** *Preliminary Note:* This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of conditioning the market for another transaction, such as a capital-raising or resale transaction.

(a) *Communications*. In a registered offering involving a business combination transaction, any communication made in connection with or relating to the transaction before the first public announcement of the offering will not constitute an offer to sell or a solicitation of an offer to buy the securities offered for purposes of Section 5(c) of the 1933 Act, so long as the participants take all reasonable steps within their control to prevent further distribution or publication of the communication until either the first public announcement is made or the registration statement related to the transaction is filed.

(b) *Definitions*. The terms business combination transaction, participant and public announcement have the same meaning as set forth in Rule 165(f) of the 1933 Act.

### *E. Documents Comprising Registration Statement*

*A registration statement or an amendment to it filed under the 1933 Act shall consist of the facing sheet of the Form, Part A, Part B, Part C, required signatures, and all other documents which are required or which the registrant elects to file as a part of the registration statement.*

**Comment:**

**Exhibits.** The exhibits required to accompany (or to be incorporated by reference into) the registration statement on Form N-14 appear starting at page 82.

### *F. Preparation of the Registration Statement*

*Instructions for completing Form N-14 are divided into three parts. Part A pertains to information that must be in the prospectus required by Section 10(a) of the Securities Act of 1933. Part B pertains to information that must be in the Statement of Additional Information. Part C pertains to other information that is required to be in the registration statement.*

*Part A: The Prospectus. The purpose of the prospectus is to provide essential information about the registrant and the transaction in a way that will assist investors in making informed decisions about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, care should be taken that the information in the prospectus is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive detail may make the prospectus difficult for many investors to understand and may, therefore, detract from its usefulness. Accordingly, registrants should adhere to the following guidelines in responding to the items in Part A:*

1. *Responses to these items, particularly those that call for a brief description, should be as simple and direct as possible and should include only information needed to understand the*

*fundamental characteristics of the registrant. Brevity is particularly important in describing practices or aspects of the registrant's operations that do not differ materially from those of other investment companies.*

*2. Descriptions of practices that are necessitated or otherwise affected by legal requirements should generally not include detailed discussions of the law.*

*3. Responses to those items that use terms such as "list" or "identify" should include only a minimum explanation of the matters being listed or identified.*

*4. The so-called President's Letter, which provides a summary of the proposed transaction, may be used as the initial or introductory document to the Part A prospectus.*

*Part B: Statement of Additional Information. Part B of the registration statement consists of additional information about the registrant and the company being acquired and certain financial information that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to require in the prospectus, if the registrant complies with certain conditions.*

*The Statement of Additional Information or information in response to Item 6 [Information About The Company Being Acquired] of Form N-14 need not be included in the prospectus or accompany it when sent to shareholders provided that: (1) the prospectus is sent (by first class mail or any other means designed to assure reasonably prompt delivery) or given to prospective investors at least 20 business days prior to (a) the date on which the meeting of security holders is held or (b) if no meeting is held, the earlier of the date of the vote, consent or authorization, the date the transaction is consummated or the date the securities are purchased, or (c) in the case of an exchange offer subject to the tender offer rules, the scheduled expiration date of the offer; (2) the cover page of the prospectus (or proxy statement in the case of a prospectus in the form of a proxy statement) states that the Statement of Additional Information is available upon oral or written request and without charge (if the registrant has a toll-free telephone number for use by prospective investors that number must be provided); in addition, a self-addressed card for requesting the Statement of Additional Information must also accompany the prospectus unless the toll-free telephone number is provided; and (3) if a request for the Statement of Additional Information is received by the registrant, the statement must be sent within one business day of receipt of the request and must be sent by first class mail or other means designed to ensure equally prompt delivery.*

*The statutory provisions relating to the dating of the prospectus apply equally to the dating of the Statement of Additional Information for purposes of Rule 423 under the 1933 Act. Furthermore, the Statement of Additional Information should be made available to investors as of the same time that the prospectus becomes available for purposes of Rule 430 under the 1933 Act.*

**Comments:**

**Disclosure Issues.** Once the Board of Directors/Trustees has approved an agreement to undertake a fund merger, various disclosure issues arise. The prospectus of the target fund should be promptly amended to alert investors that a reorganization agreement has been approved by the Board and briefly describe the proposed transaction. In addition, the distribution environment in which the mutual fund operates may require that the mutual fund wholesalers or its sales force be able to respond to questions from broker-dealers who are selling shares of the fund about the impact that the acquisition may have on the ongoing management and distribution of the fund. Careful consideration will need to be made about what to communicate during the period prior to the filing of the N-14 registration statement, during the period after the N-14 registration statement has been filed with the SEC but prior to its effectiveness and after the N-14 registration statement has been declared effective. Consideration will also need to be given as to whether any written materials should be filed with the SEC.

**Statement of Additional Information Delivery.** The delivery procedures for the statement of additional information on Form N-14 are more stringent than the requirements associated with delivery of a statement of additional information on Form N-1A. Due to the time pressures inherent in business combination transactions, Instruction F to Form N-14 contains special provisions to ensure that the statement of additional information on Form N-14 may be requested easily and will be made available promptly to investors. The statement of additional information on Form N-14 must be physically included with the prospectus on Form N-14 when sent to shareholders if the shareholder mailing is not made at least 20 business days before the shareholder meeting. If such mailing is made at least 20 business days prior to the shareholder meeting and no statement of additional information on Form N-14 is included, the cover page of the prospectus on Form N-14 must state that the statement of additional information on Form N-14 is available upon oral or written request and without charge and must include any toll-free telephone number for use by prospective investors. If such number does not exist, a self-addressed card to be used for requesting the statement of additional information on Form N-14 must accompany the prospectus on Form N-14. Moreover, the statement of additional information on Form N-14 must be sent by first class mail within one business day of receipt of any request. Form N-14 was not amended when the SEC adopted technical amendments to its rules to allow electronic dissemination of issuer-related information under the federal securities laws. However, the issuing release indicates that rules providing for distribution to investors by mail should be read to allow alternative methods of distribution. *See* Securities Act Release No. 33-7289 (May 9, 1996).

**Related Statutory Material**

**Rule 430** under the 1933 Act states:

(a) A form of prospectus filed as a part of the registration statement shall be deemed to meet the requirements of Section 10 of the 1933 Act for the purpose of Section 5(b)(1)

thereof prior to the effective date of the registration statement, provided such form of prospectus contains substantially the information required by the 1933 Act and the rules and regulations thereunder to be included in a prospectus meeting the requirements of Section 10(a) of the 1933 Act for the securities being registered, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. Every such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of Section 7 of the 1933 Act.

(b) A form of prospectus filed as part of a registration statement on Form N-1A, Form N-2, Form N-3, Form N-4, or Form N-6 shall be deemed to meet the requirements of Section 10 of the [1933] Act for the purpose of Section 5(b)(1) thereof prior to the effective date of the registration statement, provided that:

(1) Such form of prospectus meets the requirements of paragraph (a) of this section; and

(2) Such registration statement contains a form of Statement of Additional Information that is made available to persons receiving such prospectus upon written or oral request, and without charge, unless the form of prospectus contains the information otherwise required to be disclosed in the form of Statement of Additional Information. Every such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of Section 7 of the 1933 Act.

### *G. Incorporation by Reference and Delivery of Prospectuses or Reports Filed with the Commission*

*If any party to a transaction registered on Form N-14 is registered under the 1940 Act and has a current prospectus which meets the requirements of Section 10(a)(3) of the 1933 Act or is current in its reports filed pursuant to Section 30(d) of the 1940 Act, the registrant may, if it so elects, incorporate by reference the prospectus, the corresponding Statement of Additional Information, or reports, or any information in the prospectus, the corresponding Statement of Additional Information, or reports, which satisfies the disclosure required by Items 5 ["Information About the Registrant"], 6 ["Information About the Company Being Acquired"], and 11 through 14 [Item 11 is entitled "Table of Contents," Item 12 is entitled "Additional Information About the Registrant," Item 13 is entitled "Additional Information About the Company Being Acquired", and Item 14 is entitled "Financial Statements"] of this Form. If the Registrant elects to incorporate information by reference into the prospectus, a copy of each document from which information is incorporated by reference must accompany the registration statement filed with the Commission and the prospectus. Notwithstanding the foregoing the registrant may, at its discretion, incorporate any or all of the Statement of Additional Information into the prospectus delivered to investors, without delivering the Statement with the prospectus, so long as the Statement is available to investors as provided in General Instruction F. The registrant also may incorporate by reference into the prospectus information about the company be-*

*ing acquired without delivering the information with the prospectus under certain conditions pursuant to Item 6 of Form N-14, and in accordance with the requirements of Instruction F.*

*If the registrant elects to incorporate information by reference into the Statement of Additional Information, a copy of each document from which information is incorporated by reference must accompany the registration statement filed with the Commission and the Statement of Additional Information sent to shareholders.*

*Attention is directed to Rule 411 under the 1933 Act regarding the need to clearly identify in the prospectus what information is incorporated by reference.*

**Comments:**

**Incorporation by Reference.** All or part of an effective registration statement on Form N-1A or a current shareholder report of any party to the transaction may be incorporated by reference into a registration statement on Form N-14 in order to satisfy the requirements of Items 5, 6 and 11 through 14 of Form N-14. If the prospectus on Form N-14 incorporates by reference the prospectus of the acquiring fund from Form N-1A, the acquiring fund's Form N-1A prospectus must accompany the Form N-14 prospectus, and must also accompany the registration statement on Form N-14 filed with the SEC. If the prospectus on Form N-14 incorporates the statement of additional information on Form N-14, however, that statement of additional information need not accompany the Form N-14 prospectus if such prospectus includes a toll-free number or, alternatively, a pre-addressed card for use by shareholders who wish to obtain the related statement of additional information.

The Form N-1A prospectus of the target fund may be incorporated by reference to satisfy Item 6(a) of Form N-14 (which calls for information about the target fund) if the prospectus on Form N-14 states that information about the target fund is incorporated by reference and that the prospectus on Form N-1A of the target fund is available without charge and includes either a toll-free telephone number or a return mail request card to facilitate shareholder requests for such prospectus. To be able to benefit from the incorporation by reference rules under General Instruction G, General Instruction F must also be followed which includes, among other things, that the prospectus on N-14 be sent at least 20 business days prior to the shareholder meeting of the target fund.

Any information incorporated by reference into the prospectus on Form N-14 must be clearly identified by reference to the page, paragraph or heading of the incorporated document. However, information may not be incorporated by reference if such incorporation would result in incomplete, unclear or confusing disclosure.

If the acquiring fund elects to incorporate by reference any information into the statement of additional information on Form N-14 to satisfy Items 11 through 14 of Form N-14, a copy of the document from which the information was obtained must accompany the registration statement on Form N-14 filed with the SEC and any statement of additional information on Form N-14 sent to shareholders.

All documents containing information incorporated by reference into the registration statement on Form N-14 must accompany the registration statement filed with the SEC. Form N-14 thus differs from other registration forms which, pursuant to subsection (b)(4) of Rule 411 of the 1933 Act, permit information not required in a prospectus to be incorporated by reference without the need to file the incorporated document as long as the information incorporated is from a document that was filed with the SEC not more than 5 years prior to the filing of such other registration form.

NOTE: A registrant should exercise care when incorporating by reference a statement of additional information and audited financial statements in order to ensure that the audited financial statements are dated as of a date not more than sixteen months prior to their anticipated use. A registrant also should take into account the anticipated SEC review period and the duration of the proxy solicitation period chosen by the registrant.

**Related Statutory Material**

**Section 10(a)(3)** of the 1933 Act states:

(a) Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e)—

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection (a) when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense.

**Section 30(e)** (formerly designated as Section 30(d)) of the 1940 Act states:

(e) *Semiannual reports to stockholders*. Every registered investment company shall transmit to its stockholders, at least semi-annually, reports containing such of the following information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations for the protection of investors, which reports shall not be misleading in any material respect in the light of the reports required to be filed pursuant to subsections (a) and (b):

(1) a balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet;

(2) a list showing the amounts and values of securities owned on the date of such balance sheet;

(3) a statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;

(4) a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;

(5) a statement of the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person; and

(6) a statement of the aggregate dollar amounts of purchases and sales of investment securities, other than government securities, made during the period covered by the report.

*Provided*, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

**Rule 411** states:

(a) *Prospectuses*. Except as provided by this section, Item 1100(c) of Regulation AB for registered offerings of asset-backed securities, or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Information not required in a prospectus*. Except for exhibits covered by paragraph (c) of this section, information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus subject to the following provisions:

(1) Non-financial information may be incorporated by reference to any document;

(2) Financial information may be incorporated by reference to any document, provided any financial statement so incorporated meets the requirements of the forms on which the statement is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given;

(3) Information contained in any part of the registration statement, including the prospectus, may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in the prospectus; and

(4) Unless the information is incorporated by reference to a document which complies with the time limitations of Rule 10(f) of Regulation S-B and Rule 10(d) of Regulation S-K, then the document, or part thereof, containing the incorporated information is required to be filed as an exhibit.

(c) *Exhibits*. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 10(f) of Regulation S-B and Rule 10(d) of Regulation S-K, be incorporated by reference as an exhibit to any registration statement. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of such modification and the date thereof.

(d) *General*. Any incorporation by reference of information pursuant to this section shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice restricting incorporation by reference of documents which incorporate by reference other information. Information incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. If the information is incorporated by reference to a previously filed document, the file number of such document shall be included. Where only certain pages of a document are incorporated by reference and filed with the statement, the document from which the information is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the registration statement where the information is required. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

**Rule 3-18** of Regulations S-X states:

Special provisions as to registered management investment companies and companies required to be registered as management investment companies.

(a) For filings by registered management investment companies, the following financial statements shall be filed:

(1) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;

(2) An audited statement of operations for the most recent fiscal year conforming to the requirements of §210.6-07;

(3) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles. (Further references in this rule to the requirement for such statement are likewise applicable only to the extent that they are consistent with the requirements of generally accepted accounting principles.); and

(4) Audited statements of changes in net assets conforming to the requirements of §210.6-09 for the two most recent fiscal years.

(b) If the filing is made within 60 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheet or statement of assets and liabilities may be as of the end of the preceding fiscal year and the filing shall include an additional balance sheet or statement of assets and liabilities as of an interim date within 245 days of the date of filing. In addition, the statements of operations and cash flows (if required by generally accepted accounting principles) shall be provided for the preceding fiscal year and the statement of changes in net assets shall be provided for the two preceding fiscal years and each of the statements shall be provided for the interim period between the end of the preceding fiscal year and the date of the most recent balance sheet or statement of assets and liabilities being filed. Financial statements for the corresponding period of the preceding fiscal year need not be provided.

(c) If the most current balance sheet or statement of assets and liabilities in a filing is as of a date 245 days or more prior to the date the filing is expected to become effective, the financial statements shall be updated with a balance sheet or statement of assets and liabilities as of an interim date within 245 days. In addition, the statements of operations, cash flows, and changes in net assets shall be provided for the interim period between the end of the most recent fiscal year for which a balance sheet or statement of assets and liabilities is presented and the date of the most recent interim balance sheet or statement of assets and liabilities filed.

(d) Interim financial statements provided in accordance with these requirements may be unaudited but shall be presented in the same detail as required by §§210.6-01 to 210.6-10. When unaudited financial statements are presented in a registration statement, they shall include the statement required by §210.3-03(d).

## PART A

### Information Required in the Prospectus

***Item 1. Beginning of Registration Statement and Outside Front Cover Page of Prospectus***

*(a) The facing page of the registration statement shall contain the cross-reference sheet required by Rule 481(a).*

*(b) The outside front cover page of the prospectus shall contain the following information:*

*(1) the registrant's name, the address (including zip code) and telephone number (including area code) of its principal executive offices and, where applicable, its sponsor's name;*

*(2) an identification of the type of fund or separate account (as defined in Section 2(a)(37) of the 1940 Act) or a brief description of the registrant's investment objectives;*

*(3) a statement summarizing the proposed transaction, naming the parties to it and giving the address (including zip code) and telephone (including area code) of the principal executive offices of the company being acquired;*

*(4) a statement or statements that:*

*(i) the prospectus sets forth concisely the information about the registrant that a prospective investor ought to know before investing;*

*(ii) the prospectus should be retained for future reference; and*

*(iii) additional information about the registrant has been filed with the Commission and is available upon oral or written request and without charge. (This statement should include instructions about how to obtain the additional information and whether any of the Statement of Additional Information has been incorporated by reference into the prospectus);*

*(5) the date of the prospectus and date of any Statement of Additional Information;*

*(6) the statement required by Securities Act Rule 481(b)(1); and*

*(7) such other information as required by rules of the Commission or of any other governmental authority having jurisdiction over the registrant or the issuance of its securities.*

*(c) The cover page may include other information, but that additional information must not, either by its nature, quantity, or manner of presentation, impede understanding of required information.*

**Comments:**

**Facing Page of the Registration Statement.** Rule 481(a) referred to in Item 1(a) of Form N-14 has been amended to delete the requirement for filing of a cross-reference sheet.

**Cover Page for the Prospectus.** The information required on the cover page of the prospectus in Form N-14 is more detailed than that which is required to appear on the cover page of a prospectus on Form N-1A (relating to open-end companies), but is similar to that required by Form N-2 (relating to closed-end companies), Form N-3 (relating to separate accounts) and Form N-5 (relating to small business investment companies). The significant additional information required by Form N-14 is a summary of the proposed transaction.

Other than the legend required by Rule 481(b) of the 1933 Act, the specific language and organization of information to be included on the cover page and throughout a registration statement on Form N-14 is generally not prescribed but is left to the discretion of registrants.

**Related Statutory Material**

**Rule 481(a) and (b)(1)** of the 1933 Act states:

Disclose the following in registration statements prepared on a form available solely to investment companies registered under the Investment Company Act of 1940 or in registration statements filed under the Act for a company that has elected to be regulated as a business development company under Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a-54-80a-64):

(a) *Facing page*. Indicate the approximate date of the proposed sale of the securities to the public.

(b) *Outside front cover page*. If applicable, include the following in plain English as required by §230.421 (d):

(1) *Commission legend*. Provide a legend that indicates that the Securities and Exchange Commission has not approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following or other clear and concise language:

*Example A*: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

*Example B*: The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

### *Item 2. Beginning and Outside Back Cover Page of Prospectus*

*The following information, to the extent applicable, shall appear on the front or on the outside back cover page of the prospectus:*

*(a) the name of any national securities exchange on which the registrant's securities are listed and a statement that reports, proxy material and other information concerning the registrant can be inspected at the exchanges;*

(b) *the table of contents required by Rule 481(c).*

**Comment:**

**Back Cover of Prospectus.** As noted above, registrants using Form N-14 are generally permitted wide latitude in the organization of required information. However, Regulation C under the 1933 Act, in particular Rule 421(a) and (b), provides for such discretion only so long as required information is not obscured, incomplete or misleading and descriptive headings or sub-headings are provided. Such headings are the basis for the required table of contents.

**Related Statutory Material**

**Rule 481(c)** of the 1933 Act states:

(c) Table of Contents. Include on either the outside front, inside front or outside back cover page of the prospectus a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include this table of contents immediately following the cover page in any prospectus delivered electronically.

### *Item 3. Fee Table, Synopsis Information, and Risk Factors*

*(a) Include a table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed in the appropriate registration statement form under the 1940 Act (for open-end management investment companies, Item 3 of Form N-1A; for closed-end management investment companies, Item 3 of Form N-2; and for separate accounts that offer variable annuity contracts, Item 3 of Form N-3).*

*(b) The registrant shall include at the beginning of the prospectus a synopsis of the information contained in the prospectus. The synopsis shall be a clear and concise discussion of the key features of the transaction, of the registrant, and of the company being acquired. As to the registrant and company being acquired compare: (1) investment objectives and policies; (2) distribution and purchase procedures and exchange rights; (3) redemption procedures; and (4) any other significant considerations. Highlight differences. Discuss the primary federal tax and other consequences of the proposed transaction to the security holders.*

*(c) Immediately after the synopsis, briefly discuss the principal risk factors of investing in the registrant. Briefly compare these risks with those associated with an investment in the company being acquired. If the registrant is a closed-end investment company, briefly describe any restrictions on the registrant's present or, if applicable, future ability to pay dividends with respect to any class of securities.*

**Comments:**

**Synopsis of Transaction.** In 1994, Form N-14 was amended to require a comparative fee table showing current fees for the registrant, current fees for the target fund, and pro forma fees for the registrant giving effect to the transaction. The synopsis should address key features of the transaction and provide a brief description of the funds involved. The information required by Item 3(a) is designed to enable investors to compare the "fit" of the two funds to be combined and to make informed investment decisions on the consequences of the proposed transaction. For example, investment objectives and policies of the two funds should be compared, and the relative expenses and performance of the two funds should be described. Investors should be informed of significant federal tax consequences to their holdings. The disclosure generally required by Item 3 is comparable to information required to be given to investors in other offerings under the 1933 Act.

**Risk Factors.** A brief description of risk factors associated with investing in the acquiring fund should appear immediately after the synopsis. The principal speculative characteristics of an investment in the acquiring fund should be discussed (*e.g.*, an absence of an operating history or the nature of the investments which the acquiring fund makes). Emphasis should be given to those risk factors associated with the acquiring fund which are not associated with the target fund and those risk factors associated with the target fund but not the acquiring fund. For instance, if the acquiring fund invests in foreign securities, uses leverage, enters into options, futures or other derivatives transactions or purchases non-investment grade bonds ("junk bonds"), the risks associated with those investment practices should be highlighted.

***Item 4. Information About the Transaction***

*(a) Outline the material features of the proposed transaction, including:*

*(1) a brief summary of the terms of the acquisition agreement;*

*(2) a description of the securities to be issued;*

*(3) the reasons the registrant and the company being acquired are proposing the transaction;*

*(4) the federal income tax consequences, if any, to the security holders of both parties, including appropriate references to Internal Revenue Code sections; and*

*(5) a description of any material differences between the rights of security holders of the company being acquired and the rights of security holders of the registrant.*

*(b) Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.*

**Comments:**

**Merger of Affiliated Funds.** Section 17 of the 1940 Act generally prohibits transactions between mutual funds and their affiliated persons. When the mutual funds party to a proposed merger are part of the same fund complex or are otherwise affiliated, they may be able to use the provisions of Rule 17a-8 of the 1940 Act to facilitate a merger without seeking a Commission exemptive order under Section 17(b) of the 1940 Act. Rule 17a-8 is available if the surviving company in the transaction is a registered investment company (or a series thereof) and if the board of directors, including a majority of the directors who are not interested persons, of each mutual fund participating in the transaction determines that participation in the transaction is in the best interests of the mutual fund and will not result in a dilution of the interest of existing shareholders. The Rule also requires that the transaction be approved by a vote of a majority of the outstanding voting securities, as defined in the 1940 Act, of the target mutual fund under certain circumstances, such as a change in a fundamental investment policy or an increase in the distribution expenses of the target fund. No-action relief has been granted under Rule 17a-8 to permit the merger of one fund into two separate funds under certain circumstances. *See* Mutual of America Investment Corporation (pub. avail. June 2, 2006) (allowing transfer of growth segment and value segment of single fund into separate growth and value funds).

**Reasons for Transaction.** Examples of reasons for the transaction might include economies of scale, similar investment objectives, policies and portfolio characteristics, increased investment opportunities due to a larger asset base, elimination of funds that have not attracted a large enough asset base to remain viable, lower expenses or better investment performance for the acquiring fund or the fact that both funds have the same investment adviser. A description of those factors that the fund's directors considered in approving the transaction should also be included in this section. The reasons given for the transaction should be consistent with other information in the prospectus or statement of additional information on Form N-14. For example, if the registrant states that the business combination would result in economies of scale, the pro forma expense ratio for the combined funds should reflect lower expenses.

**Board of Director Deliberations.** A mutual fund merger must be approved by the board of directors (or other body exercising similar authority) of each party to the transaction. The members of the board of directors who are not interested persons of the fund, as defined in Section 2(a)(19) of the 1940 Act (the "disinterested directors") play a critical role in that process. Under applicable state law, the directors generally have a duty to evaluate the proposed transaction and to determine whether, in the exercise of their business judgment, the proposed transaction is in the best interests of their fund.

If applicable to the transaction, Rule 17a-8 requires that the board of directors determine that the transaction is in the best interests of the fund and will not dilute the interests of existing

shareholders. The SEC has described these as "critical determinations" that must be carefully considered by the board of directors, particularly when a proposed transaction involves significant conflicts of interests.

The board of directors should request and evaluate all information reasonably necessary to their determinations, giving weight to those factors relevant to the specific transaction that has been proposed. In its issuing release for Rule 17a-8, the SEC indicated that boards should consider, if relevant, the following factors:

- any fees or expenses that will be borne, directly or indirectly, by the fund in connection with the transaction;
- any effect of the transaction on annual fund operating expenses and shareholder fees and services;
- any change in the fund's investment objectives, restrictions and policies that will result from the transaction; and
- any direct or indirect federal income tax consequences of the transaction to fund shareholders.

The SEC indicated that its list of factors to be considered was not exhaustive, and that none of the factors would be determinative. Other factors that may be relevant to the board's determinations include:

- the experience and background of the portfolio managers that will manage the combined funds;
- the investment performance of the fund that will survive the merger;
- the composition of the investment portfolios of the funds party to the transaction, and the need for, and allocation of the costs of, repositioning portfolio securities;
- differences in the class structure of the funds party to the transaction;
- the compliance background of the adviser and other service providers to the surviving fund; and
- alternatives to the proposed transaction that were considered by management.

Because a fund merger is a complex transaction when viewed in the framework of the various fiduciary obligations owed to investment company shareholders, it is essential for the disinterested directors of the investment companies involved to retain experienced securities counsel to aid them in performing their responsibilities. The board may also want to consider retaining other professionals to assist them in their deliberations, such as accountants or consultants that can assist in evaluating an acquiring fund and the financial aspects of the transaction. The board's review process should begin with preparation and delivery of a request for information

on those factors that are considered relevant to the board's determinations. Once those materials have been received and reviewed, any follow-up requests for information can be made and meetings can be scheduled as appropriate.

**Accounting Survivor and Performance Reporting.** In each fund merger, it is necessary to determine which fund will be the surviving entity for accounting purposes. Depending upon the facts and circumstances of each transaction, the accounting survivor may be different than the surviving entity for legal purposes. The determination of the appropriate accounting survivor is important because it dictates the presentation of post-merger financial statements and performance calculations for the combined fund.

The SEC has taken the position that the surviving entity for accounting purposes is also the fund whose historical performance may be used by the combined fund after the merger. *See* SEC Generic Comment Letter, Feb. 3, 1995. In the North American Security Trust No-Action Letter (pub. avail. Aug. 5, 1994) the SEC stated that in determining whether a surviving fund can use the historical performance of a predecessor fund involved in a reorganization, it is necessary to compare the attributes of the surviving fund and the predecessor fund to determine which fund, if any, the surviving fund most closely resembles. This determination must be made based upon an analysis from an accounting perspective rather than the legal structure of the transaction.

The factors that should be taken into consideration when determining the accounting and performance survivor in a fund merger include, in their relative order of importance, the following:

- the investment adviser to the surviving fund;
- the portfolio composition of the surviving fund;
- the investment objectives and policies of the surviving fund;
- the expense structure and expense ratio applicable to the surviving fund; and
- the relative asset sizes of the funds involved in the reorganization.

*See* North American Security Trust (pub. avail. Aug. 5, 1994); *see* also AICPA Accounting and Audit Guide for Investment Companies with Conforming changes as of May 1, 2009.

The analysis that must be undertaken is not purely objective. Rather, a weighting heavily in favor of a factor considered to be of relative lesser importance may outweigh a closer comparison in a factor considered to be more important. Indeed, in certain circumstances the SEC may request information regarding the accounting and performance history survivor analysis, and in extreme cases may disagree with the proposed surviving entity. As a result, it is important to carefully consider this issue early in the process.

***Item 5. Information About the Registrant***

Provide the following information, to the extent applicable, about the registrant:

*(a) if the registrant is an open-end management investment company, furnish the information required by Items 2 through 8, 9(a), 9(b), and 10 through 13 of Form N-1A under the 1940 Act;*

*(b) if the registrant is a closed-end management investment company, furnish the information required by Items 4; 8.1, 8.2, 8.4, 8.5, and 8.6; 9; 10; 11, and 12 of Form N-2 under the 1940 Act;*

*(c) if the registrant is a separate account (as defined in Section 2(a)(37) of the 1940 Act) offering variable annuity contracts which are registered under the 1940 Act, furnish the information required by Items 2, 4(a) through (c), and 5 through 14 of Form N-3 under the 1940 Act;*

*(d) if the registrant is a small business investment company registered under the 1940 Act, furnish the information required by Items 1 through 7, 9 through 13, 15(a), 16, 19, 20, and 21 of Form N-5 under the 1940 Act;*

(e) *a statement that the registrant is subject to the informational requirements of the Exchange Act and in accordance therewith files reports and other information with the Securities and Exchange Commission;* and

*(f) a statement that proxy material, reports (and where registrant is subject to Regulation 14A or 14C of the Exchange Act, proxy and information statements) and other information filed by the registrant can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, stating the current address of each facility, and that copies of such material can be obtained from the Public Reference Branch, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, Washington, D.C. 20549 at prescribed rates.*

**Comments:**

**Introduction to Item 5.** This Item is the heart of the prospectus on Form N-14. It is designed to provide shareholders whose fund is being acquired by another fund in a business combination with essential information about the company whose shares they will own if the proposed transaction is approved. Item 5 does not itself detail specific information to be included in the prospectus on Form N-14 but rather references specific items of registration forms for various types of investment companies.

- Item 5(a) pertains to open-end funds and references various items of Form N-1A.
- Item 5(b) pertains to closed-end companies and references to Form N-2.
- Item 5(c) pertains to separate accounts and references to Form N-3.
- Item 5(d) pertains to small business investment companies and references to Form N-5.

Registrants may be able to satisfy all of the disclosure requirements of this Item by incorporating by reference an existing prospectus on Form N-1A, N-2, N-3 or N-5, as the case may be. Note, however, that any such prospectus must actually be delivered to shareholders with the prospectus on Form N-14. (Details about the conditions under which such an incorporation by reference procedure may be used are set forth in General Instruction G to Form N-14 and related commentary which appears at pages 31-32.)

**Summary of Form N-1A Items.** Item 5(a) of Form N-14 requires open-end funds to furnish the information required by Items 2 through 8, 9(a), 9(b), and 10 through 13 of Form N-1A. Form N-1A was amended in January 2009 to require every prospectus to include a summary section at the front of the prospectus, consisting of key information about the fund, including investment objectives and strategies, risks, costs, and performance. Also, funds have the option of providing shareholders with a "summary prospectus" to satisfy statutory prospectus delivery requirements, if the statutory prospectus is provided on an internet web site. Funds that select this option will also be required to send the statutory prospectus to the investor upon request. (See Investment Company Act Release 28584 (January 13, 2009)). Items 2 through 8, 9(a), 9(b), and 10 through 13 of current Form N-1A are briefly summarized below and reproduced in Appendix B.

- **Item 2** of Form N-1A requires disclosure of a fund's investment objectives or goals. A fund may also identify its type or category.

- **Item 3** of Form N-1A requires a fee table showing fees paid directly by shareholders and annual operating expenses of the fund. An expense example must also be provided showing actual dollar costs of investing in the fund for 1 year, 3 year, 5 year and 10 year periods. A fund must disclose its portfolio turnover rate during the most recent fiscal year.

- **Items 4(a) and 4(b)** of Form N-1A require a summary of how the fund intends to achieve its investment objectives by identifying the fund's principal investment strategies, including the type of securities in which the fund will principally invest, and any policy to concentrate in a particular industry. The fund must also summarize the principal risks of its investments, including those reasonably likely to affect adversely its performance. A bar chart showing the fund's annual total returns for each of the last 10 calendar years (or the life of the fund if less than 10 years), and a table showing average annual returns for 1, 5 and 10 calendar year periods, must also be provided.

- **Item 5** of Form N-1A requires disclosure of the name of each investment adviser (or sub-adviser) of a fund. The name, title and length of service of the person or persons primarily responsible for the day-to-day management of the fund's portfolio also must be disclosed.

- **Item 6** of Form N-1A requires disclosure of the fund's minimum initial or subsequent investment amounts, and the procedures for redeeming shares.

Exchange-traded funds are required to disclose the number of shares the fund will issue, and in certain circumstances, that shares may only be bought and sold on an exchange and that the price of shares may be more or less that their net asset value.

- **Item 7** of Form N-1A requires a statement, as applicable, that the fund's distributions may be taxed as ordinary income, capital gains or that the fund intends to distribute tax-exempt income. If the fund holds itself out as generating tax exempt income, the fund must state, as applicable, that a portion of its distributions may be subject to federal income tax.
- **Item 8** of Form N-1A requires a statement to the effect that purchases of shares through a broker-dealer or intermediary may involve payment by the fund to the intermediary for the sale of fund shares and related services, and that these payments may create a conflict of interest by influencing the intermediary to recommend the fund over another investment.
- **Item 9(a) and 9(b)** of Form N-1A require a fund to state its investment objectives, and whether those objectives may be changed without shareholder approval. The fund must also describe how it intends to achieve its investment objectives, including a description of the fund's principal investment strategies and the type of securities in which the fund will principally invest The fund also must disclose any policy to concentrate in securities of a particular industry.
- **Item 10** of Form N-1A requires disclosure of information concerning each investment adviser of a fund, including a description of the adviser's experience and the advisory services provided to the fund. A description of the compensation of each adviser must also be provided. For each portfolio manager identified in response to Item 5(b), the fund must state each such manager's business experience during the past five years. A description must also be provided of any material pending legal proceedings, other than routine litigation incidental to the business, to which the fund or its adviser or principal underwriter is a party, as well as disclosure as to any unique or unusual restrictions on the right to freely retain or dispose the fund's shares.
- **Item 11** of Form N-1A requires a description of the procedures for purchase and redemption of the fund's shares, including information regarding a fund's typical timeframe in paying redemption proceeds to shareholders and the methods a fund typically expects to use to meet redemption requests, the procedures for the pricing of the fund's shares and the fund's policies for dividends and distributions. The risks associated with frequent purchases and redemptions of shares must be described, along with any fund policies relating to frequent purchase and redemptions. The tax consequences to shareholders of buying, holding, exchanging and selling shares must also be described, including if applicable that the fund intends to make distributions that may be taxed as ordinary income and capital gains or that the fund intends to distribute tax exempt income (including if applicable, that a portion of its assets may generate income that is not exempt from federal or state income tax).

  Exchange-traded funds may in some circumstances omit information concerning when calculations of net asset value are made and procedures for purchase or redemption of fund

shares, and must provide a table showing the number of days the market price of the shares was greater than and less than the fund's net asset value during the last calendar year and the most recent calendar quarters since that year unless this information is available on an internet web site.

- **Item 12** of Form N-1A requires a description of the sales loads of the securities being offered including certain information concerning arrangements that result in breakpoints in or elimination of sales loads and, if applicable, the distribution fees payable under the fund's Rule 12b-1 plan.
- **Item 13** of Form N-1A requires the presentation of financial highlights for the fund, audited for the past five years.

**Summary of Form N-2 Items.** Item 5(b) of Form N-14 requires closed-end companies to furnish the information required by Items 4, 8.1, 8.2, 8.4, 8.5, 8.6, and 9 through 12 of Form N-2. Each of these items is briefly summarized below and reproduced in Appendix C.

- **Item 4** of Form N-2 requires financial highlights information.
- **Items 8.1, 8.2, 8.4, 8.5 and 8.6** of Form N-2 require a general description of the registrant. This information should include the date and form of organization of the registrant, description of the investment objectives and policies of the registrant, including whether its objectives can be changed without the vote of a majority of the outstanding voting securities, its fundamental policies (which include a description of all policies requiring shareholder approval for a change as any other policies deemed to be fundamental), types of securities in which it will invest in or will invest principally, any particular industry or group of industries in which it proposes to concentrate, and practices and techniques that it employs or intends to employ. If common stock is offered, information on the market where traded is to be provided. Additional information is required for a registrant that is a business development company.
- **Item 9** of Form N-2 requires a description of how the business of the registrant is managed by its board of directors, investment advisers, portfolio managers, administrators, and other service providers. The experience of the persons primarily responsible for the day-to-day management of the registrant's portfolio must be described. The registrant's administrator and custodian must also be identified.
- **Item 10** of Form N-2 requires a description of the capital stock of the registrant. The registrant should describe the dividend, voting and liquidation rights of the stock including liability to further calls or to assessment by the registrant. Any existing preemptive rights, conversion rights, redemption provisions, and sinking fund provisions; and any material obligations or potential liability associated with ownership of the security (not including investment risks) should also be disclosed.

  In addition, Item 10 requires a description of long-term debt of the registrant stating title of the class and outlining provisions with respect to interest, maturity, conversion, re-

demption, amortization, a sinking fund, and/or retirement. The registrant is required to describe each class of any authorized securities other than capital stock or long-term debt, and tax consequences to investors in the fund. The registrant must provide a table showing certain information as to the registrant's authorized shares within 90 days of the filing of the Form N-2.

If the registrant's prospectus relates to senior securities assigned a rating by a nationally recognized securities rating organization and the rating is disclosed in the prospectus, certain disclosure about the rating must be provided, including the significance of the rating, the basis on which it is issued and any conditions imposed on the registrant to maintain the rating. If the securities are not senior securities, this information may be provided in the statement of additional information if the rating will not materially affect the registrant's investment policies.

- **Item 11** of Form N-2 requires a statement as to any defaults or arrears on any senior securities of the registrant including the nature, date and the amount of such default. If any accumulated dividend is in arrears as of the date of filing, the registrant should state the title of the issue of capital stock involved and the amount per share in arrears.
- **Item 12** of Form N-2 requires a description of material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant, any subsidiary, or any investment adviser or principal underwriter of the registrant is a party.

**Summary of Form N-3 Items.** Item 5(c) of Form N-14 requires a registrant that is a separate account of an insurance company offering variable annuity contracts registered under the 1940 Act to furnish the information required by Items 2, 4(a) through (c) and 5 through 14 of Form N-3 under the 1940 Act. Each of these items is summarized below and reproduced in Appendix D.

- **Item 2** of Form N-3 requires the definitions of special terms used in the prospectus in glossary form.
- **Item 4** of Form N-3 requires condensed financial information regarding per accumulation unit income and capital changes as set forth in Rule 6-03 of Regulation S-X for each of the last ten fiscal years of the registrant (or for the life of the registrant, if less). The registrant should describe investment income, expenses, net investment income, net realized and unrealized gains or losses on securities, net increases or decreases in accumulation unit value, accumulation unit value at the beginning and end of the year, expenses to average net assets, net investment income to average net assets, portfolio turnover rate, and the number of accumulation units outstanding at the end of the year.

The registrant must furnish information as of the end of each of the last ten fiscal years for each class of senior securities of the registrant regarding the amount of debt outstanding during and at the end of the period, the average number of units outstanding and the average amount of debt per unit during the period.

- **Item 5** of Form N-3 requires a discussion of the organization and operation of the registrant including a brief description of the sponsoring insurance company. The registrant must include a statement indicating that income, gains and losses, whether or not realized, from assets allocated to the registrant are, credited to or charged against the registrant in accordance with the applicable variable annuity contracts, without regard to other income, gains or losses of the insurance company; that the assets of the registrant may not be charged with liabilities arising out of any other business of the insurance company and whether the obligations arising under the variable annuity contracts are obligations of the insurance company.

  The registrant must also disclose whether it has sub-accounts for different portfolios and, if 10% or more of the assets of any sub-account are attributable to one variable annuity contract, the registrant must give the name and address of the contractowners and the percentage of assets attributable to the variable annuity contract. This item also requires a concise description of the investment objectives and policies of the registrant, including whether those objectives may be changed without the approval of a majority of votes and how the registrant proposes to achieve its objectives. The registrant must also briefly discuss the risk factors associated with investment in the registrant.

- **Item 6** of Form N-3 requires the registrant to provide a description of how its business is managed, including the responsibilities of the board of managers, and for each investment adviser, disclosure of its name and address, description of its experience, the name of any controlling person and the services that it provides. The identity and principal business address of any other person who provides significant administrative or business affairs management services and a brief description of such services must also be provided.

  The registrant must disclose whether it pays brokerage commissions to any broker affiliated with the registrant, the sponsoring insurance company, the registrant's investment adviser, or its principal underwriter or any "second-tier" affiliate, and whether the registrant allocates brokerage transactions in a manner that takes into account the sale of investment company securities. The registrant must also disclose the name, title and length of service of the persons primarily responsible for the day to day management of its portfolio, including their business experience during the past five years.

- **Item 7** of Form N-3 requires a description of all deductions from purchase payments, contractowner accounts, or assets of the registrant (*e.g.* investment advisory fees, sales loads, administrative and transaction charges, risk charges and premium taxes). The registrant must identify the person who receives the deduction and include a brief description of what is provided in consideration for the deduction and the extent to which the deduction can be modified.

The sales load must be stated as a percentage of each purchase payment and as a percentage of the net amount invested for each breakpoint, in tabular form. For contracts with a deferred sales load, the sales load must be stated as a percentage of the amount withdrawn or surrendered. The registrant must (a) list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflects scheduled variations in, or elimination of, the sales load and must identify each class of individuals or transactions to which such plans apply; (b) state each different sales charge available as a percent of offering price and of net amount invested; and (c) state from whom additional information may be obtained.

The registrant must also state the commissions paid to dealers, the amount of compensation that the investment adviser receives from services provided to the registrant from someone other than the registrant and the types of operating expenses for which the registrant is responsible.

- **Item 8** of Form N-3 requires a general description of the variable annuity contracts. The registrant must identify the persons who have material rights, including voting rights, under the variable annuity contracts and briefly describe the nature of those rights during the accumulation period, the annuity period, or after the annuitant's death.

  A description of any provisions for and limitations on the allocation of purchase payments among sub-accounts, the transfer of contract values between sub-accounts and exchanges of contracts should be included. The registrant must describe the changes that can be made in the contract or the operations of the registrant by the registrant or the sponsoring insurance company, including why changes may be made and who must approve and be notified of such changes. A description of how contractowner inquiries should be made is also required.

  The registrant must describe the risks that frequent transfers of contract value among sub-accounts may present for other contract owners, including whether the registrant's board has adopted policies with respect to such frequent transfers and a description of such policies.

- **Item 9** of Form N-3 requires a description of the available annuity options, including any material factors that determine the level of annuity benefits, the annuity commencement date, the frequency and duration of annuity payments and their effect on the level of payment, the effect of assumed investment return, any minimum amount necessary for an annuity option and the consequences of an insufficient amount, and the rights to charge annuity options or to effect a transfer of investment base after the annuity commencement date.

- **Item 10** of Form N-3 requires a brief description of any death benefit available under a variable annuity contract during the accumulation and the annuity periods, including when the death benefit is calculated and payable and the forms the benefit may take.

- **Item 11** of Form N-3 requires a description of the procedures for purchasing a variable annuity contract. The registrant must include an explanation of the minimum initial and subsequent purchase payments that will be accepted and indicate separate limits for each sub-account. The registrant must also include a statement of when initial and subsequent purchase payments are credited and the way in which purchase payments are credited.

  An explanation that investment performance, expenses and deduction of certain charges affect accumulation unit value, identification of the method used to value the registrant's assets and a description of when calculations of accumulation unit value are made and that purchase payments are credited to a contract on the basis of accumulation unit value next determined after receipt of a purchase payment are also required. The registrant must also identify each principal underwriter of the variable annuity contracts (other than the insurance company) and state its principal business address. If the principal underwriter is affiliated with the registrant, the sponsoring insurance company or any affiliated person of the registrant or the sponsoring insurance company, the registrant must identify the nature of the affiliation.

- **Item 12** of Form N-3 requires that the registrant describe how a contractowner or annuitant can redeem a variable annuity contract, including how the proceeds are calculated and when they are payable. The registrant must also describe whether a request for redemption may not be honored for a certain period of time after a contractowner's investment, the reasons for any provision for the lapse or involuntary redemptions under the contract, any revocation rights (*e.g.* ten-day free look provisions) and whether it intends to redeem in kind.

- **Item 13** of Form N-3 requires a description of the tax consequences to investors of an investment in the variable annuity contracts being offered, the identification of the types of qualified plans with which the variable annuity contracts are intended to be used and the impact, if any, of taxation on the determination of account or sub-account values.

- **Item 14** of Form N-3 requires a description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant, its subsidiaries, investment adviser, principal underwriter or insurance company is a party.

**Summary of Form N-5 Items.** Item 5(d) of Form N-14 requires a small business investment company to furnish the information required by Items 1 through 7, 9 through 13, 15(a), 16, 19, 20, and 21 of Form N-5 under the 1940 Act. Each of these items is summarized below and reproduced in Appendix E.

- **Item 1** of Form N-5 requires the registrant to provide information regarding its organization, a statement of whether it proposes to operate as a diversified or a non-diversified closed-end investment company and a description of the business it has done or intends to do.

- **Item 2** of Form N-5 requires the registrant to describe its policy or proposed policy with regard to: issuance of senior securities; borrowing of money; underwriting of securities;

concentration of investments in particular industries; purchase and sale of real estate; purchase and sale of commodities or commodity contracts; making of loans; or any other policy which the registrant deems a matter of "fundamental policy."

- **Item 3** of Form N-5 requires the registrant to describe investment policies not disclosed under Item 2, including the type of securities the registrant may acquire; the percentage of assets of any one issuer in which the registrant may invest; the percentage of voting securities of any one issuer which registrant may acquire; investments in companies for the purpose of exercising control or management; investment in securities of other investment companies; and the policy with respect to portfolio turnover. In addition, the registrant must indicate which of the aforementioned policies may not be changed without shareholder action and disclose if it has acquired the securities of any of its regular brokers or dealers, as defined in Rule 10b-1 of the 1940 Act, and the identity of such broker/dealer. Information concerning codes of ethics under Rule 17j-1 must also be provided.

- **Item 4** of Form N-5 requires that the registrant describe its ownership of voting and convertible securities of other issuers. The registrant should disclose the following information with respect to any company of which the registrant owns 5% or more of the voting securities, in the tabular form prescribed, as of a specified date within 90 days prior to the date of filing: name and address of such company; the nature of its principal business; the title of securities owned, controlled or held by the registrant; and the percentage of each class owned, controlled or held by the registrant; and, with respect to convertible securities, the percentage of voting securities owned upon conversion.

- **Item 5** of Form N-5 requires a description of any special tax provisions applicable to the registrant as a small business investment company.

- **Item 6** of Form N-5 requires a description of any material pending legal proceedings other than ordinary routine litigation incidental to the business to which the registrant or any of its subsidiaries is a party.

- **Item 7** of Form N-5 requires a summary of earnings of the registrant. This summary should cover the last five fiscal years of the registrant (or for the life of the registrant, if less) and for any period between the end of the last fiscal year and the date of the latest balance sheet, and for the same period of the preceding fiscal year. The information provided should, whenever necessary, reflect information of material significance to investors in appraising the results shown or refer to such information set forth elsewhere in the prospectus.

- **Item 9** of Form N-5 requires information as of a specified date within 90 days prior to the date of filing of the Form N-5 with respect to persons owning 5% or more of the voting securities, those owning of record or beneficially more than 10% of any other class of equity securities, and the holdings of the officers, directors and members of the advisory board of the registrant as a group.

- **Item 10** of Form N-5 requires a presentation in tabular form of the number of holders of record of each class of equity securities as of a specified date within 90 days prior to the date of filing of the Form N-5.
- **Item 11** of Form N-5 requires the following information with regard to all directors and executive officers of the registrant: name and address; positions and offices with the registrant; and principal occupations during the past five years.
- **Item 12** of Form N-5 requires in tabular form the name and address of any member of the registrant's advisory board and requires disclosure of the name of each affiliated person of the registrant who is connected with any member of the advisory board in any capacity.
- **Item 13** of Form N-5 requires a tabular presentation of the remuneration of directors, officers, and members of the advisory board of the registrant. The registrant must set forth the name, the capacity in which remuneration was received and the aggregate remuneration in tabular form for each director, the three highest paid officers of the registrant, and each member of the advisory board, if the remuneration received by those individuals was above $30,000. In addition, the registrant must set forth the same information for those individuals as a group. The registrant must also set forth in tabular form the retirement benefits proposed to be paid to each of the aforementioned persons, including the amounts set aside or accrued during the registrant's last fiscal year and the estimated annual benefits upon retirement.
- **Item 15(a)** of Form N-5 requires that the registrant state the name, principal business address and, if other than a commercial bank or trust company, the nature of the business of its custodian.
- **Item 16** of Form N-5 requires the registrant to state the name and principal business address of its investment adviser, as well as the name and address of any affiliated person of the registrant who is also an affiliated person of the investment adviser and the nature of such affiliation. The registrant should also include a brief description of the investment advisory contract with the investment adviser, including the basis for determining remuneration.
- **Item 19** of Form N-5 requires a description of the capital stock of the registrant. Such description should outline the dividend rights, voting rights, liquidation rights, pre-emptive rights, conversion rights, redemption provisions, sinking fund provisions, and any liability to further calls or to assessment by the registrant. The registrant should also state if the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding and outline any restriction on the repurchase or redemption of shares by the registrant while there is an arrearage in the payment of dividends or sinking fund installments.
- **Item 20** of Form N-5 requires a discussion of the long-term debt of the registrant. This discussion should outline provisions with respect to interest, maturity, conversion, redemption, amortization, a sinking fund, or retirement of the long-term debt, as well as any

provisions with respect to the kind and the priority of any liens or restrictions on the declaration of dividends, or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties. In addition, the discussion should include an outline of provisions permitting or restricting the issuance of any additional securities, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security and similar provisions. Finally, this Item requires the registrant to state the name of the trustee and the nature of any material relationship between the registrant and any of its affiliates, the percentage of the securities of the class necessary to require the trustee to take action, and what indemnifications may be required before enforcement of a lien by the trustee.

- **Item 21** of Form N-5 requires a brief description of the rights evidenced by any authorized securities of the registrant other than capital stock or long-term debt.

**Other Information Available.** Form N-14 has not been revised to reflect establishment of the SEC's EDGAR Database. The description of other information about the registrant should also reference the SEC's website (*See*, *e.g.* Item 1(b)(3) of Form N-1A) and the registrant's website, if appropriate.

***Item 6. Information About the Company Being Acquired***

*Information about the company being acquired shall be provided as follows:*

*(a) if the company being acquired is a management investment company registered under the 1940 Act or a business development company as defined by Section 2(a)(48) of the 1940 Act:*

*(1) if the transaction will be submitted to the security holders of the registrant for approval or consent, furnish the information that would be required by Items 5 and 8 of this Form as if securities of the company being acquired were being registered;*

*(2) if the transaction will not be submitted to security holders of the registrant for approval or consent, furnish:*

*(i) the information that would be required by Items 5 and 8 of this Form as if securities of the company being acquired were being registered, or*

*(ii) provided the requirements of Instruction F are satisfied, include a statement that information about the company being acquired is incorporated by reference from the current prospectus of the company being acquired and is available upon request from the registrant without charge. (Provide a copy of the prospectus of the acquired company upon request in accordance with the requirements in Instruction F. If the company being acquired is registered on Form N-1A, Form N-2, Form N-3, or Form N-4 under the 1940 Act, in responding to requests under this Item, provide both a copy of the prospectus of the acquired company and the Statement of Additional Information with respect to that prospectus.)*

*(b) in addition, if the company being acquired is registered under the 1940 Act and is required to file reports under Section 30[1] of that Act:*

*(1) state that reports and other information filed by the company being acquired can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Branch, Office of Consumer Affairs and Information Services, Securities and Exchange Commission, Washington, D.C., 20549 at prescribed rates; and*

*(2) name any national securities exchange on which the securities of the company being acquired are listed, and state that reports, proxy statements and other information concerning the company being acquired can be inspected at the exchange.*

*(c) if the company being acquired is not registered under the 1940 Act but is subject to the reporting requirements of Section 13(a)[2] or 15(d)[3] of the 1934 Act, furnish the information that would be required by Item 17(a) of Form S-4 under the 1933 Act; and*

*(d) if the company being acquired is not registered under the 1940 Act and is not subject to the reporting requirements of either Section 13(a) or 15(d) of the 1934 Act, furnish a brief description of: the business done by the company, including basic identifying information such as the date and form of its organization; its investment objectives and policies; and how the company is managed.*

**Comment:**

**Introduction to Item 6.** Just as Item 5 requires disclosure of certain information concerning the acquiring company, Item 6(a) requires disclosure of certain information about the target company or a statement that such information about the target company is incorporated by reference from the target fund's current prospectus and is available to investors without charge upon request and that reports and other information filed by the target company may be obtained from the SEC and national securities exchanges, if applicable. Once again, the incorporation by reference procedure set forth in General Instruction G may be available to

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[1] Editor's note: Section 30 of the 1940 Act requires that every registered investment company file with the SEC certain periodic information, documents and reports.

[2] Editor's note: Section 13(a) of the 1934 Act requires every issuer of a security registered pursuant to Section 12 of the 1934 Act to file with the SEC annual reports and certain other information and documents. Section 12 of the 1934 Act generally prohibits "any transaction in any security (other than an exempt security) on a national securities exchange unless a registration is effective as to such security for such exchange."

[3] Editor's note: Section 15(d) of the 1934 Act requires that each issuer who has filed a registration statement which has become effective pursuant to the 1933 Act shall file with the SEC certain periodic information, documents and reports as may be required pursuant to Section 13 of the 1934 Act.

registrants, provided certain conditions are met. (*See* General Instructions F and related comments on pages 28-30 and General Instruction G and related Comment at pages 31-32.)

Item 6(d) relates to information required where the target company is not a public company. Although the Item does not detail the type of disclosure required concerning non-public companies, registrants are reminded of their general obligation to disclose all material information.

If the target company is publicly held, additional information about the company may be obtained from the SEC. *See* the Comment above regarding Other Information Available for the registrant.

***Item 7. Voting Information***

*(a) If proxies are to be solicited, include, where applicable, the information called for by Items 2 and 4 of Schedule 14A of Regulation 14A under the 1934 Act;*

*(b) If the transaction is an exchange offer or if proxies are not to be solicited, include, where applicable, the information called for by Item 2 of Schedule 14C under the 1934 Act, and state the date, time and place of the meeting of the security holders, unless such information is otherwise disclosed in material furnished to security holders with the information statement;*

*(c) In addition to the information called for by paragraphs (a) and (b) above, include:*

*(1) The information called for by Item 3 of Schedule 14A of Regulation 14A under the 1934 Act;*

*Instruction:*

*Also state that the exercise of such rights is subject to the "forward pricing" requirements of Rule 22c-1 under the 1940 Act and that the Rule supersedes contrary provisions of state law.*

*(2) the information called for by Item 21 of Schedule 14A of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;*

*(3) the information called for by Items 6(a) and (b) of Schedule 14A of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;*

*(4) with respect to both the registrant and the company being acquired:*

*(i) the name and address of each person who controls either party to the transaction and explain the effect of that control on the voting rights of other security holders. As to each control person, state the percentage of the voting securities owned or any other basis of control. If the control person is a company, give the state or other sovereign power under the laws of which it is organized. List all parents of the control person.*

*Instruction:*

*For purposes of subparagraph (c)(4)(i), "control" shall mean (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgement or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the 1940 Act, which has become final, that control exists.*

*(ii) the name, address and percentage of ownership of each person who owns of record or is known by either party to the transaction to own of record or beneficially 5 percent or more of any class of either party's outstanding equity securities.*

*Instructions:*

*(1) The percentages are to be calculated on the basis of the amount of securities outstanding.*

*(2) Indicate, as far as practicable, the percentage of registrant's shares to be owned by such persons upon consummation of the proposed transaction on the basis of present holdings and commitments.*

*(3) If to the knowledge of either party to the transaction or any principal underwriter of their securities, 5 percent or more of any class of voting securities of either party are or will be held subject to any voting trust or other similar agreement, this fact must be disclosed.*

*(4) Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and show the respective percentage owned in each manner.*

*(iii) a statement of all equity securities of the registrant, owned by all officers, directors and members of the advisory board of the registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than 1 percent of the class, a statement to that effect is sufficient.*

**Comments:**

**If Proxies are Solicited.** Item 7(a) of Form N-14 requires information described in Items 2 and 4 of Schedule 14A of Regulation 14A under the 1934 Act, which are summarized below. Items 2 and 4 of Schedule 14A reproduced in Appendix A.

- **Item 2** of Schedule 14A requires disclosure concerning a shareholder's power to revoke a proxy.
- **Item 4** of Schedule 14A requires the identification of the person soliciting a proxy. If a proxy is to be solicited other than by the use of the mails, the methods to be employed must be described. Information must be provided with respect to proxy solicitors engaged by the registrant and the persons who will bear the costs of the solicitations must be identified.

**Other Transactions.** Item 7(b) of Form N-14 requires information described in Item 2 of Schedule 14C under the 1934 Act. Item 2 of Schedule 14C, which requires a statement that proxies are not solicited, is reproduced in Appendix A.

**Voting Information.** Item 7(c) of Form N-14 requires information described in Items 3, 6(a) and (b) and 21 of Schedule 14A of Regulation 14A under the 1934 Act, which are summarized below and reproduced in Appendix A.

- **Item 3** of Schedule 14A requires disclosure concerning a dissenting shareholder's right of appraisal. Open-end investment companies registered under the 1940 Act are not required to respond to this item.
- **Item 6(a) and (b)** of Schedule 14A require disclosure, for each class of shares entitled to be voted at the meeting, number of shares outstanding and the number of votes to which each class is entitled, and the record date with respect to the solicitation.
- **Item 21** of Schedule 14A requires disclosure of the vote required for approval of a proposal at a shareholders meeting and a description of how the votes will be counted, including treatment and effect of abstentions and broker non-votes.

**Voting Requirements.** The laws of the state under which a mutual fund is organized and the fund's constituent documents (i.e., Articles of Incorporation, Declaration of Trust, Bylaws, etc.) will generally require that a fund merger be approved by the shareholders of the target fund. Those laws and constituent documents will also generally prescribe the procedures for a meeting of the shareholders, and the shareholder vote required for approval. The voting standard set by state law and/or the constituent documents, which is expressed differently in different states (*e.g.*, majority of votes cast vs. majority of the shares present at the meeting), will generally govern, except as described below. Statutes like the Delaware Statutory Trust Act provide flexibility with regard to shareholder voting and provide that a trust's declaration of trust may specify the circumstances where shareholders have the right to vote. Thus, a fund merger may not need shareholder approval under its charter documents. Thus, state statutes and the target fund's constituent documents should be reviewed to determine the appropriate voting standard. Often, the articles of incorporation or declaration of trust may have a section that is separate from the general shareholder voting requirements that will specifically address fund mergers. In addition, the 1940 Act may impose additional voting requirements for certain proposed transactions.

Rule 18f-2 under the 1940 Act establishes special rules for shareholder voting for series investment companies that issue two or more classes or series of stock that are preferred over all other series or classes in respect of assets specifically allocated to that class or series. Any matter required to be submitted to the holders of the outstanding voting securities of a series investment company will not be deemed to have been effectively acted upon unless approved by the holders of a majority of the outstanding voting securities of each class or series of stock affected by such

matter. For purposes of Rule 18f-2, a class or series of stock will be deemed to be affected by a matter unless (1) the interests of each class or series in the matter are substantially identical, or (2) the matter does not affect any interest of such class or series. When a mutual fund merger affects several series of shares of a series fund, separate approval by shareholders of each such series is necessary.

Rule 18f-2(h) defines the term "majority of the outstanding voting securities" of a class or series when used in connection with a matter such as a fund merger to mean the *lesser* of (1) the minimum vote of the outstanding voting securities of a company under state law or other applicable requirement, or (2) the minimum vote specified in Section 2(a)(42) of the 1940 Act , which is (A) 67 per centum or more of the voting securities present at a meeting if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy, or (B) 50 per centum of the outstanding voting securities of the company, whichever is the less. In most instances, the vote required for shareholder approval of a fund merger will be governed by state law or the fund's articles of incorporation or declaration of trust.

Rule 18f-3 under the 1940 Act allows multiple classes of mutual fund shares to participate in the same portfolio of investments, but with different expenses and, sometimes, different services. Under the rule, each class of shares generally must have a different arrangement for shareholder services or distribution of shares. In addition, the rule provides that *each class* of shares:

- shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement; and
- shall have separate voting rights on any matter submitted to shareholders in which the interests of one class of shares differ from the interests of any other class.

Thus, class voting may be required in connection with a fund merger proposal if one class of shares will be treated differently from another (*e.g.*, Rule 12b-1 fees will increase as a result of the merger for one class of shares but not for other classes of shares).

As indicated above, Rule 17a-8 provides an exemption from the prohibitions of Section 17 of the 1940 Act for mergers of affiliated mutual funds, if certain conditions are met. To qualify for the exemption, the merger must be approved by a majority of the outstanding voting securities, as defined in Section 2(a)(42) of the 1940 Act, of the target fund unless:

- no fundamental policy under Section 13 of the Act of the target fund is materially different from a fundamental policy of the acquiring fund;
- the investment advisory contract for the target fund is not materially different from the advisory contract for the acquiring fund (except for the identities of the investment companies party to the contract);

- the independent directors of the target fund who were elected by its shareholders will comprise a majority of the independent directors of the acquiring fund; and
- Rule 12b-1 fees to be paid by the acquiring fund are no greater than the Rule 12b-1 fees to be paid by the target fund.

**Adjournment of Meeting.** Procedural requirements relating to shareholder meetings and shareholder voting are governed by the 1940 Act, state law, the fund's charter and bylaws (or other constituent documents). All of these must be reviewed before adjourning a meeting of shareholders to determine what, if any, restrictions limit the adjournment period and the validity of the proxies. There must be a quorum for a vote to be valid. In the absence of a quorum, the holders of a majority of the shares present in person or by proxy and entitled to vote may adjourn the meeting without notice other than announcement at the meeting (unless the bylaws provide otherwise) from time to time until the requisite number of shares are present. A meeting may be adjourned until a quorum is reached, subject to restrictions on the adjournment period and validity of proxies.

Where the fund has multiple portfolios or has multiple classes of shares in a portfolio and is meeting to vote on a matter by portfolio or class, the meeting should be adjourned with respect to any class or portfolio proposal until a quorum is achieved for such class or portfolio proposal. Open-end funds that issue two or more classes or series of stock, each of which is preferred over all other classes of series in respect of assets allocated to that class or series (series investment companies), should review Rule 18f-2 and its special voting requirements before adjourning. *See* Comment: Voting Requirements above.

***Item 8. Interest of Certain Persons and Experts***

*(a) Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of any affiliated person of the registrant in the proposed transaction.*

*Instruction:*

*This Item shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.*

*(b) If any expert named in the registration statement as having prepared or certified any part thereof (or named as having prepared or certified a report or valuation for use in connection with the registration statement), or counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion, or at any time thereafter through the date of effectiveness of the registration statement to which such preparation,*

*certification, or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or was connected with the registrant, managing underwriter (or any principal underwriter, if there are no managing underwriters), voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.*

*Instructions:*

*(1) The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed $50,000. For purposes of this instruction, the term "expert" or counsel includes the firm, corporation, partnership or other entity, if any, by which the expert or counsel is employed or of which he is a member or of counsel to, and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in the matter on behalf of the firm, corporation, partnership or entity.*

*(2) Accountants providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note Section 210.2-01 of Regulation S-X for the Commission's requirements regarding "Qualification of Accountants" which discusses disqualifying interests.*

**Comment:**

**Qualifications of Accountants.** Rule 2-01 of Regulation S-X is designed to ensure that auditors are qualified and independent of their audit clients. The rule was modified extensively in Investment Company Act Release No. 25,915 (January 28, 2003) and now describes in detail restrictions on financial, employment and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client.

### *Item 9. Additional Information Required for Reoffering by Persons Deemed to be Underwriters*

*If any of the securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, furnish the following information in the prospectus, to the extent it is not already furnished therein:*

*(a) the name of each security holder;*

*(b) the nature of any position, office or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliated companies;*

*(c) the amount of securities owned by the selling security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or*

*more) the percentage of the class to be owned by the security holder after completion of the offering; and*

*(d) information about the transaction in which the securities were acquired and any material changes in the registrant's affairs after the transaction.*

## PART B

### Information Required in a Statement of Additional Information

***Item 10. Cover Page***

*(a) The outside cover page is required to contain the following information:*

*(i) the registrant's name;*

*(ii) a statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read in conjunction with the prospectus; and (C) from whom a copy of the prospectus may be obtained;*

*(iii) the date of the prospectus to which the Statement of Additional Information relates and any other identifying information; and*

*(iv) the date of the Statement of Additional Information.*

*(b) The cover page may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of required information.*

***Item 11. Table of Contents***

Set forth under appropriate captions (and subcaptions) a list of the contents of the Statement of Additional Information and, where useful, provide cross-reference to related disclosure in the prospectus.

***Item 12. Additional Information about the Registrant***

*(a) If the registrant is an open-end management investment company, furnish the information required by Items 14 through 27 of Form N-1A under the 1940 Act or Items 15 through 23 of Form N-3, as applicable.*

*(b) If the registrant is a closed-end management investment company, furnish the information required by Items 14 through 23, and Item 4.2 if the registrant is regulated as a business development company, of Form N-2 under the 1940 Act.*

*(c) If the registrant is not an open-end management investment company, no specific information about the company need be included.*

**Comments:**

**Introduction to Item 12.** This Item is designed to provide more detailed information about companies involved in a business combination to shareholders who request the Statement of Additional Information on Form N-14. Item 12 does not itself detail specific information to be included in the Statement of Additional Information on Form N-14, but rather references specific items of other registration forms.

There are two parts to Item 12(a). The first pertains to open-end funds and references various items from Part B of Form N-1A; a summary of those items appears after the Comment below and they are reproduced in Appendix B. The second part of Item 12(a) pertains to separate accounts and references various items of Form N-3; a summary of those items are reproduced in Appendix D.

Note that Item 12(c) specifically provides that registrants that are not open-end management investment companies need not provide any information in response to this item.

Registrants may be able to satisfy all of the disclosure requirements of this Item 12 by reference to materials already included in existing registration statements or other reports. Details about the conditions under which incorporation by reference may be appropriate are set forth in General Instruction G to Form N-14 and related commentary, which appears at pages 31-32.

**Summary of Form N-1A Items.** Item 12(a) of Form N-14 requires open-end funds to furnish the information required by Items 14 through 27 of Form N-1A under the 1940 Act. Items 14 through 27 of the current Form N-1A are summarized below and reproduced in Appendix B.

- **Item 14** of Form N-1A requires that the outside cover page of the statement of additional information contain: (1) the fund's name and the class or classes (if any) to which the statement of additional information relates, as well as the name of the registrant if the fund is a series; (2) the exchange ticker symbol of the fund's securities, or if the statement of additional information relates to one or more classes of the fund, adjacent to each such class provide the exchange ticker symbol of such class, and if the fund is an exchange-traded fund, state the principal U.S. market or markets on which the fund's shares are traded; (3) a statement that (i) the statement of additional information is not a prospectus; (ii) how a copy of the prospectus may be obtained; and (iii) whether and from where information is incorporated into the statement of additional information and (4) the date of the statement of additional information and of the prospectus to which the statement of additional information relates. The registrant must also include a table of contents under appropriate captions and sub-captions with cross references to the prospectus where appropriate.
- **Item 15** of Form N-1A requires the registrant to describe its form of organization, including the name of the state or other jurisdiction in which it was organized and the date of organization. The registrant must also disclose any other business in which it has been engaged during the preceding five years and the approximate date on which the registrant commenced business as an investment company. The registrant must state any former name used by it if its name changed during the preceding five years and whether either of the foregoing events occurred in connection with a bankruptcy or similar proceeding.
- **Item 16** of Form N-1A requires the registrant to describe its classification, investment strategies and risks, and its policies with respect to (1) the issuance of senior securities; (2) the borrowing of money; (3) the underwriting of securities of other issuers (4) industry

concentration; (5) the purchase or sale of real estate or commodities (6) the making of loans and (7) any other policy the registrant deems fundamental, including if applicable the registrant's investment objectives. The registrant must state whether shareholder approval is necessary to change any of these numerated policies, and if so, the vote required. The registrant must also disclose any investments made while assuming a temporary defensive position, and explain any significant variation in the registrant's portfolio turnover rates over the two most recently completed fiscal years or any anticipated variation in portfolio turnover rate from that reported for the last fiscal year.

The registrant is required to disclose it policies with respect to disclosure of its portfolio securities to any person, including how the policies apply to different categories of persons; any conditions or restrictions placed on the use of the information; the frequency with which the information is disclosed and the lag time between the date of the information and the date it is disclosed; any policy with regard to the receipt of compensation by the registrant, the adviser or any other party; the individuals (or categories of individuals) who may authorize disclosure of the portfolio securities and the procedures used by the registrant to ensure that the disclosure of the information is in the best interests of shareholders. The registrant must describe any ongoing arrangements to make the portfolio securities information available to any person including the identity of the person and any compensation received by the registrant, the adviser or any other party.

- **Item 17** of Form N-1A requires the registrant to briefly describe the leadership structure of its board of directors, including responsibilities of the board with respect to management and whether the chairman of the board is an interested person of the fund. If the chairman is interested, the registrant must disclose if the fund has a lead independent director and the specific role the lead independent director plays in fund leadership. The fund must state why the registrant has determined its leadership structure to be appropriate and the extent of the board's role in risk oversight.

  The registrant must also disclose the name, address and age, position with the registrant, term of office and length of time served and principal occupation(s) during the past five years of each director and officer of the registrant and any family relationships between the individuals listed. The registrant must also disclose for directors the number of portfolios in the "fund complex" overseen by the director, and any other directorships held in the past five years with public companies or any registered investment company. The registrant must include a discussion of the specific experience, qualifications, attributes or skills that led to the conclusion that the director should serve on the board, giving information about the director's particular areas of expertise or qualifications. In addition, the registrant must indicate which of its directors are "interested persons" as that term is defined in Section 2(a)(19) of the 1940 Act and describe any positions held with affiliated persons or principal underwriters of the registrant.

  The standing committees of the board of directors must be identified including a concise statement of the committee functions, its members, the number of committee meetings held

during the last fiscal year and, if a nominating committee, state whether the committee will consider shareholder nominees. The registrant must disclose any positions held by independent directors or their immediate family members with another investment company having the same adviser or principal underwriter as the registrant, or with the registrant's adviser, principal underwriter or any person with whom they are affiliated or which controls the adviser or principal underwriter. Information concerning transactions involving independent directors or their immediate family members, directly or indirectly, and the fund must be disclosed, along with other information on transactions or relationships between independent directors or their immediate family members and: (1) the fund's officers; (2) another investment company, or its officers, having the same adviser or principal underwriter; and (3) the fund's advisers, principal underwriters and their officers and control persons. The registrant must also disclose if an officer of its adviser or principal underwriter, or an officer of an affiliate or control person of such adviser or principal underwriter, served as a director of a company where an independent director of the registrant or their immediate family member was an officer, including identity of the company, the person who served as director of the company and their period of service, the adviser or principal underwriter (or affiliate or control person thereof) where such director holds office and the director of the fund or family member who is or was an officer of the company and the office held.

The registrant must disclose for each director the dollar range of shares of the fund owned beneficially by the director in the fund, and all investment companies overseen by the director in the family of investment companies. The registrant must also disclose for each independent director and their immediate family members all shares owned beneficially or of record in the fund's adviser or principal underwriter or any of their affiliates or control persons. Compensation paid to directors must be disclosed, including aggregate compensation from the fund, pension or retirement benefits and total compensation from the fund and the "fund complex."

The registrant must also disclose any arrangements that result in breakpoints in or elimination of sales loads for directors and other affiliated persons of the fund, and whether the fund's adviser and principal underwriter have adopted codes of ethics, and whether it permits persons subject to it to invest in securities that may be held by the fund. The registrant's proxy voting policies and procedures must also be described, including the procedures used when a vote presents a conflict of interest.

- **Item 18** of Form N-1A requires the registrant to furnish the name and address of each person who beneficially owns more than 25% of the registrant's voting securities and to explain the effect of such control on the voting rights of other security holders. For each control person the percentage of the registrant's voting securities owned or any other basis of control must be disclosed. The registrant must also disclose the name and address of and percentage ownership by each person who owns of record or who the registrant knows to own beneficially 5% or more of any class of the registrant's outstanding equity securities.

The registrant must state the percentage of the fund's securities owned by all officers and directors as a group. All of the above information must be as of a specified date no more than 30 days prior to filing of the registration statement.

- **Item 19** of Form N-1A requires the registrant to disclose the names of all controlling persons of the investment adviser and the basis of such control and the name of any affiliated person of the registrant who is also an affiliated person of the investment adviser and a list of all capacities in which such person serves the registrant and the investment adviser. The registrant must disclose the method of computing the advisory fee and the total dollar amounts paid by the registrant to the adviser for the last three fiscal years and any expense reimbursement or limitation provision to which the adviser is subject. Services performed for or on behalf of the registrant that are supplied or paid for by the adviser must be described. The registrant must also describe all fees and expenses paid by persons other than the adviser or the fund, including identity of such persons.

  The registrant must disclose the name and address of the fund's principal underwriter. The registrant also must describe the terms of any management-related services contract (such as accounting or administration agreements but not transfer agency or custodian agreements), as well as the registrant's plan of distribution and amounts paid in compensation to underwriters, dealers and sales personnel. The registrant must disclose the principal type of activities for which payments under the distribution plan are or will be made, the relationship between the amounts paid to the distributor and the expenses that it incurs as well as the amount of any unreimbursed expenses incurred under the plan of distribution in a previous year. The registrant must also disclose whether it participates in any joint distribution activities with another investment company and whether any of its interested persons, or any independent director of the registrant, has a direct or indirect financial interest in the distribution plan.

  The registrant must disclose who its custodian and independent accountants are and describe the services provided by each. The registrant must state the name and principal business address of its transfer agent. If an affiliated person of the registrant or an affiliate of such a person acts as custodian or transfer agent, the registrant must describe the services performed by such persons and the basis of their remuneration.

  The registrant must also provide (i) the gross income from securities lending activities, including income from cash collateral reinvestment; (ii) all fees and or compensation from each of the following securities lending activities and related services: (a) any share of revenue generated by the securities lending program paid to the securities lending agent(s) (the "revenue split"); (b) fees paid for cash collateral management services that are not included in the revenue split; (c) administrative fees that are not included in the revenue split; (d) fees for indemnification that are not included in the revenue split; (e) rebates paid to borrowers; and (f) any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees; (iii) the aggregate fees/compensation disclosed pursuant to (ii); and (iv) net income from securities lending

activities (i.e., the dollar amount in (i) minus the dollar amount in (iii)). The registrant must also describe the services provided to each series by the securities lending agent in the series' most recent fiscal year.

- **Item 20** of Form N-1A requires disclosure of information regarding a fund's portfolio managers. Information must be provided with respect to other accounts managed by the portfolio manager. This information includes the number of other registered investment company accounts, other pooled investment vehicles and other accounts and their total assets, including whether the advisory fee is based on the performance of the account. The registrant must also provide a description of any material conflicts of interest that may arise in connection with the management of those accounts and the fund. The structure of and method used to determine the compensation of each portfolio manager must be described. The dollar range of equity securities in the fund beneficially owned by the portfolio manager must also be disclosed.

- **Item 21** of Form N-1A requires information regarding brokerage practices, including a description of how transactions in the registrant's portfolio securities are effected, a statement about the payment of brokerage commissions and mark-ups and the amount of brokerage commissions paid by the registrant during the three most recent fiscal years including an explanation of any material difference in the most recent fiscal year. The registrant must disclose the amount of brokerage commissions paid to affiliated persons and identify such persons and the percentage of the registrant's aggregate brokerage commission paid to such person and the percentage of aggregate dollar amount of transactions effected through such person during the most recent fiscal year. The registrant must disclose how brokers are selected, including how it evaluates the reasonableness of their brokerage commissions, and whether brokerage is directed because of research services provided by such brokers, stating the amount of such transactions and related commissions. The registrant must also disclose whether it has acquired during its most recent fiscal year securities of its regular brokers or dealers (as defined in Rule 10b-1 of the 1940 Act) or their parents.

- **Item 22** of Form N-1A requires a full description of the registrant's capital stock, including restrictions on the right to freely retain or dispose of the shares, material obligations or potential liabilities associated with owning the shares, dividend rights, voting rights, liquidation rights, pre-emptive rights, conversion rights, redemption provisions, sinking fund provisions and liability to further calls or to assessment.

- **Item 23** of Form N-1A requires the registrant to describe the manner in which its securities are offered to the public, including any special purchase plans, and the method followed in determining (i) the total offering price and (ii) the value of the registrant's assets. If the registrant has made an election allowing redemptions in kind pursuant to Rule 18f-1 of the 1940 Act, such policy must be described. The registrant must also describe any arrangements in a merger, acquisition or other reorganization transaction that result in breakpoints in or the elimination of sales loads, and any arrangements permitting frequent purchases and redemptions of fund shares. Any arrangements permitting frequent pur-

chases and redemptions of fund shares must be described, including the identity of the persons permitted to engage in frequent trading and any compensation received by the registrant or the adviser.

- **Item 24** of Form N-1A requires an explanation of any tax information relevant to investors. This includes whether the registrant qualifies or intends to qualify under Subchapter M of the Internal Revenue Code, the tax implications of the registrant's having separate series of stock, investing in foreign securities or the presence of any loss carry forwards to which the registrant may be entitled.

- **Item 25** of Form N-1A requires the registrant to describe the terms of its distribution agreements, whether its offering is continuous, the aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the last three fiscal years. The registrant must supply detailed information of amounts received by affiliated underwriters (or affiliates of affiliated underwriters), including the name of the underwriter, its net underwriting discounts or commissions, compensation on redemptions, brokerage commissions and other compensation. If any underwriter or dealer received payments during the last fiscal year in shares of the registrant's security, the registrant must provide detailed information concerning the nature of such payments and the identity of the recipient or recipients.

- **Item 26** of Form N-1A requires (i) certain yield calculations and disclosures from a fund that holds itself out to be a money market fund or (ii) certain total return calculations and disclosures for funds that are not money market funds.

- **Item 27** of Form N-1A requires that the registrant include the financial statements and schedules required by Regulation S-X. Item 27 also sets for the information required in the annual report and semi-annual report to shareholders.

**Summary of Form N-3 Items.** Item 12(a) of Form N-14 requires separate accounts offering variable annuity contracts to furnish the information required by Items 15 through 23 of Form N-3 under the 1940 Act. Securities Act Release No. 33-8458 added a new Item 22 to Form N-3 and redesignated Item 22 through 37 as Items 23 through 38. Items 15 through 24 of Form N-3 are summarized below and are reproduced in Appendix D.

- **Item 15** of Form N-3 requires the registrant to list in the prospectus the contents of the statement of additional information.

- **Item 16** of Form N-3 requires disclosure of the following items on the outside cover page of the statement of additional information: (1) the registrant's name; (2) the name of the sponsoring insurance company; (3) the date of the related prospectus and the date of the statement of additional information and (4) a statement that the statement of additional information is not a prospectus and that it should be read in conjunction with the prospectus and how a prospectus may be obtained.

- **Item 17** of Form N-3 requires the registrant to furnish a table of contents with cross references to the prospectus where useful.
- **Item 18** of Form N-3 requires the registrant to disclose whether, at the request of any state, sales of contracts have been suspended or whether sales of contracts offered by the sponsoring insurance company have been suspended during the past five years. The registrant must also disclose the sponsoring insurance company's former name if it has changed in the last five years and whether the sponsoring insurance company is controlled by another person that in turn is controlled by yet another person. If 10% or more of the assets of any sub-account are not attributable to variable annuity contracts or to accumulated deductions or reserves, the registrant must state what percentage those assets are of the total assets of the separate account, as well as disclose whether the sponsoring insurance company or any other person has any present intention of removing assets from the sub-account.
- **Item 19** of Form N-3 requires the registrant to describe its investment policies, including fundamental policies with respect to (1) the issuance of senior securities; (2) short sales, purchases on margin, and the writing of put and call options; (3) the borrowing of money; (4) the underwriting of securities of other issuers; (5) industry concentration; (6) purchases or sales of real estate and real estate mortgage loans; (7) purchases and sales of commodities and commodities contracts including futures contracts; (8) the making of loans; and (9) any other fundamental policy. The registrant must also disclose its portfolio turnover rates and explain any significant changes or anticipated changes in that rate.

  Policies adopted by the registrant with respect to disclosure of portfolio securities holdings must also be described, including how the policies apply to different categories of persons; any conditions or restrictions placed on the use of the information; the frequency with which the information is disclosed and the lag time between the date of the information and the date it is disclosed; any policy with regard to the receipt of compensation by the registrant; the adviser or the sponsoring insurance company; the individuals (or categories of individuals) who may authorize disclosure of the portfolio securities and the procedures used by the registrant to ensure that the disclosure of the information is in the best interests of contract owners, participants, annuitants and beneficiaries. The registrant must describe any ongoing arrangements to make the portfolio securities information available to any person including the identity of the person and any compensation received by the registrant, the adviser, the sponsoring insurance company or others in connection with the arrangement.
- **Item 20** of Form N-3 requires the registrant to briefly describe the leadership structure of its board of directors, including whether the chairman of the board is an interested person of the registrant. If the chairman is interested, the registrant must disclose whether it has a lead independent director and the specific role the lead independent director plays in fund leadership. The fund must state why the registrant has determined its leadership structure to be appropriate and the extent of the board's role in risk oversight.

  The registrant must also disclose the names, addresses and age, positions held with the registrant and principal occupation(s) during the past five years of each member of its board

of managers and officers, any family relationships between the individuals listed. The registrant must also disclose for directors the number of portfolios in the "fund complex" overseen by the director, and any other directorships held in the past five years with public companies or any registered investment company. The registrant must include a discussion of the specific experience, qualifications, attributes or skills that led to the conclusion that the director should serve on the board, giving information about the director's particular areas of expertise or qualifications. In addition, the registrant must indicate which of its members of the board of managers are "interested persons" as that term is defined in Section 2(a)(19) of the 1940 Act and describe any positions held with affiliated persons or principal underwriters of the registrant.

The standing committees of the board of managers must be identified including a concise statement of the committee functions, its members and, if a nominating committee, state whether the committee will consider shareholder nominees. The registrant must disclose any positions held by independent directors or their immediate family members with another investment company having the same sponsoring insurance company, adviser or principal underwriter as the registrant, or with the registrant's sponsoring insurance company, adviser, principal underwriter or any person with whom they are affiliated or which controls the sponsoring insurance company, adviser or principal underwriter. Information concerning transactions involving independent directors or their immediate family members, directly or indirectly, and the fund must be disclosed, along with other information on transactions or relationships between independent directors or their immediate family members and: (1) the fund's officers; (2) another investment company, or its officers, having the same sponsoring insurance company, adviser or principal underwriter; and (3) the fund's sponsoring insurance company, adviser or principal underwriters and their officers and control persons. The registrant must also disclose if an officer of its sponsoring insurance company, adviser or principal underwriter, or an officer of an affiliate or control person of such sponsoring insurance company, adviser or principal underwriter, served as a director of a company where an independent director of the registrant or their immediate family member was an officer, including identity of the company, the person who served as director of the company and their period of service, the sponsoring insurance company, adviser or principal underwriter (or affiliate or control person thereof) where such director holds office and the director of the fund or family member who is or was an officer of the company and the office held.

The registrant must disclose for each director the dollar range of shares of the fund owned beneficially by the director in the fund, and all investment companies overseen by the director in the family of investment companies. The registrant must also disclose for each independent director and their immediate family members all shares owned beneficially or of record in the fund's sponsoring insurance company, adviser or principal underwriter or any of their affiliates or control persons. Compensation paid to directors must be disclosed, including aggregate compensation from the fund, pension or retirement benefits and total compensation from the fund and the "fund complex."

The registrant must also disclose whether it's adviser and principal underwriter have adopted codes of ethics, and whether the code of ethics permits persons subject to it to invest in securities that may be held by the registrant. The registrant's proxy voting policies and procedures must also be described, including the procedures used when a vote presents a conflict of interest.

- **Item 21** of Form N-3 requires the registrant to provide information regarding investment advisory and other services, including the names of all controlling persons of its investment adviser and the basis of such control and the name of any affiliated person of the registrant or the sponsoring insurance company who is also an affiliate of the adviser and a list of capacities in which each such person serves the registrant, sponsoring insurance company and the adviser. The registrant must also disclose the method of computing the advisory fee and the total amounts paid to the adviser for the last three fiscal years, including any expense reimbursement or limitation provision to which the adviser is subject. Services performed for or on behalf of the registrant that are supplied or paid for by the adviser in connection with the advisory agreement must be described. The registrant must also describe all fees and expenses paid by persons other than the adviser, the sponsoring insurance company or the registrant and identify such person.

  The registrant must also describe the terms of any management-related services contract (such as accounting or administration agreements but not transfer agency or custodian agreements) as well as the registrant's plan of distribution and disclose amounts paid in compensation to underwriters, dealers and sales personnel. The registrant must also disclose whether any of its interested persons, or any independent director of the registrant, has a direct or indirect financial interest in the distribution plan. The registrant must provide the names and addresses of its custodian and independent auditors and a description of the services provided by each. If an affiliated person of the registrant or an affiliate of such person acts as administrator, the registrant must describe the services performed by such person and the amounts received by such person from the registrant for the past three years.

The registrant must also provide (i) the gross income from securities lending activities, including income from cash collateral reinvestment; (ii) all fees and or compensation from each of the following securities lending activities and related services: (a) any share of revenue generated by the securities lending program paid to the securities lending agent(s) (the "revenue split"); (b) fees paid for cash collateral management services that are not included in the revenue split; (c) administrative fees that are not included in the revenue split; (d) fees for indemnification that are not included in the revenue split; (e) rebates paid to borrowers; and (f) any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees; (iii) the aggregate fees/compensation disclosed pursuant to (ii); and (iv) net income from securities lending activities (i.e., the dollar amount in (i) minus the dollar amount in (iii)). The registrant must also describe the services provided to each series by the securities lending agent in the series' most recent fiscal year.

- **Item 22** of Form N-3 requires disclosure of information regarding a Fund's portfolio managers. Information must be provided with respect to other accounts managed by the portfolio manager. This information includes the number of other registered investment company accounts, other pooled investment vehicles and other accounts and their total assets, including whether the advisory fee is based on the performance of the account. The registrant must also provide a description of any material conflicts of interest that may arise in connection with the management of those accounts and the Fund. The structure of and method used to determine the compensation of each portfolio manager must be described. The dollar range of equity securities in the Fund beneficially owned by the portfolio manager must also be disclosed.

- **Item 23** of Form N-3 requires the registrant to describe how transactions in portfolio securities are effected, including a statement about the payment of brokerage commissions and mark-ups and the amount of brokerage commissions paid by the registrant during the three most recent fiscal years including an explanation of any material increase, if any, in the most recent fiscal year. The registrant must disclose the amount of brokerage commissions paid during the three most recent fiscal years to affiliated persons and identify such persons and the percentage of the registrant's aggregate brokerage commissions paid to such persons and the percentage of the aggregate dollar amount of transactions effected through such persons during the most recent fiscal year. The registrant must also disclose how brokers are selected, including how it evaluates the reasonableness of their brokerage commissions, and whether brokerage is directed because of research services provided by such brokers, stating the amount of such transactions and related commissions. The registrant must also disclose whether it has acquired during its most recent fiscal year securities of its regular brokers or dealers (as defined in Rule 10b-1 of the 1940 Act) or their parents.

- **Item 24** of Form N-3 requires the registrant to describe the manner in which its securities are offered to the public, including any special purchase plans or exchange privileges. The registrant must also describe the method that will be used to determine the sales load on its variable annuity contracts and the method used to value its assets. The registrant must de-

scribe the way purchase payments are credited to the variable annuity contract and must describe any exemptive order it has received from Section 18(f) of the 1940 Act or, if it has filed an election pursuant to Rule 18f-1, the implications of such an election. Any arrangement with any person to permit frequent transfers of contract value among sub-accounts of the registrant must be described, including the identity of the persons permitted to engage in frequent transfers and any compensation received by the registrant, the adviser, or the sponsoring insurance company.

**Summary of Form N-2 Items.** Item 12(b) of Form N-14 requires a registrant that is a closed-end management investment company to furnish the information required by Items 14 through 23, and Item 4.2 if the registrant is regulated as a business development company, of Form N-2 under the 1940 Act. Securities Act Release No. 33-8458 added a new Item 21 to Form N-2 and redesignated Items 21 through 33 as Items 22 through 34. Items 14 through 24 and Item 4.2 of Form N-2 are summarized below and are reproduced in Appendix C.

- **Item 14** of Form N-2 requires an outside cover page, containing the registrant's name, a statement that the statement of additional information is not a prospectus and should be read with the prospectus, as well as the date of the statement of additional information and prospectus. In addition, the cover page may include other information that does not, by its nature, quantity, or manner of presentation, impede understanding of required information.
- **Item 15** of Form N-2 requires a table of contents with cross references to the prospectus where useful.
- **Item 16** of Form N-2 requires the registrant to disclose whether it has been engaged in business other than that of an investment company during the past 5 years, the nature of the other business and the approximate date when it commenced business as an investment company. The registrant must state any former name used by it if its name changed during the preceding five years and whether either of the foregoing events occurred in connection with a bankruptcy or similar proceeding.
- **Item 17** of Form N-2 requires a concise description of the investment policies of the registrant, including its fundamental policies with respect to: (1) the issuance of senior securities, (2) short sales, (3) the borrowing of money, (4) the underwriting of securities of other issuers, (5) industry concentration, (6) the purchase or sale of real estate and real estate mortgage loans, (7) the purchase or sale of commodities or commodity contracts (including futures contracts), (8) the making of loans, and (9) any other policy the registrant deems fundamental. Any other significant policies which may be changed without shareholder approval must be described. The registrant must explain any significant variation in the registrant's portfolio turnover rates during the last two fiscal years or any anticipated significant change in portfolio turnover rate from that reported for its most recent fiscal year.
- **Item 18** of Form N-2 requires the registrant to briefly describe the leadership structure of its board of directors, including whether the chairman of the board is an interested person of

the registrant. If the chairman is interested, the registrant must disclose if it has a lead independent director and the specific role the lead independent director plays in the registrant's leadership. The registrant must state why it has determined its leadership structure to be appropriate and the extent of the board's role in risk oversight.

The registrant must also disclose the name, address and age, positions with the registrant, principal occupation(s) during the past five years of each director and officer of the registrant and any family relationship between the individuals listed. The registrant must also disclose for directors the number of portfolios in the "fund complex" overseen by the director, and any other directorships held in the past five years with public companies or any registered investment company. For each non-resident director or officer of the registrant, the registrant must disclose whether he has an authorized agent to receive notice in the U.S. and, if so, the name and address of the agent. The registrant must include a discussion of the specific experience, qualifications, attributes or skills that led to the conclusion that the director should serve on the board, giving information about the director's particular areas of expertise or qualifications. In addition, the registrant must indicate which of its directors are "interested persons" as that term is defined in Section 2(a)(19) of the 1940 Act and describe any positions held with affiliated persons or principal underwriters of the registrant.

The standing committees of the board of directors must be identified including a concise statement of the committee functions, its members and, if a nominating committee, state whether the committee will consider shareholder nominees. The registrant must disclose any positions held by independent directors or their immediate family members with another investment company having the same adviser or principal underwriter as the registrant, or with the registrant's adviser, principal underwriter or any person with whom they are affiliated or which controls the adviser or principal underwriter. Information concerning transactions involving independent directors or their immediate family members, directly or indirectly, and the fund must be disclosed, along with other information on transactions or relationships between independent directors or their immediate family members and: (1) the fund's officers; (2) another investment company, or its officers, having the same adviser or principal underwriter; and (3) the fund's advisers, principal underwriters and their officers and control persons. The registrant must also disclose if an officer of its adviser or principal underwriter, or an officer of an affiliate or control person of such adviser or principal underwriter, served as a director of a company where an independent director of the registrant or their immediate family member was an officer, including identity of the company, the person who served as director of the company and their period of service, the adviser or principal underwriter (or affiliate or control person thereof) where such director holds office and the director of the registrant or family member who is or was an officer of the company and the office held.

The registrant must disclose for each director the dollar range of shares of the fund owned beneficially by the director in the fund, and all investment companies overseen by the director in the family of investment companies. The registrant must also disclose for each

independent director and their immediate family members all shares owned beneficially or of record in the registrant's adviser or principal underwriter or any of their affiliates or control persons. Compensation paid to directors must be disclosed, including aggregate compensation from the fund, pension or retirement benefits and total compensation from the fund and the "fund complex." For business development companies, the registrant should provide the information required by Item 402 of Regulation S-K.

The registrant must also disclose whether the fund's adviser and principal underwriter have adopted codes of ethics, and whether it permits persons subject to it to invest in securities that may be held by the fund. The registrant's proxy voting policies and procedures must also be described, including the procedures used when a vote presents a conflict of interest.

- **Item 19** of Form N-2 requires the registrant to furnish the name and address of each person who beneficially owns more than 25% of the registrant's voting securities and to explain the effect of such control on the voting rights of other shareholders. For each control person the percentage of the registrant's voting securities owned or any other basis of control must be disclosed. The registrant must disclose the name and address of and percentage ownership by each person who owns of record or who the registrant knows to own beneficially 5% or more of any class of the registrant's equity securities. The registrant must state the percentage of the fund's securities owned by all officers and directors as a group. All of the above information must be as of a specified date no more than 30 days prior to filing of the registration statement.
- **Item 20** of Form N-2 requires the registrant to disclose the name of all controlling persons of its investment adviser, the basis of such control, and, if material, the business history of such controlling person. The registrant should also set forth the name of any affiliated person of the registrant who is also an affiliated person of the investment adviser and a list of all capacities in which such person serves the registrant and the investment adviser. The registrant must disclose the method of computing the advisory fee paid by the registrant and the total dollar amounts paid to the adviser by the registrant for the last three fiscal years and any expense reimbursement or limitation provision to which the adviser is subject. Services performed for or on behalf of the registrant that are supplied or paid for by the adviser must be described. The registrant must also describe all fees and expenses paid by persons other than the adviser or the registrant, including identity of such persons. The registrant must describe the terms of any management-related service contract (such as accounting or administration agreements but not transfer agency or custodian agreements). The registrant must disclose who its custodian and independent accountants are and describe the services provided by each. If an affiliated person of the registrant or an affiliate of such person acts as custodian or transfer agent, the registrant must describe the services performed by such persons and the basis of their remuneration.
- **Item 21** of Form N-2 requires disclosure of information regarding a Fund's portfolio managers. Information must be provided with respect to other accounts managed by the portfolio manager. This information includes the number of other registered investment company accounts, other pooled investment vehicles and other accounts and their total assets, including whether the advisory fee is based on the performance of the account. The registrant must also

provide a description of any material conflicts of interest that may arise in connection with the management of those accounts and the Fund. The structure of and method used to determine the compensation of each portfolio manager must be described. The dollar range of equity securities in the Fund beneficially owned by the portfolio manager must also be disclosed.

- **Item 22** of Form N-2 requires information regarding brokerage practices, including a description of how transactions in the registrant's portfolio securities are effected, a statement about the payment of brokerage commissions and mark-ups and the amount of brokerage commissions paid during the three most recent fiscal years including an explanation of any material difference in the most recent fiscal year. The registrant must disclose the amount of brokerage commissions paid to affiliated persons and identify such persons and the percentage of the registrant's aggregate brokerage commissions paid to such person and the percentage of aggregate dollar amount of transactions effected through such person during the most recent fiscal year. The registrant must also disclose how brokers are selected, including how it evaluates the reasonableness of their brokerage commissions, and whether brokerage is directed because of research services provided, stating the amount such transaction and related commissions. The registrant must also disclose whether it has acquired during its most recent fiscal year securities of its regular brokers or dealers (as defined in Rule 10b-1 of the 1940 Act) or their parents.
- **Item 23** of Form N-2 requires a description of the tax status of the registrant. The registrant should provide information about its tax status that the registrant believes is of interest to investors, including an explanation of the legal basis for the tax status. Any special or unusual tax aspects of the registrant should also be discussed.
- **Item 24** of Form N-2 requires that financial statements of the registrant be provided.

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- **Item 4.2** of Form N-2 requires disclosure if the registrant is a regulated business development company under the 1940 Act required by Items 301, 302 and 303 of Regulation S-K.

### *Item 13. Additional Information about the Company Being Acquired*

*If the transaction will be submitted to the security holders of the registrant for approval or consent:*

*(a) If the company being acquired is an open-end management investment company, furnish the information required by Items 14 through 17 and 19 through 27 of Form N-1A under the 1940 Act or Items 15 through 23 of Form N-3, as applicable.*

*(b) If the Company being acquired is a closed-end management investment company, furnish the information required by Items 15 through 18 and Items 20 through 23 of Form N-2. If the Company being acquired is regulated as a business development company, also furnish the information required by Items 4.2 and 8.6(c) (if applicable) of Form N-2.*

*(c) If the company being acquired is not an open-end management investment company, no specific information about the company need be included.*

**Comment:**

**Information About the Acquiring Fund.** Approval of a fund reorganization transaction structured as a sale assets by the shareholders of the acquiring fund is not usually required under applicable state law. Statutory mergers, however typically require approval by shareholders of the acquiring fund under applicable state law. If that is the case, no response to Item 13 of Form N-14 is required. The disclosure items referred to in Item 13 found in Form N-1A and Form N-3 are summarized above and reproduced in Appendix B and D. The disclosure items from Form N-2, other than Item 8.6(c) of Form N-2, are similarly summarized above and reproduced in Appendix C. Item 8.6(c) of Form N-2 requires a business development company to provide financial statements as part of the registration statement.

***Item 14. Financial Statements***

*The Statement of Additional Information shall contain the financial statements and schedules of the acquiring company and the company to be acquired required by Regulation S-X for the periods specified in Article 3 of Regulation S-X except:*

*1. the following statements and schedules required by Regulation S-X may be omitted from Part B of the registration statement and included in Part C:*

*(i) the statements of any subsidiary which is not a majority-owned subsidiary; and*

*(ii) the following schedules in support of the most recent balance sheet: (A) columns C and D of Schedule III; and (B) Schedule IV.*

*2. the pro forma financial statements required by Rule 11-01 of Regulation S-X need not be prepared if the net asset value of the company being acquired does not exceed ten percent of the registrant's net asset value, both of which are measured as of a specified date within thirty days prior to the date of filing of this registration statement.*

**Comment:**

**Financial Statements and Regulation S-X.** A registration statement on Form N-14 must include a full set of audited financial statements for the acquiring company required by Regulation S-X. In addition, certain financial statements for the target company are also required. (*See* Item 14 of Form N-14.) Typically, such financial statements can be incorporated by reference from existing registration statements or reports pursuant to General Instruction G to Form N-14. Under Rule 3-18(c) of Regulation S-X, however, if such financial statements are dated as of a date 245 days or more prior to the *expected effective date* (not the filing date) of the registration statement on Form N-14, they must be accompanied by interim financials dated within the 245 day period. Such interim financials may be unaudited, but must be presented in the same detail as the audited financials. A fund's financial statements contained in its semi-annual report to shareholders can be used as interim financial statements, but timing and disclosure issues can arise if new audited financial statements are to become available while shareholder approval of the fund merger is being solicited.

Item 11.01 of Regulation S-X also requires that pro forma financial information be provided. Pro forma financial statements need not be prepared if the net asset value of the fund to be acquired does not exceed 10 percent of the acquiring fund's net asset value. Item 11-02(b)(1) provides that in circumstances where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of pro forma financial statements.

## PART C

## Other Information

### *Item 15. Indemnification*

*State the general effect of any contract, arrangement or statute under which any director, officer, underwriter or affiliated person of the registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any director, officer affiliated person or underwriter for its own protection.*

*Instruction.*

*In responding to this Item the registrant should take note of the provisions of Rules 461(c) and 484 under the 1933 Act and Sections 17(h) and (i) of the 1940 Act.*

**Related Statutory Material**

**Rule 461(c)** of the 1933 Act states:

(c) Insurance against liabilities arising under the Act, whether the cost of insurance is borne by the registrant, the insured or some other person, will not be considered a bar to acceleration, unless the registrant is a registered investment company or a business development company and the cost of such insurance is borne by other than an insured officer or director of the registrant. In the case of such a registrant, the Commission may refuse to accelerate the effective date of the registration statement when the registrant is organized or administered pursuant to any instrument (including a contract for insurance against liabilities arising under the Act) that protects or purports to protect any director or officer of the company against any liability to the company or its security holders to which he or she would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office.

**Rule 484** of the 1933 Act states:

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, if

(a) any acceleration is requested of the effective date of the registration statement pursuant to Rule 461, and

(b)(1) any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Act, or

(2) the underwriting agreement contains provisions by which indemnification against such liabilities is given by the registrant to the underwriter or controlling persons of the

underwriter and the director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is an underwriter, and

(3) the benefits of such indemnification are not waived by such persons; the registration statement shall include a brief description of the indemnification provisions and an undertaking in substantially the following form:

> "Insofar as indemnification for liability arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue."

**Sections 17(h) and (i)** of the 1940 Act state:

(h) After one year from the effective date of this title, neither the charter, certificate of incorporation, articles of association, indenture of trust, nor the by-laws of any registered investment company, nor any other instrument pursuant to which such a company is organized or administered, shall contain any provision which protects or purports to protect any director or officer of such company against any liability to the company or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

(i) After one year from the effective date of this title no contract or agreement under which any person undertakes to act as investment adviser of, or principal underwriter for, a registered investment company shall contain any provision which protects or purports to protect such person against any liability to such company or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of his duties, or by reason of his reckless disregard of his obligations and duties under such contract or agreement.

***Item 16. Exhibits***

*Subject to the rules on incorporation by reference, give a list of all exhibits filed as part of the registration statement.*

*Exhibits:*

*(1) copies of the charter of the registrant as now in effect;*

*(2) copies of the existing bylaws or corresponding instruments of the registrant;*

*(3) copies of any voting trust agreement affecting more than 5 percent of any class of equity securities of the registrant;*

*(4) copies of the agreement of acquisition, reorganization, merger, liquidation and any amendments to it;*

*(5) copies of all instruments defining the rights of holders of the securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant;*

*(6) copies of all investment advisory contracts relating to the management of the assets of the registrant;*

*(7) copies of each underwriting or distribution contract between the registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;*

*(8) copies of all bonus, profit sharing, pension or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the registrant in their capacity as such. Furnish a reasonably detailed description of any plan that is not set forth in a formal document;*

*(9) copies of all custodian agreements and depository contracts under Section 17(f) of the 1940 Act, for securities and similar investments of the registrant, including the schedule of remuneration;*

*(10) copies of any plan entered into by registrant pursuant to Rule 12b-1 under the 1940 Act and any agreements with any person relating to implementation of the plan, and copies of any plan entered by registrant pursuant to Rule 18f-3 under the 1940 Act, any agreement with any person relating to implementation of the plan, any amendments to the plan, and a copy of the portion of the minutes of the meeting of the registrant's directors describing any action takes to revoke the plan;*

*(11) an opinion and consent of counsel as to the legality of the securities being registered, indicating whether they will, when sold be legally issued, fully paid and non-assessable;*

*(12) an opinion, and consent to their use, of counsel or, in lieu of an opinion, a copy of the revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to shareholders discussed in the prospectus;*

*(13) copies of all material contracts of the registrant not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the registration statement;*

*(14) copies of any other opinions, appraisals or rulings, and consents to their use relied on in preparing the registration statement and required by Section 7 of the 1933 Act;*

*(15) all financial statements omitted pursuant to Item 14(a)(1);*

*(16) manually signed copies of any power of attorney pursuant to which the name of any person has been signed to the registration statement; and*

*(17) any additional exhibits which the registrant may wish to file.*

*Instruction:*

*Subject to the rules on incorporation by reference, the exhibits shall be filed as part of the registration statement. Exhibits shall be approximately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits required above.*

Comment: Item 16(12) of Form N-14 requires registrants filing registration statements on Form N-14 to file as an exhibit to the registration statement, or incorporate by reference, an opinion of counsel or a copy of an Internal Revenue Service ("IRS") ruling supporting the tax matters discussed in the registration statement. Opinions or rulings may be filed either in the original filing or at effectiveness of the registration statement.

The SEC staff recognizes, however, that the closing of a reorganization usually is contingent on the registrant receiving the tax opinion or IRS ruling; therefore, the closing of the transaction itself is satisfactory evidence that the tax opinion or ruling was obtained. In such a circumstance, the SEC staff has not objected if a registrant files the tax opinion or IRS ruling after the reorganization, if the registrant includes an undertaking in the registration statement to file, by post-effective amendment, an opinion of counsel or a copy of an IRS ruling supporting the tax consequences of the proposed reorganization within a reasonable time after receipt of such opinion or ruling. Such post-effective amendment may be filed under Rule 485(b) under the 1933 Act. See Investment Company Filing Guidance (February 15, 1996).

**Related Statutory Material**

**Section 7(a)** of the 1933 Act states:

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the

information, and be accompanied by the documents, specified in Schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

### *Item 17. Undertakings*

(1) The undersigned registrant agrees that prior to any public reoffering of the securities registered through the use of a prospectus which is a part of this registration statement by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c) of the Securities Act, the reoffering prospectus will contain the information called for by the applicable registration form for the reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The undersigned registrant agrees that every prospectus that is filed under paragraph (1) above will be filed as a part of an amendment to the registration statement and will not be used until the amendment is effective, and that, in determining any liability under the 1933 Act, each post-effective amendment shall be deemed to be a new registration statement for the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering of them.

### Related Statutory Material

**Rule 145(c)** of the 1933 Act states*:

(c) *Persons and Parties Deemed to be Underwriters.* For purposes of this rule, if any party to any transaction specified in paragraph (a) is a shell company, other than a business combination related shell company, as those terms are defined in § 230.405, any party to

that transaction, other than the issuer, or any person who is an affiliate of such party at the time any such transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with any such transaction, shall be deemed to be engaged in a distribution and therefore to be an underwriter thereof within the meaning of Section 2(11) of the Act.

Rule 145(e)(2) of the 1933 Act states: The term "party" as used in this paragraph (c) shall mean the corporations, business entities, or other persons other than the issuer, whose assets or capital structure are affected by the transactions specified in paragraph (a).

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* *See the Preliminary Note to Rule 145 at page 14 for a discussion of the purpose of Rule 145.*

## SIGNATURE PAGE

### Signatures

As required by the Securities Act of 1933, this registration statement has been signed on behalf of the registrant, in the City of and State of , on the day of , 20 .

_____
**Registrant**

By: _____
**(Signature and Title)**

As required by the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| | Principal Executive Officer | |
| | Principal Financial Officer | |
| | Comptroller (Principal Accounting Officer) | |
| | Director | |

**Comment:**

**Signatures:** Under Section 6(a) of the 1933 Act, a registration statement must be signed by the registrant, as well as the registrant's "principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer)."

## FEDERAL TAX CONSIDERATIONS

This section provides a brief description of some of the principal federal income tax issues affecting acquisitions of investment companies. Our discussion is based on the state of tax law as of the beginning of 2018. Legislative changes are being made to the federal income tax laws on virtually an annual basis, and changes in the administrative interpretation of existing tax laws have also become quite common. The best advice that we can offer readers in planning a transaction is to consult their tax advisers concerning the latest developments in the taxation of mergers and acquisitions.

Although an acquisition of the stock of an investment company (via a tender offer, for example) would theoretically be possible, it has been the authors' experience that most investment company acquisitions are accomplished through asset acquisitions. If the assets of a registered investment company that has elected to be treated as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code (the "Code") are acquired by another RIC, the tax consequences to the acquired RIC and its shareholders generally are determined under the provisions of the Code applicable to regular corporations. Unless the transaction qualified for non-recognition treatment as a "tax-free reorganization," such an asset acquisition would be taxable at both the corporate and shareholder levels. In some cases, a transaction may have to be abandoned unless tax-free treatment can be achieved.

Because of the tax risks posed by most corporate acquisitions, taxpayers generally seek the opinion of counsel that the transaction will be tax-free. The Internal Revenue Service ("IRS") no longer rules on whether a transaction qualifies as a tax-free reorganization, regardless of whether the transaction is an integral part of a larger transaction that involves other issues upon which the IRS will rule. The IRS will rule, however, on one or more issues with respect to the transaction to the extent that such issue or issues are "significant." A significant issue is an issue of law the resolution of which is not essentially free from doubt; and that is germane to determining the tax consequences of a transaction. Rev. Proc. 2018-3, 2018-1 IRB 118 (December 29, 2017). Because the IRS will not issue private letter rulings with respect to the tax status of a reorganization, most reorganization transactions are done in reliance upon opinions of counsel.

### *A. Impact of Acquisitions on Subchapter M Requirements*

In most tax-free acquisitions (as well as all taxable ones) the taxable year of the acquired corporation will close as of the date of the acquisition. For an investment company, the closure of the taxable year may present certain problems in retaining its qualification as a RIC under Subchapter M of the Code. These problems are outlined below.

#### *1. Adequate RIC Distributions*

In order to qualify for treatment as a RIC under Subchapter M of the Code, an investment company must distribute during each taxable year 90 percent of the sum of its "investment

company taxable income" (generally interest and dividend income, and net short-term capital gain) and its net income exempt from federal income tax. A RIC may retain and pay tax on long-term capital gain or distribute such capital gain to shareholders as a capital gain dividend. In addition, a RIC must distribute 98 percent of its ordinary income (generally interest and dividend income) for its taxable year and 98.2 percent of its capital gain net income (the excess of gains from the sale of capital assets over losses from the sale of such assets) computed by treating the one-year period ending October 31 as if it were the RIC's taxable year, in order to avoid a non-deductible 4 percent excise tax on undistributed amounts of ordinary income and capital gain net income. The acquired RIC will have to schedule sufficient distributions prior to the effective date of the transaction in order to ensure that it is in compliance with these distribution requirements.

*2. Compliance with Diversification Test*

In order to qualify for treatment as a RIC under Subchapter M of the Code, an investment company must diversify its holdings so that, at the close of each quarter of its taxable year, 50 percent of the value of its assets consists of cash and cash items, U.S. Government securities, securities of other RICs and securities of other issuers (as to which the investment company has not invested more than 5 percent of the value of its total assets in securities of such issuer and as to which the investment company does not hold more than 10 percent of the outstanding voting securities of such issuer), and no more than 25 percent of the value of its total assets may be invested in securities of any one issuer (other than U.S. Government securities or securities of other RICs), or of two or more issuers which the investment company controls and which are engaged in the same or similar trades or businesses, or, in the securities of one or more qualified publicly traded partnerships. If the acquisition will close the acquired RIC's taxable year, compliance with the diversification requirement must exist on the acquisition date in order for RIC status to be maintained. Normally, the Code provides a 30-day cure period following the close of each quarter in which the RIC may bring its portfolio into compliance with the foregoing diversification requirement. The opportunity to correct discrepancies in its portfolio would apparently not be available for an investment company whose existence terminates in an acquisition.

*3. Income Qualification*

In order to qualify for treatment as a RIC under Subchapter M of the Code, an investment company must derive at least 90 percent of its gross income for each taxable year from dividends, interest, certain payments with respect to securities loans, gains from the sale or disposition of stock, securities or foreign currencies, other income derived with respect to its business of investing in such stock, securities or currencies, or net income from qualified publicly traded partnerships. In contrast to the other three principal Code requirements for RIC qualification, satisfaction of this income source requirement will create compliance problems for an acquired RIC only in rare circumstances.

### *B. Tax-Free Forms of Asset Acquisition*

In a "tax-free reorganization," the assets of a RIC may be acquired in a transaction that is not currently subject to tax at either the corporate or shareholder level. Recognition of gain or loss at the corporate level is deferred until the assets of the acquired RIC are sold by the acquiring RIC and at the shareholder level until a sale or redemption of the shares of the acquiring RIC (or earlier receipt by the shareholder of dividends paid by the RIC). There are several forms of tax-free "reorganization" described in Section 368 of the Code that involve asset or stock acquisitions. If the acquisition does not have one of these forms, and does not satisfy other statutory and judicial requirements (described below), it will be taxable. Except for "B" reorganizations, each of these forms permits an acquiring corporation to provide limited amounts of cash or other property (commonly called "boot") as acquisition consideration in addition to shares of acquiring corporation stock. In practice, the non-stock consideration furnished by an acquiring corporation in most RIC reorganizations is usually limited to the acquiring RIC's assumption of some or all of the acquired RIC's liabilities, which the Code generally does not treat as taxable "boot".

*1. "A" Reorganization (Statutory Merger)*

In an "A" reorganization (statutory merger), shareholders of the target RIC surrender their shares for shares of the acquiring RIC in a merger or consolidation which meets the requirements of applicable state or foreign corporate law. It should be noted that each of the "C" (stock-for-assets), "D" (transfer to controlled corporation), and "F" (reincorporation) reorganizations that are described below also may qualify as an "A" reorganization (statutory merger) if they are legally effected as a merger or consolidation.

*2. "B" Reorganization (Stock-for-Stock)*

In a "B" reorganization (stock-for-stock), the target corporation becomes a subsidiary of the acquiring corporation. If the subsidiary is immediately liquidated, the transaction will be recharacterized as a "C" reorganization (stock-for-assets). Consequently, a "B" reorganization (stock-for-stock) is unlikely to be used in connection with investment company acquisitions. Accordingly, the discussion below will not address "B" reorganization (stock-for-stock).

*3. "C" Reorganization (Stock-for-Assets)*

In a "C" reorganization (stock-for-assets), the acquiring RIC acquires substantially all of the assets of the target RIC solely in exchange for its voting stock and, in many cases, the assumption of the target RIC's liabilities (which may include liabilities incurred in the ordinary course of the RIC's business to which the assets are subject). After the exchange, the target RIC distributes shares of the acquiring RIC to its shareholders in complete liquidation, deregisters as an investment company and dissolves pursuant to state law.

*4. "D" Reorganization (Transfer to Controlled Corporation)*

In a non-divisive "D" reorganization (transfer to controlled corporation), the target RIC transfers substantially all its assets to the acquiring RIC in exchange for shares of the acquiring RIC, and in many cases, the assumption of the target RIC's liabilities (which may

include liabilities incurred in the ordinary course of the RIC's business to which the assets are subject). After the exchange, the target RIC distributes shares of the acquiring RIC to its shareholders in complete liquidation. To qualify as a "D" reorganization, it is essential that the shareholders of the *target* RIC be in "control" of the acquiring RIC (that is, the transaction effects a reverse acquisition). The target RIC then deregisters as an investment company and dissolves pursuant to state law. (Divisive "D" reorganizations (transfers to controlled corporations) are preliminary to spin-offs, split-offs and split-ups.) (*See* discussion below.)

*5. "E" Reorganization (Recapitalization)*

An "E" reorganization (recapitalization) involves an exchange of stock and/or securities for stock and/or securities of the same corporation and cannot be used directly to effect an asset acquisition. Accordingly, the discussion below will not address "E" reorganization (recapitalization).

*6. "F" Reorganization (Reincorporation)*

An "F" reorganization (reincorporation) is a reorganization in which a RIC changes only its place of incorporation or its form. For example, a RIC organized as a Massachusetts business trust may convert to a Delaware statutory trust in order to take advantage of the perceived greater flexibility of Delaware law.

An "F" reorganization (reincorporation) is accomplished by creating a new investment company, and transferring the assets of the existing RIC to the new company (whether through a merger or other means). Shareholders of the existing RIC exchange their shares for shares in the new RIC, and the existing RIC is liquidated, deregistered as an investment company and dissolved pursuant to state law. The new investment company continues the tax identity of the liquidated RIC and continues to be taxed as a RIC, using the same employer identification number of the liquidated RIC.

An "F" reorganization (reincorporation) may be a preliminary step to an asset acquisition but cannot be directly used to effect the acquisition itself. Because an "F" reorganization (reincorporation) essentially involves only one corporation, the taxable year of the existing RIC is not closed on the effective date of the reorganization—an exception to the usual rule.

*7. Overlapping Forms*

The forms of reorganization are not mutually exclusive, although certain rules of preemption are provided under the Code. A statutory merger of an existing RIC into a shell corporation with no change in share ownership or distribution of assets, for example, could be simultaneously described as an "A" (statutory merger), "C" (stock-for-assets), "D" (transfer to controlled corporation), or "F" reorganization (reincorporation). On the facts stated, it would be treated as an "F" reorganization (reincorporation) under the applicable preemption rules.

### C. *Requirements for Tax-Free Asset Acquisition*

Under the Code, each portfolio or investment company of a series investment company, whether the series is organized as a Delaware statutory trust or a corporation, is treated as a separate corporation for all purposes (subject to certain entity classification rules for non-corporate entities). Thus, the assets of each portfolio or investment company of a series investment company may be acquired in a tax-free "reorganization." However, each such acquisition separately must satisfy the following Code requirements in order to receive tax-free treatment.

#### 1. *Existence of a Plan of Reorganization*

In every form of tax-free asset acquisition, there must be "a plan of reorganization" between the RICs which are parties to the reorganization. While there are no particular Code or regulatory requirements as to the nature or comprehensiveness of a "plan," it is prudent to have the Board of Directors (or Trustees) of the funds involved in the transaction adopt formal written "plans."

#### 2. *Continuity of Shareholder Interest*

In an asset acquisition having the form of an "A" (statutory merger) or "C" (stock-for-assets) reorganization, shareholders of the target RIC must continue to have a significant ownership interest in the acquiring RIC. This standard has evolved from case law, and the precise measure of continuity has never been fixed by statute. However, Treasury regulations indicate that the "continuity of interest" requirement is satisfied in an "A" (statutory merger) or "C" (stock-for-assets) reorganization if shareholders of the target RIC receive an interest in the acquiring RIC equal to at least 40 percent by value of outstanding shares of the target RIC prior to the transaction. Although courts have held that as little as 28 percent continuity of interest of target shareholders in the acquiring corporation may suffice to satisfy the continuity of interest requirement, current legal opinion practice generally adheres to the 40 percent standard.

The Treasury regulations were amended to exempt "F" reorganizations from the continuity of interest requirement.

The Treasury regulations suggest that continuity of shareholder interest may not be applicable in a "D" reorganization (transfer to controlled corporation). Some commentators have contended that a "D" reorganization (transfer to controlled corporation) could occur if a one percent Shareholder of the acquired RIC obtains "control" of the acquiring RIC in the transaction, if all other Code requirements were satisfied. The IRS ruling position, however, has always been that the same continuity of interest requirement applies for a "D" reorganization (transfer to controlled corporation) as for an "A" (statutory merger) or "C" (stock-for-assets) reorganization.

For purposes of satisfying the continuity of interest requirement, the interests of any shareholders of the target RIC that dissent from the reorganization must be taken into account.

However, the IRS informally has acknowledged that an open-end investment company, which is required by law to stand ready to redeem its shareholders, is not required to take into account the interests of shareholders redeemed in the ordinary course of its business.

*3. Business Purpose*

Any asset acquisition must have a *corporate* business purpose in order to qualify as a tax-free reorganization. This requirement historically has been imposed to deny tax-free status to "sham" transactions that are undertaken solely for tax avoidance purposes. As an example of an acceptable business purpose for a RIC reorganization, the IRS has frequently cited reduction of investment advisory or other expenses through the combination of the two funds. Thus far, the law has not required a demonstration that the claimed business purpose could be served *only* by means of an acquisition.

*4. Continuity of Business Enterprise*

Except as described below for an "F" reorganization, in order to obtain tax-free treatment for any form of asset acquisition, the acquiring RIC must continue the historic business of the target RIC, or use a significant portion, defined as roughly one-third by the applicable U.S. Treasury regulations, of the target RIC's historic business assets in its business. The IRS apparently recognizes that a RIC's "business" can be the making of investments. However, the IRS has ruled that a corporation (not a RIC) engaged in the investment business that invested one-third in diversified corporate stock purchased for equity growth, one-third in corporate stock purchased to maximize current income and one-third in general corporate bonds, which sold all of its corporate stock and bonds, and reinvested the proceeds in municipal bonds as part of a plan of reorganization between it and a RIC wholly invested in municipal bonds, did not satisfy the continuity of business enterprise requirement. Because the target investment company sold all of its historic business assets prior to reorganization, the acquiring RIC could not use those assets in its business. Moreover, the IRS reasoned that the acquiring RIC did not continue the historic business of the target since the business of investing in corporate stocks and bonds (that of the target) was different than the business of investing in municipal bonds (that of the acquiring RIC). (Rev. Rul. 87-76, 1987-2 C.B. 84.) Apparently, therefore, it is the IRS' view that a particular investment business must be continued in order for the continuity of a business enterprise requirement to be satisfied. Current IRS informal ruling policy indicates that the continuity of business enterprise requirement will be satisfied so long as at least one-third of the target fund's assets satisfy the investment policies of the acquiring fund. However, the IRS ruling policy historically has not been consistent in this regard.

In 2001, in the context of issuing private letter rulings, the IRS began applying a new approach in analyzing mutual fund mergers that involves reviewing the acquiring and the target RICs to see if (1) their objectives, strategies and risks are compatible, and (2) it is likely that the acquiring RIC will retain the target RIC's shareholders. Under this approach, if the acquiring RIC is permitted to retain a significant portion of the target RIC's assets, the

continuity of business enterprise requirement of maintaining the same line of business may be satisfied even though the target RIC may not retain a significant portion of its assets. Applying this approach, the IRS approved (i) the combination of two diversified mid-cap growth funds; (ii) the combination of a narrow-based, non-diversified growth acquired fund with a broad-based, diversified growth acquiring fund; (iii) the combination of an industry-specific acquired fund with a diversified dividend and income acquiring fund; and (iv) a state-specific tax-exempt acquired fund with a national tax-exempt acquiring fund.

The Treasury regulations exempt "F" reorganizations from the continuity of business enterprise requirement.

*5. "Substantially All" RIC Assets Must be Transferred*

In a "C" (stock-for-assets) or non-divisive "D" (transfer to controlled corporation) reorganization, "substantially all" of the assets of the target RIC must be transferred to the acquiring RIC. The IRS will rule that a "C" (stock-for-assets) or non-divisive "D" (transfer to controlled corporation) reorganization satisfies the "substantially all" requirement if at least 90 percent of the fair market value of the target RIC's net assets, and at least 70 percent of the fair market value of its gross assets (determined as of the effective date of the exchange) are transferred. For purposes of this requirement, the IRS has informally acknowledged that an open-end investment company which is required by law to redeem shares upon shareholder request need not take into account assets used to redeem shareholders in the ordinary course of its business. In addition, for purposes of satisfying this requirement, the IRS has informally acknowledged that a RIC is not required to take into account dividends distributed in the ordinary course of its business. In recent informal rulings, however, the IRS has indicated that it will not consider redemptions by affiliates of the investment adviser to be in the ordinary course of the fund's business (presumably because the investment adviser is involved in planning the reorganization) and that such redemptions therefore will count against satisfaction of the "substantially all" test.

In a statutory merger ("A" reorganization), there is no requirement that substantially all the assets of the target RIC be transferred to the acquiring RIC.

In an "F" reorganization (reincorporation), the IRS previously ruled that all of a RIC's assets except those used to redeem the de minimis number of shareholders permitted to dissent (under Rev. Rul. 78-441, 1978-2 C.B. 152, obsoleted by Rev. Rul. 2003-99, 2003-2 C.B. 288) must be transferred to the new RIC. Under regulations issued in 2015, a RIC may also recapitalize, redeem its stock, or make distributions to its shareholders, without causing an "F" reorganization (reincorporation) to fail to qualify as an "F" reorganization (reincorporation). Further, although an "F" reorganization may facilitate another transaction that is part of the same plan, the final regulations concluded that the reorganization should not be recharacterized because "F" reorganizations involve only one corporation and do not resemble sales of assets.

*6. Control*

In a "D" reorganization (transfer to controlled corporation), shareholders of the target RIC must be in control of the acquiring RIC after the exchange. "Control," as defined in the Code, is present when ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock (voting and nonvoting) of the acquiring RIC, is acquired by the acquired RIC's shareholders.

There is no control requirement for an "A" (statutory merger), "C" (stock-for-assets) or "F" (reincorporation) reorganization.

*7. Expenses*

Each RIC that is a party to a reorganization generally bears its own expenses in connection with the reorganization. Even though the assumption of unpaid liabilities of the acquired RIC by the acquiring RIC or the payment of reorganization expenses by the acquiring corporation after the reorganization has closed are not considered taxable events, it appears that the actual transfer of cash from the acquiring RIC to the acquired RIC to pay reorganization expenses may be considered taxable "boot" given in the reorganization.

The IRS informally has ruled that if an acquiring RIC reimburses the target RIC for some portion of the expenses incurred by the target RIC in a reorganization, the reimbursement will be included in the taxable income of the target RIC. Such income will have to be taken into account by the RIC in determining the distributions it must make to avoid disqualification and excise taxes. The IRS also has suggested, in a private letter ruling, that income resulting from reimbursement of reorganization expenses bears on the issue of qualification of a RIC insofar as a RIC must derive at least 90 percent of its income from dividends, interest and gains from the sale or other disposition of stock or securities.

The IRS informally has ruled that assumption of reorganization expenses by an investment advisor in the ordinary course of its business will not be treated as "boot" to the target fund but will be treated as taxable income. C.F. Rev. Rul. 73-54, 1973-1 C.B. 187.

***D. Consequences of a Tax-Free Asset Acquisition***

The following discussion summarizes the federal income tax consequences of an asset acquisition to the parties to a reorganization and assumes that the assets of a RIC are acquired solely in exchange for shares of an acquiring RIC, which are distributed to (or otherwise received) by shareholders of the acquired RIC. If a mixture of consideration were used in the transaction (*e.g.*, shares and cash "boot") then non-recognition treatment may still be at least partially available for the transaction, but the consequences would be considerably more complex.

*1. Target RIC*

The target RIC will not recognize either gain or loss on the transfer of its assets to the acquiring RIC in exchange for shares of the acquiring RIC and upon distribution of shares of acquiring RIC to target RIC shareholders in liquidation of target RIC.

2. *Acquiring RIC*

The acquiring RIC will not recognize either gain or loss upon the receipt by it of the assets of target RIC in exchange for its shares. The income tax basis of the assets of the target RIC in the acquiring RIC will be the same as their income tax basis in the target RIC. The holding period of these assets (for purposes of determining whether their subsequent disposition results in short-term capital gain or long-term capital gain) will include the period during which they were owned by the target RIC.

3. *Target RIC Shareholders*

Shareholders of the target RIC will not recognize gain or loss upon the exchange of their shares for shares in the acquiring RIC. The income tax basis of shares of the acquiring RIC which the target RIC shareholders receive in exchange for the RIC shares given up will be equal to the income tax basis of the shares surrendered. The holding period of shares received will include the holding period of shares given up, provided that the shares were capital assets in the hands of the target RIC shareholders.

4. *Shareholders of Acquiring Corporation*

There are no federal income tax consequences to continuing shareholders of the acquiring RIC of the acquisition of assets of the target RIC in exchange for shares.

### *E. Inheritance of Tax Attributes*

In an "A" (statutory merger), "C" (stock-for-assets), non-divisive "D" (transfer to controlled corporation) or "F" (reincorporation) reorganization, tax attributes of the target RIC, including any capital loss carryovers, "built-in" or unrealized losses arising from a depreciation of portfolio assets, and earnings and profits (or deficits in earnings and profits) are inherited by the acquiring RIC. This carryover of tax attributes contrasts favorably with the consequences of a taxable acquisition, in which those tax benefits that cannot be used in the transaction are irretrievably lost. However, the use of tax benefits by an acquiring RIC may (even in a tax-free reorganization) be limited by Code provisions dealing with a "change of ownership."

A "change of ownership" occurs in an "A" (statutory merger), "C" (stock-for-assets) or non-divisive "D" (transfer to controlled corporation) reorganization only when there has been an acquisition of more than 50 percent of the ownership interest in either the acquiring RIC or the acquired RIC by any 5 percent shareholder. However, all less than 5 percent shareholders of a RIC are treated as a single 5 percent shareholder. Thus, two widely held RICs (i.e., RICs without 5 percent shareholders) would each be treated as owned by a single "5 percent shareholder." The acquisition of the one RIC by the other in an "A" (statutory merger) or "C" (stock-for-assets) reorganization would thus represent a change of ownership of the RIC with a smaller net asset value, in that the ownership interest of the public shareholders of the RIC with a larger net asset value increased by more than 50 percent (i.e., from zero to 100 percent). (For purposes of this discussion, assume the smaller RIC is the target RIC and the larger RIC is the

acquiring RIC.) By contrast in the case of a non-divisive "D" reorganization (transfer to controlled corporation) (involving, as in the previous example, widely held RICs), there would be a change of ownership of the acquiring RIC because the acquired RIC's public shareholders would have had to have obtained a more than 50 percent interest for "control." In each of these circumstances, the tax benefits of the RIC experiencing the change of ownership would be limited.

In an "F" reorganization (reincorporation), tax attributes of the target RIC carryover to the acquiring RIC without limitation because no such change of ownership can occur (without disqualifying the transaction for "F" reorganization (reincorporation) status).

In an "A" (statutory merger), "C" (stock-for-assets), or non-divisive "D" (transfer to controlled corporation) reorganization, use of capital loss carryovers of the target RIC by the acquiring RIC against its post-reorganization taxable income is limited annually to an amount equal to the net asset value of the target RIC on the closing date multiplied by the long-term tax exempt rate (published periodically by the IRS). Any excess over the annual limitation may be carried forward to a subsequent taxable year, subject to normal Code limitations (*e.g.*, generally, for any net capital losses (*i.e.*, capital losses in excess of capital gains) realized in taxable years of a RIC on or before December 22, 2010, a RIC is permitted to carry forward such capital losses for eight years as a short-term capital loss, but net capital losses for a taxable year of a RIC beginning after December 22, 2010, may be carried forward indefinitely).

The change of ownership limitations on carry forwards of a target RIC will be affected by the existence (on the date of the change of ownership) of a "net unrealized built-in gain" or "net unrealized built-in loss" in the assets of the target RIC. A RIC will not be treated as having either a "net unrealized built-in gain" or a "net unrealized built-in loss" unless such built-in gain or loss is greater than the lesser of 15 percent of the fair market value of its assets on the date of the change of ownership (excluding cash, cash items, or any marketable security the value of which does not differ appreciably from its income tax basis) or $10,000,000. If the target RIC has a net unrealized built-in gain on the date of the ownership change, the amount of any capital loss carry forward of the target RIC which may be used by the acquiring RIC is increased by any gain recognized from the disposition of any appreciated ("built-in gain") asset within the five-year period ending after the effective date of the transaction (but only to the extent recognized built-in gains do not exceed, in the aggregate, the net unrealized built-in gain). If the target RIC has a net unrealized built-in loss on the date of the ownership change, any loss recognized by the acquiring RIC as a result of the disposition of a depreciated ("built-in loss") asset at any time within five years of the effective date of the transaction will, together with any capital loss carryover of the target RIC to a taxable year of the acquiring RIC, be subject to the annual loss limitation (but only to the extent recognized built-in losses do not exceed, in the aggregate, the net unrealized built-in loss).

Although the foregoing rules apply in cases where the target RIC is assumed to be a "loss corporation," a variation of these rules may apply where the acquiring RIC has the tax beneficial

"loss." If the target RIC in these circumstances has a net unrealized built-in gain, any recognized built-in gain within five years of the change of ownership of the target RIC may not be offset by a "preacquisition loss" (which includes a recognized built-in loss and a capital loss carryover) of the acquiring RIC, unless and until the built-in gain recognized after the acquisition equals the net unrealized built-in gain.

If the target RIC in an "A" (statutory merger), "C" (stock-for-assets), or non-divisive "D" (transfer to controlled corporation) reorganization has excess foreign tax credits, the use of such credits by the acquiring RIC may similarly be limited. However, because many RICs elect to pass-through foreign tax credits to their shareholders, this problem arises less frequently in connection with RIC acquisitions.

In addition to the limitations set forth above, if a RIC acquires the assets of another RIC in an "A" (statutory merger), "C" (stock-for-assets), or non-divisive "D" (transfer to controlled corporation) reorganization, and the acquisition of the assets is determined by the IRS to be for the principal purpose of avoiding federal income tax by securing some tax benefit of the target RIC, *e.g.*, a capital loss carryover, the IRS may disallow the use of that benefit.

***F. Other Issues—Transactions Which Cannot be Done Tax-Free***

*1. Incorporation of Existing Investment Portfolios*

Under the Code, a business conducted in non-corporate form generally is able to incorporate without immediate tax consequences. However, property transferred to an "investment company" (as defined by Treasury regulations under section 351 of the Code), is excepted from this rule and generally will produce immediate tax consequences for the transferor. Property is treated as transferred to an investment company if the transfer results in a diversification of the transferor's interests and the transfer is either a transfer to a RIC, a real estate investment trust (a "REIT"), or a corporation 80 percent or more of the value of the assets of which (excluding cash and nonconvertible debt obligations) are held for investment and are readily marketable securities, or interests in RICs and REITs. A transfer results in diversification if two or more persons transfer non-identical assets to a corporation (unless the non-identical assets constitute an insignificant portion of the total consideration transferred).

Generally, individual or institutional investors are not able to incorporate their existing investment portfolios within a RIC in a tax-free manner because of this rule. Rather, they will be treated as having sold their assets for their fair market value, and will recognize gain or loss at the time of their contribution to the RIC. The basis of assets transferred to the corporation will be their fair market value.

*2. Spin-Offs, Split-Offs, Split-Ups (Section 355)*

Under general Code rules, a business conducted in corporate form holding appreciated property may be spun off or split off (or the entire corporation may be split up) without

immediate tax consequences provided that certain (extensive) requirements set forth in section 355 of the Code are satisfied. These divisive transactions are effected through distribution by a corporation of shares in a corporation which it controls (including a new corporation that may have been created in a prior divisive "D" reorganization (transfer to controlled corporation)). (For this purpose, "control" is defined as ownership of at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock of the corporation.) Among the requirements which must be satisfied is the requirement that the corporation distributing shares and the corporation the shares of which are distributed must each be engaged in the "active conduct of a trade or a business" before the distribution. The IRS has not issued any rulings on the tax-free separation of portfolio investments of a RIC under section 355. However, in a published ruling concerning a REIT, the IRS took the position that a REIT, which is an investment vehicle subject to express limitations designed to ensure that it generates only passive income, can satisfy the five-year active business requirement of section 355 where the REIT undertakes active and substantial management and operational functions with respect to real estate that it is holding for rental. Nevertheless, it is highly unlikely that the IRS would rule in the same manner regarding a RIC's management functions with respect to its intangible investments.

Although section 355 apparently is unavailable to RICs, split-offs may nevertheless be effected on a tax-free basis at the corporate level through a special provision of the Code (Section 852(b)(6)) that provides for the nonrecognition of gains by a RIC where portfolio assets are distributed to shareholders in kind in redemption of their shares. (A corporation will never recognize a loss on a split-off distribution. Code Section 311(a).) In contrast to a section 355 split-off transaction, however, shareholders receiving such a distribution of RIC assets will be subject to tax under either the redemption or dividend provisions of the Code. If the transaction is taxed as a redemption, the shareholders will recognize gain or loss measured by the difference between the fair market value of the assets received and their tax basis in the shares surrendered. If the transaction is taxed as a dividend, the shareholders being redeemed generally will recognize ordinary income (to the extent of the RIC's current and accumulated earnings and profits), and will transfer their tax basis in the shares surrendered to the shares of the RIC they retain. In either case (dividend or redemption), the RIC may obtain a dividends paid deduction for the redemption to the extent of its tax basis in the distributed property.

*3. Use of RICs to Avoid Corporate Level Tax*

Under Section 337(d) of the Code, the IRS was authorized to prescribe regulations necessary to ensure that the repeal, by the Tax Reform Act of 1986, of provisions of the Code that generally permitted a corporation to avoid corporate level tax by means of a complete liquidation is not circumvented. After several attempts at guidance in this area, the IRS issued final regulations in 2003, which were amended in 2013 and again in 2017, governing all transactions or events that might result in a RIC owning property that has a tax basis

determined by reference to its tax basis in the hands of a "C" corporation (a "regular" corporation, which, unlike a RIC, is subject to tax at both the corporate and shareholder levels). Such transactions include both asset acquisitions of "C" corporations by RICs in corporate reorganizations and elections of RIC status by existing "C" corporations. In each of these cases, the tax-free carryover of a tax basis to the Subchapter M tax regime would otherwise permit the permanent avoidance of corporate level tax. Accordingly, these regulations override all of the tax-free reorganization rules described above in cases where a RIC is acquiring a "C" corporation.

Under these regulations, gains that are recognized by the acquiring or converting RIC within the first 5 years following its acquisition of "C" corporation assets or its conversion to RIC status will be subject to a corporate level tax, unless and until (1) the RIC has recognized an amount of gain equal to the net amount of unrecognized built-in gain (i.e., unrecognized built-in gains less unrecognized built-in losses) on the last day of the final taxable year as a non-RIC of the acquired "C" corporation or of the "C" corporation electing RIC status or (2) the RIC can demonstrate that the gain was recognized from assets not held by a former "C" corporation. Though subject to this corporate level tax, recognized built-in gains and losses of a RIC are still included in computing investment company taxable income and net capital gain for Subchapter M purposes.

Net operating loss carryforwards, capital loss carryforwards, and minimum tax credits and business credit carryforwards arising from "C" corporation tax years of the acquired or converted entity may be allowed as a deduction or credit. However, these carryforwards must be used to offset net recognized built-in gain (or reduce the built-in gains tax) before they can be used to reduce investment company taxable income (or any Subchapter M tax on that income) for the tax year.

The corporate level tax imposed on net recognized built-in gain for a tax year is treated as a loss sustained by the RIC or the REIT during the tax year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain.

As an alternative to deferred recognition of its unrecognized built-in gain, a "C" corporation that converts to RIC status or that transfers property to a RIC may make a "deemed sale election" to recognize all of such gain as if it had sold the converted (or acquired) property to an unrelated party at fair market value on the day preceding its conversion to RIC status (or on the date it transferred the property to the RIC). The deemed sale election is not particularly attractive, since the regulations do not permit its use to recognize a net built-in loss (i.e., unrecognized built-in losses less unrecognized built-in gains) in the "C" corporation assets—the one circumstance in which the "C" corporation might derive a tax benefit.

The regulations requiring the 5-year built-in gains tax (or the alternative deemed sale election) do not apply to an entity electing RIC status that was a "C" corporation for a period

of not more than two tax years and immediately before being subject to tax as a C corporation was subject to tax as a RIC for a period of at least one tax year. This exception is designed to apply where a RIC fails to qualify as a RIC for a short period, a relief measure occasioned by the Black Monday crash of 1987 that disqualified many RICs. The amended 2013 regulations also exclude from the 5-year built in gain tax any transaction that qualifies for non-recognition treatment as a like-kind exchange or an involuntary conversion under the Code and a transaction in which the acquired C corporation was a tax-exempt entity to the extent that the gain would not be subject to tax under the Code if a deemed sale election were made by the C corporation.

## Appendix A

## Proxy Rules—Selected Items from Schedule 14A and Schedule 14C

### SCHEDULE 14A

**Item 2. Revocability of Proxy**

State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

**Item 3. Dissenters' Right of Appraisal**

Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

*Instructions.*

1. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

2. Open-end investment companies registered under the Investment Company Act of 1940 are not required to respond to this item.

**Item 4. Persons Making the Solicitation**

(a) Solicitations not subject to Rule 14a-12(c).

(1) If the solicitation is made by the registrant, so state. Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action intended to be taken by the registrant and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the registrant, so state and give the names of the participants in the solicitation, as defined in paragraphs (a)(iii), (iv), (v) and (vi) of Instruction 3 to this Item.

(3) If the solicitation is to be made otherwise than by the use of the mails or pursuant to Rule 14a-16, describe the methods to be employed. If the solicitation is to be made by

specially, engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) Solicitations subject to Rule 14a-12(c).

(1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the registrant or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and the identity of the parties, (ii) the cost or anticipated cost thereof, and (iii) the approximate number of such employees or employees of any other person (naming such other person) who will solicit security holders.

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the registrant, state whether reimbursement will be sought from the registrant, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the registrant and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the registrant.

*Instructions.*

1. With respect to solicitations subject to Rule 14a-12(c) of the 1934 Act, costs and expenditures within the meaning of this Item 4 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the registrant may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (b)(6) of this Item should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the registrant subsequent to the date of settlement.

3. For purposes of this Item 4 and Item 5 of this Schedule 14A:

(a) The terms "participant" and "participant in a solicitation" include the following:

(i) the registrant;

(ii) any director of the registrant and any nominee for whose election as a director proxies are solicited;

(iii) any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;

(iv) any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than $500 and who are not otherwise participants;

(v) any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the registrant by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) any person who solicits proxies.

(b) The terms "participant" and "participant in a solicitation" do not include:

(i) any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;

(ii) any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the duties required to be performed in the course of such employment;

(iv) any person regularly employed as an officer or employee of the registrant or any of its subsidiaries who is not otherwise a participant; or

(v) any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

* * * * * *

**Item 6. Voting securities and principal holders thereof**

(a) As to each class of voting securities of the registrant entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held), state the number of shares outstanding and the number of votes to which each class is entitled.

(b) State the record date, if any, with respect to this solicitation. If the right to vote or give consent is not to be determined, in whole or in part, by reference to a record date, indicate the criteria for the determination of security holders entitled to vote or give consent.

* * * * * *

**Item 21. Voting Procedures.**

As to each matter which is to be submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval or election, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as registrant charter and by-law provisions.

**Item 22. Information required in investment company proxy statement.**

(a) *General.*

(1) *Definitions.* Unless the context otherwise requires, terms used in this Item that are defined in § 240.14a-1 (with respect to proxy soliciting material), in § 240.14c-1 (with respect to information statements), and in the Investment Company Act of 1940 shall have the same meanings provided therein and the following terms shall also apply:

(i) *Administrator.* The term "Administrator" shall mean any person who provides significant administrative or business affairs management services to a Fund.

(ii) *Affiliated broker.* The term "Affiliated Broker" shall mean any broker:

(A) That is an affiliated person of the Fund;

(B) That is an affiliated person of such person; or

(C) An affiliated person of which is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator.

(iii) *Distribution plan.* The term "Distribution Plan" shall mean a plan adopted pursuant to Rule 12b-1 under the Investment Company Act of 1940 (§ 270.12b-1 of this chapter).

(iv) *Family of Investment Companies*. The term "Family of Investment Companies" shall mean any two or more registered investment companies that:

(A) Share the same investment adviser or principal underwriter; and

(B) Hold themselves out to investors as related companies for purposes of investment and investor services.

(v) *Fund*. The term "Fund" shall mean a Registrant or, where the Registrant is a series company, a separate portfolio of the Registrant.

(vi) *Fund complex*. The term "Fund Complex" shall mean two or more Funds that:

(A) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(B) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other Funds.

(vii) *Immediate Family Member*. The term "Immediate Family Member" shall mean a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(viii) *Officer*. The term "Officer" shall mean the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

(ix) *Parent*. The term "Parent" shall mean the affiliated person of a specified person who controls the specified person directly or indirectly through one or more intermediaries.

(x) *Registrant*. The term "Registrant" shall mean an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)).

(xi) *Sponsoring Insurance Company*. The term "Sponsoring Insurance Company" of a Fund that is a separate account shall mean the insurance company that establishes and maintains the separate account and that owns the assets of the separate account.

(xii) *Subsidiary*. The term "Subsidiary" shall mean an affiliated person of a specified person who is controlled by the specified person directly, or indirectly through one or more intermediaries.

(2) [Reserved]

(3) *General disclosure*. Furnish the following information in the proxy statement of a Fund or Funds:

(i) State the name and address of the Fund's investment adviser, principal underwriter, and Administrator.

(ii) When a Fund proxy statement solicits a vote on proposals affecting more than one Fund or class of securities of a Fund (unless the proposal or proposals are the same and affect all Fund or class shareholders), present a summary of all of the proposals in tabular form on one of the first three pages of the proxy statement and indicate which Fund or class shareholders are solicited with respect to each proposal.

(iii) Unless the proxy statement is accompanied by a copy of the Fund's most recent annual report, state prominently in the proxy statement that the Fund will furnish, without charge, a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to a shareholder upon request, providing the name, address, and toll-free telephone number of the person to whom such request shall be directed (or, if no toll-free telephone number is provided, a self-addressed postage paid card for requesting the annual report). The Fund should provide a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to the requesting shareholder by first class mail, or other means designed to assure prompt delivery, within three business days of the request.

(iv) If the action to be taken would, directly or indirectly, establish a new fee or expense or increase any existing fee or expense to be paid by the Fund or its shareholders, provide a table showing the current and pro forma fees (with the required examples) using the format prescribed in the appropriate registration statement form under the Investment Company Act of 1940 (for open-end management investment companies, Item 3 of Form N-1A (§ 239.15A); for closed-end management investment companies, Item 3 of Form N-2 (§ 239.14); and for separate accounts that offer variable annuity contracts, Item 3 of Form N-3 (§ 239.17a)).

*Instructions.*

1. Where approval is sought only for a change in asset breakpoints for a pre-existing fee that would not have increased the fee for the previous year (or have the effect of increasing fees or expenses, but for any other reason would not be reflected in a pro forma fee table), describe the likely effect of the change in lieu of providing pro forma fee information.

2. An action would indirectly establish or increase a fee or expense where, for example, the approval of a new investment advisory contract would result in higher custodial or transfer agency fees.

3. The tables should be prepared in a manner designed to facilitate understanding of the impact of any change in fees or expenses.

4. A Fund that offers its shares exclusively to one or more separate accounts and thus is not required to include a fee table in its prospectus (*see* Item 3 of Form N-1A (§ 239.15A)) should nonetheless prepare a table showing current and pro forma expenses and disclose that the table does not reflect separate account expenses, including sales load.

(v) If action is to be taken with respect to the election of directors or the approval of an advisory contract, describe any purchases or sales of securities of the investment adviser or its Parents, or Subsidiaries of either, since the beginning of the most recently completed fiscal year by any director or any nominee for election as a director of the Fund.

*Instructions.*

1. Identify the parties, state the consideration, the terms of payment and describe any arrangement or understanding with respect to the composition of the board of directors of the Fund or of the investment adviser, or with respect to the selection of appointment of any person to any office with either such company.

2. Transactions involving securities in an amount not exceeding one percent of the outstanding securities of any class of the investment adviser or any of its Parents or Subsidiaries may be omitted.

(b) *Election of Directors*. If action is to *be* taken with respect to the election of directors of a Fund, furnish the following information in the proxy statement in addition to, in the case of business development companies, the information (and in the format) required by Item 7 and Item 8 of this Schedule 14A.

*Instructions to introductory text of paragraph (b).*

1. Furnish information with respect to a prospective investment adviser to the extent applicable.

2. If the solicitation is made by or on behalf of a person other than the Fund or an investment adviser of the Fund, provide information only as to nominees of the person making the solicitation.

3. When providing information about directors and nominees for election as directors in response to this Item 22(b), furnish information for directors or nominees who are or would be "interested persons" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)) separately from the information for directors or nominees who are not or would not be interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors and nominees who are or would be interested persons and for directors or nominees who are not or would not be interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors or nominees who are or would be interested persons and the directors or nominees who are not or would not be interested persons.

4. No information need be given about any director whose term of office as a director will not continue after the meeting to which the proxy statement relates.

(1) Provide the information required by the following table for each director, nominee for election as director, Officer of the Fund, person chosen to become an Officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Name, Address, and Age | Position(s) Held with Fund | Term of Office and Length of Time Served | Principal Occupation(s) During Past 5 Years | Number of Portfolios in Fund Complex Overseen by Director or Nominee for Director | Other Directorships Held by Director or Nominee for Director |

*Instructions to paragraph (b)(1).*

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. No nominee or person chosen to become a director or Officer who has not consented to act as such may be named in response to this Item. In this regard, *see* Rule 14a-4(d) under the Exchange Act (§ 240.14a-4(d)).

3. If fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

4. For each director or nominee for election as director who is or would be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director or nominee is or would be an interested person.

5. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

6. Include in column (5) the total number of separate portfolios that a nominee for election as director would oversee if he were elected.

7. Indicate in column (6) directorships not included in column (5) that are held by a director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*), or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), or any company registered as an investment company under the Investment Company Act of 1940, (15 U.S.C. 80a), as amended, and name the companies in which the directorships are held.

Where the other directorships include directorships overseeing two or more portfolios in the same Fund Complex, identify the Fund Complex and provide the number of portfolios overseen as a director in the Fund Complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (b)(1) of this Item, except for any director or nominee for election as director who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

*Instruction to paragraph (b)(2).* When an individual holds the same position(s) with two or more registered investment companies that are part of the same Fund Complex, identify the Fund Complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3)(i) For each director or nominee for election as director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

(ii) Describe briefly any arrangement or understanding between any director, nominee for election as director, Officer, or person chosen to become an Officer, and any other person(s) (naming the person(s)) pursuant to which he was or is to be selected as a director, nominee, or Officer.

*Instruction to paragraph (b)(3)(ii).* Do not include arrangements or understandings with directors or Officers acting solely in their capacities as such.

(4)(i) Unless disclosed in the table required by paragraph (b)(1) of this Item, describe any positions, including as an officer, employee, director, or general partner, held by any director or nominee for election as director, who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), or Immediate Family Member of the director or nominee, during the past five years, with:

(A) The Fund;

(B) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having

an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(C) An investment adviser, principal underwriter, Sponsoring Insurance Company, or affiliated person of the Fund; or

(D) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

(ii) Unless disclosed in the table required by paragraph (b)(1) of this Item or in response to paragraph (b)(4)(i) of this Item, indicate any directorships held during the past five years by each director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended, and name the companies in which the directorships were held.

*Instruction to paragraph (b)(4).* When an individual holds the same position(s) with two or more portfolios that are part of the same Fund Complex, identify the Fund Complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(5) For each director or nominee for election as director, state the dollar range of equity securities beneficially owned by the director or nominee as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen or to be overseen by the director or nominee within the same Family of Investment Companies as the Fund.

| (1) | (2) | (3) |
|---|---|---|
| Name of Director or Nominee | Dollar Range of Equity Securities in the Fund | Aggregate Dollar Range of Equity Securities in All Funds Overseen or to be Overseen by Director or Nominee in Family of Investment Companies |

*Instructions to paragraph (b)(5)*

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (§ 240.16a-1(a)(2)).

3. If action is to be taken with respect to more than one Fund, disclose in column (2) the dollar range of equity securities beneficially owned by a director or nominee in each such Fund overseen or to be overseen by the director or nominee.

4. In disclosing the dollar range of equity securities beneficially owned by a director or nominee in columns (2) and (3), use the following ranges: none, $1-$10,000, $10,001-$50,000, $50,001-$100,000, or over $100,000.

(6) For each director or nominee for election as director who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), and his Immediate Family Members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund:

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Name of Director or Nominee | Name of Owners and Relationships to Director or Nominee | Company | Title of Class | Value of Securities | Percent of Class |

*Instructions to paragraph (b)(6)*

1. Information should be provided as of the most recent practicable date. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d-3 or rule 16a-1(a)(2) under the Exchange Act (§ 240.13d-3 or 240.16a-1(a)(2)).

3. Identify the company in which the director, nominee, or Immediate Family Member of the director or nominee owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company, describe the company's relationship with the investment adviser, principal underwriter, or Sponsoring Insurance Company.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director (or nominee) and his Immediate Family Members.

(7) Unless disclosed in response to paragraph (b)(6) of this Item, describe any direct or indirect interest, the value of which exceeds $120,000, of each director or nominee for election as director who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), or Immediate Family Member of the director or nominee, during the past five years, in:

(i) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

*Instructions to paragraph (b)(7).*

1. A director, nominee, or Immediate Family Member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director (or nominee) and the interests of his Immediate Family Members should be aggregated in determining whether the value exceeds $120,000.

(8) Describe briefly any material interest, direct or indirect, of any director or nominee for election as director who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), or Immediate Family Member of the director or nominee, in any transaction, or series of similar transactions, since the beginning of the last two completed fiscal years of the Fund, or in any currently proposed transaction, or series of similar transactions, in which the amount involved exceeds $120,000 and to which any of the following persons was or is to be a party:

(i) The Fund;

(ii) An Officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(iv) An Officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the

Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser, principal underwriter, or Sponsoring Insurance Company as the Fund or having an investment adviser, principal underwriter, or Sponsoring Insurance Company that directly or indirectly controls, is controlled by, or is under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(v) An investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(vi) An Officer of an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund; or

(viii) An Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund.

*Instructions to paragraph (b)(8).*

1. Include the name of each director, nominee, or Immediate Family Member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director, nominee, or Immediate Family Member of the director or nominee without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

7. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a trans-

action with one of the persons listed in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (b)(8) of this Item where the interest of the director, nominee, or Immediate Family Member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item, and the transaction is not material to the company.

8. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

9. No information need be given as to any transaction where the interest of the director, nominee, or Immediate Family Member arises solely from the ownership of securities of a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item and the director, nominee, or Immediate Family Member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

10. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the latest practicable date, and the rate of interest paid or charged.

11. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item unless the director is accorded special treatment.

(9) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $120,000, of any director or nominee for election as director who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), or Immediate Family Member of the director or nominee, that exists, or has existed at any time since the beginning of the last two completed fiscal years of the Fund, or is currently proposed, with any of the persons specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item;

(ii) Provision of legal services to any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(9)(i) through (b)(9)(iii) of this Item.

*Instructions to paragraph (b)(9).*

1. Include the name of each director, nominee, or Immediate Family Member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director, nominee, or Immediate Family Member and the person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item as a result of the relationship since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

5. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item may have an indirect relationship by reason of the position, relationship, or interest.

6. In determining whether the amount involved in a relationship exceeds $120,000, amounts involved in a relationship of the director (or nominee) should be aggregated with those of his Immediate Family Members.

7. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item has a relationship; the name of the director, nominee, or Immediate Family Member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item since the beginning of the last two completed fiscal years of the Fund or proposed to be done during the Fund's current fiscal year.

8. In calculating payments for property and services for purposes of paragraph (b)(9)(i) of this Item, the following may be excluded:

A. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

B. Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

9. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(8)(i) through (b)(8)(viii) of this Item unless the director is accorded special treatment.

(10) If an Officer of an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund, or an Officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser, principal underwriter, or Sponsoring Insurance Company of the Fund, serves, or has served since the beginning of the last two completed fiscal years of the Fund, on the board of directors of a company where a director of the Fund or nominee for election as director who is not or would not be an "interested person" of the Fund within the meaning of section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)), or Immediate Family Member of the director or nominee, is, or was since the beginning of the last two completed fiscal years of the Fund, an Officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser, principal underwriter, or Sponsoring Insurance Company or person controlling, controlled by, or under common control with the investment adviser, principal underwriter, or Sponsoring Insurance Company where the individual named in paragraph (b)(10)(ii) of this Item holds or held office and the office held; and

(iv) The director of the Fund, nominee for election as director, or Immediate Family Member who is or was an Officer of the company; the office held; and the period of holding the office.

*Instruction to paragraph (b)(10).* If the proxy statement relates to multiple portfolios of a series Fund with different fiscal years, then, in determining the date that is the beginning of the last two completed fiscal years of the Fund, use the earliest date of any series covered by the proxy statement.

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a), 405, and 407(h) of Regulation S-K (§§ 229.401(f) and (g), 229.404(a), and 229.405, and 229.407(h) of this chapter).

*Instruction to paragraph (b)(11).* Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Item 404(a) of Regulation S-K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

(12) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the Fund's business, to which any director or nominee for director or affiliated person of such director or nominee is a party adverse to the Fund or any of its affiliated persons or has a material interest adverse to the Fund or any of its affiliated persons. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(13) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), for all directors, and for each of the three highest-paid Officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons"):

(i) Furnish the information required by the following table for the last fiscal year:

| (1) Name of Person, Position | (2) Aggregate Compensation From Fund | (3) Pension or Retirement Benefits Accrued As Part of Fund Expenses | (4) Estimated Annual Benefits Upon Retirement | (5) Total Compensation From Fund and Fund Complex Paid to Directors |
|---|---|---|---|---|

*Instructions to paragraph (b)(13)(i).*

1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)) or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund or any of its Subsidiaries, or by other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (b)(13)(i) of this Item pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under any plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

(14) State whether or not the Fund has a separately designated audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)). If the entire board of directors is acting as the Fund's audit committee as specified in section 3(a)(58)(B) of the Act (15 U.S.C. 78c(a)(58)(B)), so state. If applicable, provide the disclosure required by § 240.10A-3(d) regarding an exemption from the listing standards for audit committees. Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee and any nominating committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee and, in the case of a nominating committee, whether or not the members of the committee are "interested persons" of the Fund as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)); and

(iii) The number of committee meetings held during the last fiscal year.

*Instruction to paragraph (b)(14).* For purposes of Item 22(b)(14), the term "nominating committee" refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(15) (i) Provide the information (and in the format) required by Items 407(b)(1), (b)(2) and (f) of Regulation S-K (§ 229.407(b)(1), (b)(2) and (f) of this chapter); and

(ii) Provide the following regarding the requirements for the director nomination process:

(A) The information (and in the format) required by Items 407(c)(1) and (c)(2) of Regulation S-K (§ 229.407(c)(1) and (c)(2) of this chapter); and

(B) If the Fund is a listed issuer (as defined in § 240.10A-3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3(a)) that has independence requirements for nominating committee members, identify each director that is a member of the nominating committee that is not independent under the independence standards described in this paragraph. In determining whether the nominating committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the nominating committee are independent in compliance with the independence standards applicable for the members of the nominating committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the nominating committee, use the independence standards for the nominating committee in the listing standards applicable to the Fund.

*Instruction to paragraph (b)(15)(ii)(B).* If the national securities exchange or inter-dealer quotation system on which the Fund's securities are listed has exemptions to the independence requirements for nominating committee members upon which the Fund relied, disclose the exemption relied upon and explain the basis for the Fund's conclusion that such exemption is applicable.

(16) In the case of a Fund that is a closed-end investment company:

(i) Provide the information (and in the format) required by Item 407(d)(1), (d)(2) and (d)(3) of Regulation S-K (§ 229.407(d)(1), (d)(2) and (d)(3) of this chapter); and

(ii) Identify each director that is a member of the Fund's audit committee that is not independent under the independence standards described in this paragraph. If the Fund does not have a separately designated audit committee, or committee performing similar functions, the Fund must provide the disclosure with respect to all members of its board of directors.

(A) If the Fund is a listed issuer (as defined in § 240.10A-3 of this chapter) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3(a)) that has independence requirements for audit committee

members, in determining whether the audit committee members are independent, use the Fund's definition of independence that it uses for determining if the members of the audit committee are independent in compliance with the independence standards applicable for the members of the audit committee in the listing standards applicable to the Fund. If the Fund does not have independence standards for the audit committee, use the independence standards for the audit committee in the listing standards applicable to the Fund.

(B) If the Fund is not a listed issuer whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3(a)), in determining whether the audit committee members are independent, use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A of the Act (15 U.S.C. 780-3(a)) which has requirements that a majority of the board of directors be independent and that has been approved by the Commission, and state which definition is used. Whatever such definition the Fund chooses, it must use the same definition with respect to all directors and nominees for director. If the national securities exchange or national securities association whose standards are used has independence standards for the members of the audit committee, use those specific standards.

*Instruction to paragraph (b)(16)(ii).* If the national securities exchange or inter-dealer quotation system on which the Fund's securities are listed has exemptions to the independence requirements for nominating committee members upon which the Fund relied, disclose the exemption relied upon and explain the basis for the Fund's conclusion that such exemption is applicable. The same disclosure should be provided if the Fund is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the Fund has exemptions that are applicable to the Fund.

(17) In the case of a Fund that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), if a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

(18) If a shareholder nominee or nominees are submitted to the Fund for inclusion in the Fund's proxy materials pursuant to § 240.14a-11 and the Fund is not permitted to

exclude the nominee or nominees pursuant to the provisions of § 240.14a-11, the Fund must include in its proxy statement the disclosure required from the nominating shareholder or nominating shareholder group under Item 5 of § 240.14n-101 with regard to the nominee or nominees and the nominating shareholder or nominating shareholder group.

*Instruction to paragraph (b)(18).* The information disclosed pursuant to paragraph (b)(18) of this Item will not be deemed incorporated by reference into any filing under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), except to the extent that the Fund specifically incorporates that information by reference.

(19) If a Fund is required to include a shareholder nominee or nominees submitted to the Fund for inclusion in the Fund's proxy materials pursuant to a procedure set forth under applicable state or foreign law or the Fund's governing documents providing for the inclusion of shareholder director nominees in the Fund's proxy materials, the Fund must include in its proxy statement the disclosure required from the nominating shareholder or nominating shareholder group under Item 6 of § 240.14n-101 with regard to the nominee or nominees and the nominating shareholder or nominating shareholder group.

*Instruction to paragraph (b)(19).* The information disclosed pursuant to paragraph (b)(19) of this Item will not be deemed incorporated by reference into any filing under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), except to the extent that the Fund specifically incorporates that information by reference.

(c) *Approval of investment advisory contract.* If action is to be taken with respect to an investment advisory contract, include the following information in the proxy statement.

*Instruction.* Furnish information with respect to a prospective investment adviser to the extent applicable (including the name and address of the prospective investment adviser).

(1) With respect to the existing investment advisory contract:

(i) State the date of the contract and the date on which it was last submitted to a vote of security holders of the Fund, including the purpose of such submission;

(ii) Briefly describe the terms of the contract, including the rate of compensation of the investment adviser;

(iii) State the aggregate amount of the investment adviser's fee and the amount and purpose of any other material payments by the Fund to the investment adviser, or any affiliated person of the investment adviser, during the last fiscal year of the Fund;

(iv) If any person is acting as an investment adviser of the Fund other than pursuant to a written contract that has been approved by the security holders of the company, identify the person and describe the nature of the services and arrangements;

(v) Describe any action taken with respect to the investment advisory contract since the beginning of the Fund's last fiscal year by the board of directors of the Fund (unless described in response to paragraph (c)(1)(vi)) of this Item 22); and

(vi) If an investment advisory contract was terminated or not renewed for any reason, state the date of such termination or non-renewal, identify the parties involved, and describe the circumstances of such termination or non-renewal.

(2) State the name, address and principal occupation of the principal executive officer and each director or general partner of the investment adviser.

*Instruction.* If the investment adviser is a partnership with more than ten general partners, name:

(i). The general partners with the five largest economic interests in the partnership, and, if different, those general partners comprising the management or executive committee of the partnership or exercising similar authority; and

(ii). The general partners with significant management responsibilities relating to the fund.

(3) State the names and addresses of all Parents of the investment adviser and show the basis of control of the investment adviser and each Parent by its immediate Parent.

*Instructions.*

1. If any person named is a corporation, include the percentage of its voting securities owned by its immediate Parent.

2. If any person named is a partnership, name the general partners having the three largest partnership interests (computed by whatever method is appropriate in the particular case).

(4) If the investment adviser is a corporation and if, to the knowledge of the persons making the solicitation or the persons on whose behalf the solicitation is made, any person not named in answer to paragraph (c)(3) of this Item 22 owns, of record or beneficially, ten percent or more of the outstanding voting securities of the investment adviser, indicate that fact and state the name and address of each such person.

(5) Name each officer or director of the Fund who is an officer, employee, director, general partner or shareholder of the investment adviser. As to any officer or director who is not a director or general partner of the investment adviser and who owns securities or has any other material direct or indirect interest in the investment adviser or any other person controlling, controlled by or under common control with the investment adviser, describe the nature of such interest.

(6) Describe briefly and state the approximate amount of, where practicable, any material interest, direct or indirect, of any director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any material proposed transactions, to which the investment adviser of the Fund, any Parent or Subsidiary of the investment adviser (other than another Fund), or any Subsidiary of the Parent of such entities was or is to be a party.

*Instructions.*

1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets by or to the investment adviser, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth, but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph (c)(6) of Item 22 with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(7) Disclose any financial condition of the investment adviser that is reasonably likely to impair the financial ability of the adviser to fulfill its commitment to the fund under the proposed investment advisory contract.

(8) Describe the nature of the action to be taken on the investment advisory contract and the reasons therefor, the terms of the contract to be acted upon, and, if the action is an amendment to, or a replacement of, an investment advisory contract, the material differences between the current and proposed contract.

(9) If a change in the investment advisory fee is sought, state:

(i) The aggregate amount of the investment adviser's fee during the last year;

(ii) The amount that the adviser would have received had the proposed fee been in effect; and

(iii) The difference between the aggregate amounts stated in response to paragraphs (i) and (ii) of this item (c)(9) as a percentage of the amount stated in response to paragraph (i) of this item (c)(9).

(10) If the investment adviser acts as such with respect to any other Fund having a similar investment objective, identify and state the size of such other Fund and the rate of

the investment adviser's compensation. Also indicate for any Fund identified whether the investment adviser has waived, reduced, or otherwise agreed to reduce its compensation under any applicable contract.

*Instruction.* Furnish the information in response to this paragraph (c)(10) of Item 22 in tabular form.

(11) Discuss in reasonable detail the material factors and the conclusions with respect thereto that form the basis for the recommendation of the board of directors that the shareholders approve an investment advisory contract. Include the following in the discussion:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in determining to recommend that the shareholders approve the advisory contract; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

*Instructions.*

1. Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract for which approval is sought and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its determination to recommend approval of the contract.

2. If any factor enumerated in paragraph (c)(11)(i) of this Item 22 is not relevant to the board's evaluation of the investment advisory contract for which approval is sought, note this and explain the reasons why that factor is not relevant.

(12) Describe any arrangement or understanding made in connection with the proposed investment advisory contract with respect to the composition of the board of directors of the Fund or the investment adviser or with respect to the selection or appointment of any person to any office with either such company.

(13) For the most recently completed fiscal year, state:

(i) The aggregate amount of commissions paid to any Affiliated Broker; and

(ii) The percentage of the Fund's aggregate brokerage commissions paid to any such Affiliated Broker.

*Instruction.* Identify each Affiliated Broker and the relationships that cause the broker to be an Affiliated Broker.

(14) Disclose the amount of any fees paid by the Fund to the investment adviser, its affiliated persons or any affiliated person of such person during the most recent fiscal year for services provided to the Fund (other than under the investment advisory contract or for brokerage commissions). State whether these services will continue to be provided after the investment advisory contract is approved.

(d) *Approval of distribution plan.* If action is to be taken with respect to a Distribution Plan, include the following information in the proxy statement.

*Instruction.* Furnish information on a prospective basis to the extent applicable.

(1) Describe the nature of the action to be taken on the Distribution Plan and the reason therefor, the terms of the Distribution Plan to be acted upon, and, if the action is an amendment to, or a replacement of, a Distribution Plan, the material differences between the current and proposed Distribution Plan.

(2) If the Fund has a Distribution Plan in effect:

(i) Provide the date that the Distribution Plan was adopted and the date of the last amendment, if any;

(ii) Disclose the persons to whom payments may be made under the Distribution Plan, the rate of the distribution fee and the purposes for which such fee may be used;

(iii) Disclose the amount of distribution fees paid by the Fund pursuant to the plan during its most recent fiscal year, both in the aggregate and as a percentage of the Fund's average net assets during the period;

(iv) Disclose the name of, and the amount of any payments made under the Distribution Plan by the Fund during its most recent fiscal year to, any person who is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator, an affiliated person of such person, or a person that during the most recent fiscal year received 10% or more of the aggregate amount paid under the Distribution Plan by the Fund;

(v) Describe any action taken with respect to the Distribution Plan since the beginning of the Fund's most recent fiscal year by the board of directors of the Fund; and

(vi) If a Distribution Plan was or is to be terminated or not renewed for any reason, state the date or prospective date of such termination or non-renewal, identify the parties involved, and describe the circumstances of such termination or non-renewal.

(3) Describe briefly and state the approximate amount of, where practicable, any material interest, direct or indirect, of any director or nominee for election as a director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any material proposed transactions, to which any person identified in response to Item 22(d)(2)(iv) was or is to be a party.

*Instructions.*

1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph (d)(3) of Item 22 with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(4) Discuss in reasonable detail the material factors and the conclusions with respect thereto which form the basis for the conclusion of the board of directors that there is a reasonable likelihood that the proposed Distribution Plan (or amendment thereto) will benefit the Fund and its shareholders.

*Instruction.* Conclusory statements or a list of factors will not be considered sufficient disclosure.

## SCHEDULE 14C

### Item 2. Statement That Proxies Are Not Solicited

The following statement shall be set forth on the first page of the information statement in bold-face type:

**WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY**

## APPENDIX B

### Selected Items from Form N-1A

**Item 2. Risk/Return Summary: Investment Objectives/Goals**

Disclose the Fund's investment objectives or goals. A Fund also may identify its type or category (e.g., that it is a Money Market Fund or a balanced fund).

**Item 3. Risk/Return Summary: Fee Table**

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2:

*Fees and expenses of the Fund*

**This table describes the fees and expenses that you may pay if you buy and hold shares of the Fund. You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least $[ ] in [name of fund family] funds. More information about these and other discounts is available from your financial professional and in [identify section heading and page number] of the Fund's prospectus and [identify section heading and page number] of the Fund's statement of additional information.**

***Shareholder Fees*** (fees paid directly from your investment)

| | |
|---|---|
| Maximum Sales Charge (Load) Imposed on Purchases (as a percentage of offering price) | __% |
| Maximum Deferred Sales Charge (Load) (as a percentage of ) | __% |
| Maximum Sales Charge (Load) Imposed on Reinvested Dividends [and other Distributions] (as a percentage of ) | __% |
| Redemption Fee (as a percentage of amount redeemed, if applicable) | __% |
| Exchange Fee | __% |
| Maximum Account Fee | __% |

***Annual Fund Operating Expenses*** (expenses that you pay each year as a percentage of the value of your investment)

| | |
|---|---|
| Management Fees | __% |
| Distribution [and/or Service] (12b-1) Fees | __% |
| Other Expenses | __% |
| _____ | __% |
| _____ | __% |
| _____ | __% |
| Total Annual Fund Operating Expenses | __% |

***Example***

**This Example is intended to help you compare the cost of investing in the Fund with the cost of investing in other mutual funds.**

**The Example assumes that you invest $10,000 in the Fund for the time periods indicated and then redeem all of your shares at the end of those periods. The Example also assumes that your investment has a 5% return each year and that the Fund's operating expenses remain the same. Although your actual costs maybe higher or lower, based on these assumptions your costs would be:**

| 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|
| $ ____ | $ _____ | $_____ | $_____ |

**You would pay the following expenses if you did not redeem your shares:**

| 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|
| $ ____ | $_____ | $_____ | $_____ |

**The Example does not reflect sales charges (loads) on reinvested dividends [and other distributions]. If these sales charges (loads) were included, your costs would be higher.**

*Portfolio Turnover*

**The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover rate may indicate higher transaction costs and may result in higher taxes when Fund shares are held in a taxable account. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was __% of the average value of its portfolio.**

*Instructions.*

1. *General.*

(a) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. The narrative explanation regarding sales charge discounts is only required by a Fund that offers such discounts and should specify the minimum level of investment required to qualify for a discount as disclosed in the table required by Item 12(a)(1).

(c) Include the caption "Maximum Account Fees" only if the Fund charges these fees. A Fund may omit other captions if the Fund does not charge the fees or expenses covered by the captions.

(d) (i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in a single fee table using the captions provided. In a footnote to the fee table, state that the table and Example reflect the expenses of both the Feeder and Master Funds.

(ii) If the prospectus offers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate response for each Class or Feeder Fund.

(e) If the Fund is an Exchange-Traded Fund,

(i) Modify the narrative explanation to state that investors may pay brokerage commissions on their purchases and sales of Exchange-Traded Fund shares, which are not reflected in the example; and

(ii) If the Fund issues or redeems shares in creation units of not less than 25,000 shares each, exclude any fees charged for the purchase and redemption of the Fund's creation units.

2. *Shareholder Fees.*

(a) (i) "Maximum Deferred Sales Charge (Load)" includes the maximum total deferred sales charge (load) payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 12(a), except that, for a sales charge (load) based on net asset value at the time of purchase, show the sales charge (load) as a percentage of the *offering price* at the time of purchase. A Fund may include in a footnote to the table, if applicable, a tabular presentation showing the amount of deferred sales charges (loads) over time or a narrative explanation of the sales charges (loads) (*e.g.*, % in the first year after purchase, declining to % in the year and eliminated thereafter).

(ii) If more than one type of sales charge (load) is imposed (*e.g.*, a deferred sales charge (load) and a front-end sales charge (load)), the first caption in the table should read "Maximum Sales Charge (Load)" and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge (load) comprising that figure on separate lines below.

(iii) If a sales charge (load) is imposed on shares purchased with reinvested capital gains distributions or returns of capital, include the bracketed words in the third caption.

(b) "Redemption Fee" includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption, and if the Fund is a Money Market Fund, does not include a liquidity fee imposed upon the sale of Fund Shares in accordance with rule 2a-7(c)(2).

(c) "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Fund to another fund. The Fund may include in a footnote to the table, if applicable, a tabular presentation of the range of exchange fees or a narrative explanation of the fees.

(d) "Maximum Account Fees." Disclose account fees that may be charged to a typical investor in the Fund; fees that apply to only a limited number of shareholders based on their particular circumstances need not be disclosed. Include a caption describing the maximum account fee (*e.g.*, "Maximum Account Maintenance Fee" or "Maximum Cash Management Fee"). State the maximum annual account fee as either a fixed dollar amount or a percentage of assets. Include in a parenthetical to the caption the basis on which any percentage is calculated. If an account fee is charged only to accounts that do not meet a certain threshold (*e.g.*, accounts under $5,000), the Fund may include the threshold in a parenthetical to the caption or footnote to the table. The Fund may include an explanation of any non-recurring account fee in a parenthetical to the caption or in a footnote to the table.

3. *Annual Fund Operating Expenses*.

(a) "Management Fees" include investment advisory fees (including any fees based on the Fund's performance), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates that are not included as "Other Expenses."

(b) "Distribution [and/or Service] (12b-1) Fees" include all distribution or other expenses incurred during the most recent fiscal year under a plan adopted pursuant to rule 12b-1 [17 CFR 270.12b-1]. Under an appropriate caption or a subcaption of "Other Expenses," disclose the amount of any distribution or similar expenses deducted from the Fund's assets other than pursuant to a rule 12b-1 plan.

(c) (i) "Other Expenses" include all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X [17 CFR 210.6-07]).

(ii) "Other Expenses" do not include extraordinary expenses as determined under generally accepted accounting principles (*see* FASB ASC Subtopic 225-20, Income Statement-Extraordinary and Unusual Items). If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," disclose in a footnote to the table what "Other Expenses" would have been had the extraordinary expenses been included.

(iii) The Fund may subdivide this caption into no more than three subcaptions that identify the largest expense or expenses comprising "Other Expenses," but must include a total of all "Other Expenses." Alternatively, the Fund may include the components of "Other Expenses" in a parenthetical to the caption.

(d) (i) Base the percentages of "Annual Fund Operating Expenses" on amounts incurred during the Fund's most recent fiscal year, but include in expenses amounts that would have been incurred absent expense reimbursement or fee waiver arrangements.

If the Fund has changed its fiscal year and, as a result, the most recent fiscal year is less than three months, use the fiscal year prior to the most recent fiscal year as the basis for determining "Annual Fund Operating Expenses."

(ii) If there have been any changes in "Annual Fund Operating Expenses" that would materially affect the information disclosed in the table:

(A) Restate the expense information using the current fees as if they had been in effect during the previous fiscal year; and

(B) In a footnote to the table, disclose that the expense information in the table has been restated to reflect current fees.

(iii) A change in "Annual Fund Operating Expenses" means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. A change in "Annual Fund Operating Expenses" does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(e) If there are expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement, a Fund may add two captions to the table: one caption showing the amount of the expense reimbursement or fee waiver, and a second caption showing the Fund's net expenses after subtracting the fee reimbursement or expense waiver from the total fund operating expenses. The Fund should place these additional captions directly below the "Total Annual Fund Operating Expenses" caption of the table and should use appropriate descriptive captions, such as "Fee Waiver [and/or Expense Reimbursement]" and "Total Annual Fund Operating Expenses After Fee Waiver [and/or Expense Reimbursement]," respectively. If the Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, including the expected termination date, and briefly describe who can terminate the arrangement and under what circumstances.

(f) (i) If the Fund (unless it is a Feeder Fund) invests in shares of one or more Acquired Funds, add a subcaption to the "Annual Fund Operating Expenses" portion of the table directly above the subcaption titled "Total Annual Fund Operating Expenses." Title the additional subcaption: "Acquired Fund Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds. For purposes of this item, an "Acquired Fund" means any company in which the Fund invests or has invested during the relevant fiscal period that (A) is an investment company or (B) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sec-

tions 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)). If a Fund uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Fund, the Fund may include these fees and expenses under the subcaption "Other Expenses" in lieu of this disclosure requirement.

(ii) Determine the "Acquired Fund Fees and Expenses" according to the following formula:

$$\text{AFFE} = \frac{[(F1/FY)*AI1*D1]+[(F2/FY)*AI2*D2]+[(F3/FY)*AI3*D3] + \text{Transaction Fees} + \text{Incentive Allocations}}{\text{Average Net Assets of the Fund}}$$

Where:

| | | |
|---|---|---|
| AFFE | = | Acquired Fund fees and expenses; |
| F1, F2, F3… | = | Total annual operating expense ratio for each Acquired Fund; |
| FY | = | Number of days in the relevant fiscal year. |
| AI1, AI2, AI3… | = | Average invested balance in each Acquired Fund; |
| D1, D2, D3… | = | Number of days invested in each Acquired Fund; and |

"Transactional Fees" = The total amount of sales loads, redemption fees or, other transaction fees paid by the Fund in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year.

"Incentive Allocations" = Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Funds' income, capital gains and/or appreciation in the Acquired Fund.

(iii) Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 13(a) (*see* Instruction 4 to Item 13(a)).

(iv) The total annual operating expense ratio used for purposes of this calculation (F) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund

to the Fund. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include expenses (*i.e.*, performance fees) that are incurred solely upon the realization and/or distribution of a gain. If an Acquired Fund has no operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

(v) To determine the average invested balance (AI), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vi) A New Fund should base the Acquired Fund fees and expenses on assumptions as to the specific Acquired Funds in which the New Fund expects to invest. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

(vii) The Fund may clarify in a footnote to the fee table that the total annual fund operating expenses under Item 3 do not correlate to the ratio of expenses to average net assets given in response to Item 13, which reflects the operating expenses of the Fund and does not include Acquired Fund fees and expenses.

4. *Example.*

(a) Assume that the percentage amounts listed under "Total Annual Fund Operating Expenses" remain the same in each year of the 1-, 3-, 5-, and 10-year periods, except that an adjustment may be made to reflect any expense reimbursement or fee waiver arrangements that will reduce any Fund operating expenses for no less than one year from the effective date of the Fund's registration statement. An adjustment to reflect any expense reimbursement or fee waiver arrangement may be reflected only in the period(s) for which the expense reimbursement or fee waiver arrangement is expected to continue.

(b) For any breakpoint in any fee, assume that the amount of the Fund's assets remains constant as of the level at the end of the most recently completed fiscal year.

(c) Assume reinvestment of all dividends and distributions.

(d) Reflect recurring and non-recurring fees charged to all investors other than any exchange fees or any sales charges (loads) on shares purchased with reinvested dividends or other distributions. If sales charges (loads) are imposed on reinvested dividends or other distributions, include the narrative explanation following the Example and include the bracketed words when sales charges (loads) are charged on reinvested capital gains distributions or returns of capital. Reflect any shareholder account fees collected by more than one Fund by dividing the total amount of the fees collected during the most recent fiscal year for all Funds whose shareholders are subject to the fees by the total average net assets of the Funds. Add the resulting percentage to "Annual Fund Operating Expenses" and assume that it remains the same in each of the 1-, 3-, 5-, and 10-year periods. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(e) Reflect any deferred sales charge (load) by assuming redemption of the entire account at the end of the year in which the sales charge (load) is due. In the case of a deferred sales charge (load) that is based on the Fund's net asset value at the time of payment, assume that the net asset value at the end of each year includes the 5% annual return for that and each preceding year.

(f) Include the second 1-, 3-, 5-, and 10-year periods and related narrative explanation only if a sales charge (load) or other fee is charged upon redemption.

5. *Portfolio Turnover*. Disclose the portfolio turnover rate provided in response to Item 13(a) for the most recent fiscal year (or for such shorter period as the Fund has been in operation). Disclose the period for which the information is provided if less than a full fiscal year. A Fund that is a Money Market Fund may omit the portfolio turnover information required by this Item.

6. *New Funds*. For purposes of this Item, a "New Fund" is a Fund that does not include in Form N-1A financial statements reporting operating results or that includes financial statements for the Fund's initial fiscal year reporting operating results for a period of 6 months or less. The following Instructions apply to New Funds.

(a) Base the percentages expressed in "Annual Fund Operating Expenses" on payments that will be made, but include in expenses, amounts that will be incurred without reduction for expense reimbursement or fee waiver arrangements, estimating amounts of "Other Expenses." Disclose in a footnote to the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

(b) Complete only the 1- and 3-year period portions of the Example and estimate any shareholder account fees collected.

**Item 4. Risk/Return Summary: Investments, Risks, and Performance**

Include the following information, in plain English under rule 421(d) under the Securities Act, in the order and subject matter indicated:

(a) *Principal investment strategies of the Fund.*

Based on the information given in response to Item 9(b), summarize how the Fund intends to achieve its investment objectives by identifying the Fund's principal investment strategies (including the type or types of securities in which the Fund invests or will invest principally) and any policy to concentrate in securities of issuers in a particular industry or group of industries.

(b) *Principal risks of investing in the Fund.*

*(1) Narrative Risk Disclosure.*

(i) Based on the information given in response to Item 9(c), summarize the principal risks of investing in the Fund, including the risks to which the Fund's portfolio as a whole is subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, and total return. Unless the Fund is a Money Market Fund, disclose that loss of money is a risk of investing in the Fund.

*Instruction.* A Fund may, in responding to this Item, describe the types of investors for whom the Fund is intended or the types of investment goals that may be consistent with an investment in the Fund.

(ii)(A) If the Fund is a Money Market Fund that is not a government Money Market Fund, as defined in § 270.2a– 7(a)(16) or a retail Money Market Fund, as defined in § 270.2a–7(a)(25), include the following statement:

You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(B) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(16), or a retail Money Market Fund, as defined in § 270.2a–7(a)(25), and that is subject to the requirements of §§ 270.2a–7(c)(2)(i) and/

or (ii) of this chapter (or is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii)), include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(C) If the Fund is a Money Market Fund that is a government Money Market Fund, as defined in § 270.2a–7(a)(16), that is not subject to the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a–7(c)(2)(iii) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a–7(c)(2)(i) and/or (ii), include the following statement:

> You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

***Instructions.*** If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the statement specified in Item 4(b)(1)(ii)(A), Item 4(b)(1)(ii)(B), or Item 4(b)(1)(ii)(C) may omit the last sentence ("The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time."). For purposes of this Instruction, the term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term "financial support" excludes any routine waiver of fees or reimbursement of fund ex-

penses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

(iii) If the Fund is advised by or sold through an insured depository institution, state that:

An investment in the Fund is not a deposit of the bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

*Instruction.* A Money Market Fund that is advised by or sold through an insured depository institution should combine the disclosure required by Items 4(b)(1)(ii) and (iii) in a single statement.

(iv) If applicable, state that the Fund is non-diversified, describe the effect of non-diversification (*e.g.*, disclose that, compared with other funds, the Fund may invest a greater percentage of its assets in a particular issuer), and summarize the risks of investing in a non-diversified fund.

*(2) Risk/Return Bar Chart and Table.*

(i) Include the bar chart and table required by paragraphs (b)(2)(ii) and (iii) of this section. Provide a brief explanation of how the information illustrates the variability of the Fund's returns (*e.g.*, by stating that the information provides some indication of the risks of investing in the Fund by showing changes in the Fund's performance from year to year and by showing how the Fund's average annual returns for 1, 5, and 10 years compare with those of a broad measure of market performance). Provide a statement to the effect that the Fund's past performance (before and after taxes) is not necessarily an indication of how the Fund will perform in the future. If applicable, include a statement explaining that updated performance information is available and providing a Web site address and/or toll-free (or collect) telephone number where the updated information may be obtained.

(ii) If the Fund has annual returns for at least one calendar year, provide a bar chart showing the Fund's annual total returns for each of the last 10 calendar years (or for the life of the Fund if less than 10 years), but only for periods subsequent to the effective date of the Fund's registration statement. Present the corresponding numerical return adjacent to each bar. If the Fund's fiscal year is other than a calendar year, include the year-to-date return information as of the end of the most recent quarter in a footnote to the bar chart. Following the bar chart, disclose the Fund's highest and lowest return for a quarter during the 10 years or other period of the bar chart.

[**amendment effective November 19, 2018**: If swing pricing policies and procedures were applied during any of the periods, include a general description of the effects of

swing pricing on the Fund's annual total returns for the applicable period(s) presented in a footnote to the bar chart.]

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's (A) average annual total return; (B) average annual total return (after taxes on distributions); and (C) average annual total return (after taxes on distributions and redemption). A Money Market Fund should show only the returns described in clause (A) of the preceding sentence. All returns should be shown for 1-, 5-, and 10- calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. The table also should show the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 27(b)(7) for the same periods. A Fund that has been in existence for more than 10 years also may include returns for the life of the Fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield. For a Fund (other than a Money Market Fund or a Fund described in General Instruction C.3.(d)(iii)), provide the information in the following table with the specified captions:

**AVERAGE ANNUAL TOTAL RETURNS**

*(For the periods ended December 31, ____)*

| | 1 year | 5 years [or Life of Fund] | 10 years [or Life of Fund] |
|---|---|---|---|
| **Return Before Taxes** | % | % | % |
| **Return After Taxes on Distributions** | % | % | % |
| **Return After Taxes on Distributions and Sale of Fund Shares** | % | % | % |
| ***Index*** **(reflects no deduction for [fees, expenses, or taxes])** | % | % | % |

(iv) Adjacent to the table required by paragraph 4(b)(2)(iii), provide a brief explanation that:

(A) After-tax returns are calculated using the historical highest individual federal marginal income tax rates and do not reflect the impact of state and local taxes;

(B) Actual after-tax returns depend on an investor's tax situation and may differ from those shown, and after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts;

(C) If the Fund is a Multiple Class Fund that offers more than one Class in the prospectus, after-tax returns are shown for only one Class and after-tax returns for other Classes will vary; and

(D) If average annual total return (after taxes on distributions and redemption) is higher than average annual total return, the reason for this result may be explained.

[(E) If swing pricing policies and procedures were applied during any of the periods, include a general description of the effects of swing pricing on the Fund's average annual total returns for the applicable period(s) presented. **amendment effective November 19, 2018]**

*Instructions.*

1. *Bar Chart.*

(a) Provide annual total returns beginning with the earliest calendar year. Calculate annual returns using the Instructions to Item 13(a), except that the calculations should be based on calendar years. If a Fund's shares are sold subject to a sales load or account fees, state that sales loads or account fees are not reflected in the bar chart and that, if these amounts were reflected, returns would be less than those shown.

(b) For a Fund that provides annual total returns for only one calendar year or for a Fund that does not include the bar chart because it does not have annual returns for a full calendar year, modify, as appropriate, the narrative explanation required by paragraph (b)(2)(i) (*e.g.*, by stating that the information gives some indication of the risks of an investment in the Fund by comparing the Fund's performance with a broad measure of market performance).

2. *Table.*

(a) Calculate a Money Market Fund's 7-day yield under Item 26(a); the Fund's average annual total return under Item 26(b)(1); and the Fund's average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) under Items 26(b)(2) and (3), respectively.

(b) A Fund may include, in addition to the required broad-based securities market index, information for one or more other indexes as permitted by Instruction 6 to Item 27(b)(7). If an additional index is included, disclose information about the additional index in the narrative explanation accompanying the bar chart and table (*e.g.*, by stating that the information shows how the Fund's performance compares with the returns of an index of funds with similar investment objectives).

(c) If the Fund selects an index that is different from the index used in a table for the immediately preceding period, explain the reason(s) for the selection of a different index and provide information for both the newly selected and the former index.

(d) A Fund (other than a Money Market Fund) may include the Fund's yield calculated under Item 26(b)(2). Any Fund may include its tax-equivalent yield calculated under Item 26. If a Fund's yield is included, provide a toll-free (or collect) telephone number that investors can use to obtain current yield information.

(e) Returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) for a Fund or Series must be adjacent to one another and appear in that order. The returns for a broad-based securities market index, as required by paragraph 4(b)(2)(iii), must precede or follow all of the returns for a Fund or Series rather than be interspersed with the returns of the Fund or Series.

3. *Multiple Class Funds.*

(a) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2), provide annual total returns in the bar chart for only one of those Classes. The Fund can select which Class to include (*e.g.*, the oldest Class, the Class with the greatest net assets) if the Fund:

(i) Selects the Class with 10 or more years of annual returns if other Classes have fewer than 10 years of annual returns;

(ii) Selects the Class with the longest period of annual returns when the Classes all have fewer than 10 years of returns; and

(iii) If the Fund provides annual total returns in the bar chart for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the bar chart the reasons for the selection of a different Class.

(b) When a Multiple Class Fund offers a new Class in a prospectus and separately presents information for the new Class in response to Item 4(b)(2), include the bar chart with annual total returns for any other existing Class for the first year that the Class is offered. Explain in a footnote that the returns are for a Class that is not presented that would have substantially similar annual returns because the shares are invested in the same portfolio of securities and the annual returns would differ only to the extent that the Classes do not have the same expenses. Include return information for the other Class reflected in the bar chart in the performance table.

(c) When a Multiple Class Fund presents information for more than one Class together in response to Item 4(b)(2):

(i) Provide the returns required by paragraph 4(b)(2)(iii)(A) of this Item for each of the Classes;

(ii) Provide the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for only one of those Classes. The Fund may select the Class for which it provides

the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item, provided that the Fund:

(A) Selects a Class that has been offered for use as an investment option for accounts other than those described in General Instruction C.3.(d)(iii)(A);

(B) Selects a Class described in paragraph (c)(ii)(A) of this instruction with 10 or more years of annual returns if other Classes described in paragraph (c)(ii)(A) of this instruction have fewer than 10 years of annual returns;

(C) Selects the Class described in paragraph (c)(ii)(A) of this instruction with the longest period of annual returns if the Classes described in paragraph (c)(ii)(A) of this instruction all have fewer than 10 years of returns; and

(D) If the Fund provides the returns required by paragraphs 4(b)(2)(iii)(B) and (C) of this Item for a Class that is different from the Class selected for the most immediately preceding period, explain in a footnote to the table the reasons for the selection of a different Class;

(iii) The returns required by paragraphs 4(b)(2)(iii)(A), (B), and (C) of this Item for the Class described in paragraph (c)(ii) of this instruction should be adjacent and should not be interspersed with the returns of other Classes; and

(iv) All returns shown should be identified by Class.

(d) If a Multiple Class Fund offers a Class in the prospectus that converts into another Class after a stated period, compute average annual total returns in the table by using the returns of the other Class for the period after conversion.

4. *Change in Investment Adviser*. If the Fund has not had the same investment adviser during the last 10 calendar years, the Fund may begin the bar chart and the performance information in the table on the date that the current adviser began to provide advisory services to the Fund subject to the conditions in Instruction 11 of Item 27(b)(7).

**Item 5. Management**

(a) *Investment Adviser(s)*. Provide the name of each investment adviser of the Fund, including sub-advisers.

*Instructions*.

1. A Fund need not identify a sub-adviser whose sole responsibility for the Fund is limited to day-to-day management of the Fund's holdings of cash and cash equivalent instruments, unless the Fund is a Money Market Fund or other Fund with a principal investment strategy of regularly holding cash and cash equivalent instruments.

2. A Fund having three or more sub-advisers, each of which manages a portion of the Fund's portfolio, need not identify each such sub-adviser, except that the Fund must

identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Fund's net assets. For purposes of this paragraph, a significant portion of a Fund's net assets generally will be deemed to be 30% or more of the Fund's net assets.

(b) *Portfolio Manager(s)*. State the name, title, and length of service of the person or persons employed by or associated with the Fund or an investment adviser of the Fund who are primarily responsible for the day-to-day management of the Fund's portfolio ("Portfolio Manager").

*Instructions*.

1. This requirement does not apply to a Money Market Fund.

2. If a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, information in response to this Item is required for each member of such committee, team, or other group. If more than five persons are jointly and primarily responsible for the day-to-day management of the Fund's portfolio, the Fund need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Fund's portfolio.

**Item 6. Purchase and Sale of Fund Shares**

(a) *Purchase of Fund Shares*. Disclose the Fund's minimum initial or subsequent investment requirements.

(b) *Sale of Fund Shares*. Also disclose that the Fund's shares are redeemable and briefly identify the procedures for redeeming shares (*e.g.*, on any business day by written request, telephone, or wire transfer).

(c) *Exchange-Traded Funds*. If the Fund is an Exchange-Traded Fund,

(i) Specify the number of shares that the Fund will issue (or redeem) in exchange for the deposit or delivery of basket assets (*i.e.*, the securities or other assets the Fund specifies each day in name and number as the securities or assets in exchange for which it will issue or in return for which it will redeem Fund shares) and explain that:

(A) Individual Fund shares may only be purchased and sold on a national securities exchange through a broker-dealer; and

(B) The price of Fund shares is based on market price, and because Exchange-Traded Fund shares trade at market prices rather than net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount); and

(ii) If the Fund issues shares in creation units of not less than 25,000 shares each, the Fund may omit the information required by Items 6(a) and 6(b).

[(d) If the Fund uses swing pricing, explain the Fund's use of swing pricing; including what swing pricing is, the circumstances under which the Fund will use it, the effects of swing pricing on the Fund and investors, and provide the upper limit it has set on the swing factor. With respect to any portion of a Fund's assets that is invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Fund shall include a statement that the Fund's net asset value is calculated based upon the net asset values of the registered open-end management investment companies in which the Fund invests, and, if applicable, state that the prospectuses for those companies explain the circumstances under which they will use swing pricing and the effects of using swing pricing. **amendment effective November 19, 2018**]

**Item 7. Tax Information**

State, as applicable, that the Fund intends to make distributions that may be taxed as ordinary income or capital gains or that the Fund intends to distribute tax-exempt income. For a Fund that holds itself out as investing in securities generating tax-exempt income, provide, as applicable, a general statement to the effect that a portion of the Fund's distributions may be subject to federal income tax.

**Item 8. Financial Intermediary Compensation**

Include the following statement. A Fund may modify the statement if the modified statement contains comparable information. A Fund may omit the statement if neither the Fund nor any of its related companies pay financial intermediaries for the sale of Fund shares or related services.

*Payments to Broker-Dealers and Other Financial Intermediaries.*

If you purchase the Fund through a broker-dealer or other financial intermediary (such as a bank), the Fund and its related companies may pay the intermediary for the sale of Fund shares and related services. These payments may create a conflict of interest by influencing the broker-dealer or other intermediary and your salesperson to recommend the Fund over another investment. Ask your salesperson or visit your financial intermediary's Web site for more information.

**Item 9. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings**

(a) *Investment Objectives*. State the Fund's investment objectives and, if applicable, state that those objectives may be changed without shareholder approval.

(b) *Implementation of Investment Objectives*. Describe how the Fund intends to achieve its investment objectives. In the discussion:

(1) Describe the Fund's principal investment strategies, including the particular type or types of securities in which the Fund principally invests or will invest.

*Instructions.*

1. A strategy includes any policy, practice, or technique used by the Fund to achieve its investment objectives.

2. Whether a particular strategy, including a strategy to invest in a particular type of security, is a principal investment strategy depends on the strategy's anticipated importance in achieving the Fund's investment objectives, and how the strategy affects the Fund's potential risks and returns. In determining what is a principal investment strategy, consider, among other things, the amount of the Fund's assets expected to be committed to the strategy, the amount of the Fund's assets expected to be placed at risk by the strategy, and the likelihood of the Fund's losing some or all of those assets from implementing the strategy.

3. A negative strategy (*e.g.*, a strategy not to invest in a particular type of security or not to borrow money) is not a principal investment strategy.

4. Disclose any policy to concentrate in securities of issuers in a particular industry or group of industries (*i.e.*, investing more than 25% of a Fund's net assets in a particular industry or group of industries).

5. Disclose any other policy specified in Item 16(c)(1) that is a principal investment strategy of the Fund.

6. Disclose, if applicable, that the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in attempting to respond to adverse market, economic, political, or other conditions. Also disclose the effect of taking such a temporary defensive position (*e.g.*, that the Fund may not achieve its investment objective).

7. Disclose whether the Fund (if not a Money Market Fund) may engage in active and frequent trading of portfolio securities to achieve its principal investment strategies. If so, explain the tax consequences to shareholders of increased portfolio turnover, and how the tax consequences of, or trading costs associated with, a Fund's portfolio turnover may affect the Fund's performance.

(2) Explain in general terms how the Fund's adviser decides which securities to buy and sell (*e.g.*, for an equity fund, discuss, if applicable, whether the Fund emphasizes value or growth or blends the two approaches).

(c) Risks. Disclose the principal risks of investing in the Fund, including the risks to which the Fund's particular portfolio as a whole is expected to be subject and the circumstances reasonably likely to affect adversely the Fund's net asset value, yield, or total return.

(d) Portfolio Holdings. State that a description of the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities is available (i) in the Fund's SAI; and (ii) on the Fund's website, if applicable.

## Item 10. Management, Organization, and Capital Structure

(a) *Management*.

(1) *Investment Adviser*.

(i) Provide the name and address of each investment adviser of the Fund, including subadvisers. Describe the investment adviser's experience as an investment adviser and the advisory services that it provides to the Fund.

(ii) Describe the compensation of each investment adviser of the Fund as follows:

(A) If the Fund has operated for a full fiscal year, state the aggregate fee paid to the adviser for the most recent fiscal year as a percentage of average net assets. If the Fund has not operated for a full fiscal year, state what the adviser's fee is as a percentage of average net assets, including any breakpoints.

(B) If the adviser's fee is not based on a percentage of average net assets (*e.g.*, the adviser receives a performance-based fee), describe the basis of the adviser's compensation.

(iii) Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

*Instructions*.

1. If the Fund changed advisers during the fiscal year, describe the compensation and the dates of service for each adviser.

2. Explain any changes in the basis of computing the adviser's compensation during the fiscal year.

3. If a Fund has more than one investment adviser, disclose the aggregate fee paid to all of the advisers, rather than the fees paid to each adviser, in response to this Item.

(2) *Portfolio Manager*. For each Portfolio Manager identified in response to Item 5(b), state the Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Fund. If a Portfolio Manager is a member of a committee, team, or other group of persons associated with the Fund or an investment adviser of the Fund that is jointly and primarily responsible for the day-to-day management of the Fund's portfolio, provide a brief description of the person's role on the committee, team, or other group (e.g., lead

member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio.

(3) Legal Proceedings. Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Fund or the Fund's investment adviser or principal underwriter is a party. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any legal proceedings instituted, or known to be contemplated, by a governmental authority.

*Instruction*. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Fund or the ability of the investment adviser or principal underwriter to perform its contract with the Fund.

(b) *Capital Stock*. Disclose any unique or unusual restrictions on the right freely to retain or dispose of the Fund's shares or material obligations or potential liabilities associated with holding the Fund's shares (not including investment risks) that may expose investors to significant risks.

**Item 11. Shareholder Information**

(a) *Pricing of Fund Shares*. Describe the procedures for pricing the Fund's shares, including:

(1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost); except that if the Fund is an Exchange-Traded Fund, an explanation that the price of Fund shares is based on market price.

*Instruction*. A Fund (other than a Money Market Fund) must provide a brief explanation of the circumstances under which it will use fair value pricing and the effects of using fair value pricing. With respect to any portion of a Fund's assets that are invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Fund may briefly explain that the Fund's net asset value is calculated based upon the net asset values of the registered open-end management investment companies in which the Fund invests, and that the prospectuses for these companies explain the circumstances under which those companies will use fair value pricing and the effects of using fair value pricing.

(2) A statement as to when calculations of net asset value are made and that the price at which a purchase or redemption is effected is based on the next calculation of net asset value after the order is placed.

(3) A statement identifying in a general manner any national holidays when shares will not be priced and specifying any additional local or regional holidays when the Fund shares will not be priced.

*Instructions.*

1. In responding to this Item, a Fund may use a list of specific days or any other means that effectively communicates the information (*e.g.*, explaining that shares will not be priced on the days on which the New York Stock Exchange is closed for trading).

2. If the Fund has portfolio securities that are primarily listed on foreign exchanges that trade on weekends or other days when the Fund does not price its shares, disclose that the net asset value of the Fund's shares may change on days when shareholders will not be able to purchase or redeem the Fund's shares.

(b) *Purchase of Fund Shares*. Describe the procedures for purchasing the Fund's shares.

(c) *Redemption of Fund Shares*. Describe the procedures for redeeming the Fund's shares, including:

(1) Any restrictions on redemptions.

(2) Any redemption charges, including how these charges will be collected and under what circumstances the charges will be waived.

(3) Any procedure that a shareholder can use to sell the Fund's shares to the Fund or its underwriter through a broker-dealer, noting any charges that may be imposed for such service.

*Instruction*. The specific fees paid through the broker-dealer for such service need not be disclosed.

(4) The circumstances, if any, under which the Fund may redeem shares automatically without action by the shareholder in accounts below a certain number or value of shares.

(5) The circumstances, if any, under which the Fund may delay honoring a request for redemption for a certain time after a shareholder's investment (*e.g.*, whether a Fund does not process redemptions until clearance of the check for the initial investment).

(6) Any restrictions on, or costs associated with, transferring shares held in street name accounts.

(7) The number of days following receipt of shareholder redemption requests in which the fund typically expects to pay out redemption proceeds to redeeming shareholders. If the number of days differs by method of payment (e.g., check, wire, automated clearing house), then disclose the typical number of days or estimated range of days that the fund expects it will take to pay out redemption proceeds for each method used.

(8) The methods that the fund typically expects to use to meet redemption requests, and whether those methods are used regularly, or only in stressed market conditions (e.g., sales of portfolio assets, holdings of cash or cash equivalents, lines of credit, interfund lending, and/or ability to redeem in kind).

(d) *Dividends and Distributions*. Describe the Fund's policy with respect to dividends and distributions, including any options that shareholders may have as to the receipt of dividends and distributions.

(e) *Frequent Purchases and Redemptions of Fund Shares*.

(1) Describe the risks, if any, that frequent purchases and redemptions of Fund shares by Fund shareholders may present for other shareholders of the Fund.

(2) State whether or not the Fund's board of directors has adopted policies and procedures with respect to frequent purchases and redemptions of Fund shares by Fund shareholders.

(3) If the Fund's board of directors has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Fund not to have such policies and procedures.

(4) If the Fund's board of directors has adopted any such policies and procedures, describe those policies and procedures, including:

(i) Whether or not the Fund discourages frequent purchases and redemptions of Fund shares by Fund shareholders;

(ii) Whether or not the Fund accommodates frequent purchases and redemptions of Fund shares by Fund shareholders; and

(iii) Any policies and procedures of the Fund for deterring frequent purchases and redemptions of Fund shares by Fund shareholders, including any restrictions imposed by the Fund to prevent or minimize frequent purchases and redemptions. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances, including whether each of these restrictions applies to trades that occur through omnibus accounts at intermediaries, such as investment advisers, broker-dealers, transfer agents, third party administrators, and insurance companies. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(A) Any restrictions on the volume or number of purchases, redemptions, or exchanges that a shareholder may make within a given time period;

(B) Any exchange fee or redemption fee;

(C) Any costs or administrative or other fees or charges that are imposed on shareholders deemed to be engaged in frequent purchases and redemptions of Fund shares, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(D) Any minimum holding period that is imposed before an investor may make exchanges into another Fund;

(E) Any restrictions imposed on exchange or purchase requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(F) Any right of the Fund to reject, limit, delay, or impose other conditions on exchanges or purchases or to close or otherwise limit accounts based on a history of frequent purchases and redemptions of Fund shares, including the circumstances under which such right will be exercised.

(5) If applicable, include a statement, adjacent to the disclosure required by paragraphs (e)(1) through (e)(4) of this Item, that the SAI includes a description of all arrangements with any person to permit frequent purchases and redemptions of Fund shares.

(f) *Tax Consequences*.

(1) Describe the tax consequences to shareholders of buying, holding, exchanging and selling the Fund's shares, including, as applicable, that:

(i) The Fund intends to make distributions that may be taxed as ordinary income and capital gains (which may be taxable at different rates depending on the length of time the Fund holds its assets). If the Fund expects that its distributions, as a result of its investment objectives or strategies, will consist primarily of ordinary income or capital gains, provide disclosure to that effect.

(ii) The Fund's distributions, whether received in cash or reinvested in additional shares of the Fund, may be subject to federal income tax.

(iii) An exchange of the Fund's shares for shares of another fund will be treated as a sale of the Fund's shares and any gain on the transaction may be subject to federal income tax.

(2) For a Fund that holds itself out as investing in securities generating tax-exempt income:

(i) Modify the disclosure required by paragraph (f)(1) to reflect that the Fund intends to distribute tax-exempt income.

(ii) Also disclose, as applicable, that:

(A) The Fund may invest a portion of its assets in securities that generate income that is not exempt from federal or state income tax;

(B) Income exempt from federal tax may be subject to state and local income tax; and

(C) Any capital gains distributed by the Fund may be taxable.

(3) If the Fund does not expect to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code [I.R.C. 851 *et seq*.], explain the tax consequences. If the Fund expects to pay an excise tax under the Internal Revenue Code [I.R.C. 4982] with respect to its distributions, explain the tax consequences.

(g) Exchange-Traded Funds. If the Fund is an Exchange-Traded Fund:

(1) The Fund may omit from the prospectus the information required by Items 11(a)(2), (b), and (c) if the Fund issues or redeems Fund shares in creation units of not less than 25,000 shares each; and

(2) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (i.e., premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit this table if the Fund provides an Internet address at the Fund's Web site, which is publicly accessible, free of charge, that investors can use to obtain the premium/discount information required in this Item.

*Instructions.*

1. Provide the information in tabular form.

2. Express the information as a percentage of the net asset value of the Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.

4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

**Item 12. Distribution Arrangements**

(a) *Sales Loads.*

(1) Describe any sales loads, including deferred sales loads, applied to purchases of the Fund's shares. Include in a table any front-end sales load (and each breakpoint in the sales load, if any) as a percentage of both the offering price and the net amount invested.

*Instructions.*

1. If the Fund's shares are sold subject to a front-end sales load, explain that the term "offering price" includes the front-end sales load.

2. Disclose, if applicable, that sales loads are imposed on shares, or amounts representing shares, that are purchased with reinvested dividends or other distributions.

3. Discuss, if applicable, how deferred sales loads are imposed and calculated, including:

(a) Whether the specified percentage of the sales load is based on the offering price, or the lesser of the offering price or net asset value at the time the sales load is paid.

(b) The amount of the sales load as a percentage of both the offering price and the net amount invested.

(c) A description of how the sales load is calculated (*e.g.*, in the case of a partial redemption, whether or not the sales load is calculated as if shares or amounts representing shares not subject to a sales load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased).

(d) If applicable, the method of paying an installment sales load (*e.g.*, by withholding of dividend payments, involuntary redemptions, or separate billing of a shareholder's account).

(2) Unless disclosed in response to paragraph (a)(1), briefly describe any arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of investors). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested. If applicable, state that additional information concerning sales load breakpoints is available in the Fund's SAI.

*Instructions.*

1. The description, pursuant to paragraph (a)(1) or (a)(2) of this Item 12, of arrangements that result in breakpoints in, or elimination of, sales loads must include a brief summary of shareholder eligibility requirements, including a description or list of the types of accounts (*e.g.*, retirement accounts, accounts held at other financial intermediaries), account holders (*e.g.*, immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (*e.g.*, funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

2. The description pursuant to paragraph (a)(2) of this Item 12 need not contain any information required by Items 17(d) and 23(b).

(3) Describe, if applicable, the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies. Methods that should be described, if applicable, include historical cost, net amount invested, and offering price.

(4) (i) State, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the Fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints. Describe any information or records, such as account statements, that it may be necessary for a shareholder to provide to the

Fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. This description must include, if applicable:

(A) Information or records regarding shares of the Fund or other funds held in all accounts (*e.g.*, retirement accounts) of the shareholder at the financial intermediary; and

(B) Information or records regarding shares of the Fund or other funds held in any account of the shareholder at another financial intermediary; and

(C) Information or records regarding shares of the Fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.

(ii) If the Fund permits eligibility for breakpoints to be determined based on historical cost, state that a shareholder should retain any records necessary to substantiate historical costs because the Fund, its transfer agent, and financial intermediaries may not maintain this information.

(5) State whether the Fund makes available free of charge, on or through the Fund's Web site at a specified Internet address, and in a clear and prominent format, the information required by paragraphs (a)(1) through (a)(4) and Item 23(a), including whether the Web site includes hyperlinks that facilitate access to the information. If the Fund does not make the information required by paragraphs (a)(1) through (a)(4) and Item 23(a) available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet Web site).

*Instruction.* All information required by paragraph (a) of this Item 12 must be adjacent to the table required by paragraph (a)(1) of this Item 12; must be presented in a clear, concise, and understandable manner; and must include tables, schedules, and charts as expressly required by paragraph (a)(1) of this Item 12 or where doing so would facilitate understanding.

(b) *Rule 12b-1 Fees.* If the Fund has adopted a plan under rule 12b-1, state the amount of the distribution fee payable under the plan and provide disclosure to the following effect:

(1) The Fund has adopted a plan under rule 12b-1 that allows the Fund to pay distribution fees for the sale and distribution of its shares; and

(2) Because these fees are paid out of the Fund's assets on an on-going basis, over time these fees will increase the cost of your investment and may cost you more than paying other types of sales charges.

Instructions . If the Fund pays service fees under its rule 12b-1 plan, modify this disclosure to reflect the payment of these fees (*e.g.*, by indicating that the Fund pays distribution and other fees for the sale of its shares and for services provided to shareholders). For purposes of this paragraph, service fees have the same meaning given

that term under rule 2830(b)(9) of the NASD Conduct Rules [NASD Manual (CCH) 4622].

(c) *Multiple Class and Master-Feeder Funds.*

(1) Describe the main features of the structure of the Multiple Class Fund or Master-Feeder Fund.

(2) If more than one Class of a Multiple Class Fund is offered in the prospectus, provide the information required by paragraphs (a) and (b) for each of those Classes.

(3) If a Multiple Class Fund offers in the prospectus shares that provide for mandatory or automatic conversions or exchanges from one Class to another Class, provide the information required by paragraphs (a) and (b) for both the shares offered and the Class into which the shares may be converted or exchanged.

(4) If a Feeder Fund has the ability to change the Master Fund in which it invests, describe briefly the circumstances under which the Feeder Fund can do so.

Instruction . A Feeder Fund that does not have the authority to change its Master Fund need not disclose the possibility and consequences of its no longer investing in the Master Fund.

**Item 13. Financial Highlights Information**

(a) Provide the following information for the Fund, or for the Fund and its subsidiaries, audited for at least the latest 5 years and consolidated as required in Regulation S-X [17 CFR 210].

*Financial Highlights*

The financial highlights table is intended to help you understand the Fund's financial performance for the past 5 years [or, if shorter, the period of the Fund's operations]. Certain information reflects financial results for a single Fund share. The total returns in the table represent the rate that an investor would have earned [or lost] on an investment in the Fund (assuming reinvestment of all dividends and distributions). This information has been audited by , whose report, along with the Fund's financial statements, are included in [the SAI or annual report], which is available upon request.

Net Asset Value, Beginning of Period
*Income From Investment Operations*
Net Investment Income
Net Gains or Losses on Securities (both realized and unrealized)
Total From Investment Operations
*Less Distributions*
Dividends (from net investment income)
Distributions (from capital gains)

Returns of Capital
Total Distributions
Capital Adjustments Due to Swing Pricing **[amendment effective November 19, 2018]**
Net Asset Value, [adjusted pursuant to swing pricing] End of Period **[amendment effective November 19, 2018]**
*Total Return*

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*Ratios/Supplemental Data*
Net Assets, End of Period
Ratio of Expenses to Average Net Assets
Ratio of Net Income to Average Net Assets
Portfolio Turnover Rate

*Instructions.*

1. *General.*

(a) Present the information in comparative columnar form for each of the last 5 fiscal years of the Fund (or for such shorter period as the Fund has been in operation), but only for periods subsequent to the effective date of the Fund's registration statement. Also present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. When a period in the table is for less than a full fiscal year, a Fund may annualize ratios in the table and disclose that the ratios are annualized in a note to the table.

(b) List per share amounts at least to the nearest cent. If the offering price is expressed in tenths of a cent or more, then state the amounts in the table in tenths of a cent. Present the information using a consistent number of decimal places.

(c) Include the narrative explanation before the financial information. A Fund may modify the explanation if the explanation contains comparable information to that shown.

2. *Per Share Operating Performance.*

(a) Derive net investment income data by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) per share may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods of computing net investment income may be acceptable. Provide an explanation in a note to the table of any other method used to compute net investment income.

(b) The amount shown at the Net Gains or Losses on Securities caption is the balancing figure derived from the other amounts in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year be-

cause of the timing of sales and repurchases of the Fund's shares in relation to fluctuating market values for the portfolio.

(c) For any distributions made from sources other than net investment income and capital gains, state the per share amounts separately at the Returns of Capital caption and note the nature of the distributions.

(d) The amount shown at the Capital Adjustments Due to Swing Pricing caption should include the per share impact of any amounts retained by the Fund pursuant to its swing pricing policies and procedures, if applicable. [**amendment effective November 19, 2018**]

(e) The amounts shown at the Net Asset Value, as adjusted pursuant to swing pricing, End of Period caption should be the Fund's net asset value per share as adjusted pursuant to its swing pricing policies and procedures on the last day of the reporting period, if applicable. [**amendment effective November 19, 2018**]

3. *Total Return.*

(a) Assume an initial investment made at the net asset value calculated on the last business day before the first day of each period shown.

(b) Do not reflect sales loads or account fees in the initial investment, but, if sales loads or account fees are imposed, note that they are not reflected in total return.

(c) Reflect any sales load assessed upon reinvestment of dividends or distributions.

(d) Assume a redemption at the price calculated on the last business day of each period shown.

(e) For a period less than a full fiscal year, state the total return for the period and disclose that total return is not annualized in a note to the table.

4. *Ratios/Supplemental Data.*

(a) Calculate "average net assets" based on the value of the net assets determined no less frequently than the end of each month.

(b) Calculate the Ratio of Expenses to Average Net Assets using the amount of expenses shown in the Fund's statement of operations for the relevant fiscal period, including increases resulting from complying with paragraph 2(g) of rule 6-07 of Regulation S-X and reductions resulting from complying with paragraphs 2(a) and (f) of rule 6-07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from applying paragraph 2(g) of rule 6-07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for periods ending after September 1, 1995.

(c) A Fund that is a Money Market Fund may omit the Portfolio Turnover Rate.

(d) Calculate the Portfolio Turnover Rate as follows:

(i) Divide the lesser of amounts of purchases or sales of portfolio securities for the fiscal year by the monthly average of the value of the portfolio securities owned by the Fund during the fiscal year. Calculate the monthly average by totaling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding 11 months and dividing the sum by 13.

(ii) Exclude from both the numerator and the denominator amounts relating to all securities, including options, whose maturities or expiration dates at the time of acquisition were one year or less. Include all long-term securities, including long-term U.S. Government securities. Purchases include any cash paid upon the conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights and warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

(iii) If the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares during the fiscal year in a purchase-of-assets transaction, exclude the value of securities acquired from purchases and securities sold from sales to realign the Fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

(iv) Include in purchases and sales any short sales that the Fund intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of the portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of the portfolio securities sold during the period.

(e) A Fund may incorporate by reference the Financial Highlights Information from a report to shareholders under rule 30e-1 into the prospectus in response to this Item if the Fund delivers the shareholder report with the prospectus or, if the report has been previously delivered (*e.g.,* to a current shareholder), the Fund includes the statement required by Item 1(b)(1).

## PART B: INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

### Item 14. Cover Page and Table of Contents

(a) *Front Cover Page*. Include the following information on the outside front cover page of the SAI:

(1) The Fund's name and the Class or Classes, if any, to which the SAI relates. If the Fund is a Series, also provide the Registrant's name.

(2) The exchange ticker symbol of the Fund's securities or, if the SAI relates to one or more Classes of the Fund's securities, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's securities. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

(3) A statement or statements:

(i) That the SAI is not a prospectus;

(ii) How the prospectus may be obtained; and

(iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

*Instruction*. Any information incorporated by reference into the SAI must be delivered with the SAI unless the information has been previously delivered in a shareholder report (*e.g.*, to a current shareholder), and the Fund states that the shareholder report is available, without charge, upon request. Provide a toll-free (or collect) telephone number to call to request the report.

(4) The date of the SAI and of the prospectus to which the SAI relates.

(b) *Table of Contents*. Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

### Item 15. Fund History

(a) Provide the date and form of organization of the Fund and the name of the state or other jurisdiction in which the Fund is organized.

(b) If the Fund has engaged in a business other than that of an investment company during the past 5 years, state the nature of the other business and give the approximate date on which the Fund commenced business as an investment company. If the Fund's name was changed during that period, state its former name and the approximate date on which it was changed. Briefly describe the nature and results of any change in the Fund's business or name that occurred in connection with any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment or succession.

**Item 16. Description of the Fund and Its Investments and Risks**

(a) *Classification*. State that the Fund is an open-end, management investment company and indicate, if applicable, that the Fund is diversified.

(b) *Investment Strategies and Risks*. Describe any investment strategies, including a strategy to invest in a particular type of security, used by an investment adviser of the Fund in managing the Fund that are not principal strategies and the risks of those strategies.

(c) *Fund Policies*.

(1) Describe the Fund's policy with respect to each of the following:

(i) Issuing senior securities;

(ii) Borrowing money, including the purpose for which the proceeds will be used;

(iii) Underwriting securities of other issuers;

(iv) Concentrating investments in a particular industry or group of industries;

(v) Purchasing or selling real estate or commodities;

(vi) Making loans; and

(vii) Any other policy that the Fund deems fundamental or that may not be changed without shareholder approval, including, if applicable, the Fund's investment objectives.

*Instruction*. If the Fund reserves freedom of action with respect to any practice specified in paragraph (c)(1), state the maximum percentage of assets to be devoted to the practice and disclose the risks of the practice.

(2) State whether shareholder approval is necessary to change any policy specified in paragraph (c)(1). If so, describe the vote required to obtain this approval.

(d) *Temporary Defensive Position*. Disclose, if applicable, the types of investments that a Fund may make while assuming a temporary defensive position described in response to Item 9(b).

(e) *Portfolio Turnover*. Explain any significant variation in the Fund's portfolio turnover rates over the two most recently completed fiscal years or any anticipated variation in the portfolio turnover rate from that reported for the last fiscal year in response to Item 13.

*Instruction*. This paragraph does not apply to a Money Market Fund.

(f) *Disclosure of Portfolio Holdings*.

(1) Describe the Fund's policies and procedures with respect to the disclosure of the Fund's portfolio securities to any person, including:

(i) How the policies and procedures apply to disclosure to different categories of persons, including individual investors, institutional investors, intermediaries that

distribute the Fund's shares, third-party service providers, rating and ranking organizations, and affiliated persons of the Fund;

(ii) Any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(iii) The frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(iv) Any policies and procedures with respect to the receipt of compensation or other consideration by the Fund, its investment adviser, or any other party in connection with the disclosure of information about portfolio securities;

(v) The individuals or categories of individuals who may authorize disclosure of the Fund's portfolio securities (*e.g.*, executive officers of the Fund);

(vi) The procedures that the Fund uses to ensure that disclosure of information about portfolio securities is in the best interests of Fund shareholders, including procedures to address conflicts between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other; and

(vii) The manner in which the board of directors exercises oversight of disclosure of the Fund's portfolio securities.

*Instruction.* Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, with respect to the disclosure of the Fund's portfolio securities to any person.

(2) Describe any ongoing arrangements to make available information about the Fund's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Fund, its investment adviser, or any other party in connection with each such arrangement, and provide the information described by paragraphs (f)(1)(ii), (iii), and (v) of this Item with respect to such arrangements.

*Instructions.*

1. The consideration required to be disclosed by Item 16(f)(2) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

2. The Fund is not required to describe an ongoing arrangement to make available information about the Fund's portfolio securities pursuant to this Item, if, not later than

the time that the Fund makes the portfolio securities information available to any person pursuant to the arrangement, the Fund discloses the information in a publicly available filing with the Commission that is required to include the information.

3. The Fund is not required to describe an ongoing arrangement to make available information about the Fund's portfolio securities pursuant to this Item if:

(a) the Fund makes the portfolio securities information available to any person pursuant to the arrangement no earlier than the day next following the day on which the Fund makes the information available on its website in the manner specified in its prospectus pursuant to paragraph (b); and

(b) the Fund has disclosed in its current prospectus that the portfolio securities information will be available on its website, including (1) the nature of the information that will be available, including both the date as of which the information will be current (*e.g.*, month-end) and the scope of the information (*e.g.*, complete portfolio holdings, Fund's largest 20 holdings); (2) the date when the information will first become available and the period for which the information will remain available, which shall end no earlier than the date on which the Fund files its Form N-CSR or Form N-PORT for the last month of the Fund's first or third fiscal quarters with the Commission for the period that includes the date as of which the website information is current; and (3) the location on the Fund's website where either the information or a prominent hyperlink (or series of prominent hyperlinks) to the information will be available.

(g) *Money Market Fund Material Events*. If the Fund is a Money Market Fund (except any Money Market Fund that is not subject to the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii) of this chapter pursuant to § 270.2a-7(c)(2)(iii) of this chapter, and has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of §§ 270.2a-7(c)(2)(i) and/or (ii)) disclose, as applicable, the following events:

(1) Imposition of Liquidity Fees and Temporary Suspensions of Fund Redemptions.

(i) During the last 10 years, any occasion on which the Fund has invested less than ten percent of its total assets in weekly liquid assets (as provided in §270.2a-7(c)(2)(ii)), and with respect to each such occasion, whether the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a-7(c)(2)(ii) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a-7(c)(2)(i).

(ii) During the last 10 years, any occasion on which the Fund has invested less than thirty percent, but more than ten percent, of its total assets in weekly liquid assets (as provided in § 270.2a-7(c)(2)(i)) and the Fund's board of directors has determined to impose a liquidity fee pursuant to § 270.2a-7(c)(2)(i) and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a-7(c)(2)(i).

*Instructions*

1. With respect to each such occasion, disclose: the dates and length of time for which the Fund invested less than ten percent (or thirty percent, as applicable) of its total assets in weekly liquid assets; the dates and length of time for which the Fund's board of directors determined to impose a liquidity fee pursuant to § 270.2a-7(c)(2)(i) or § 270.2a-7(c)(2)(ii), and/or temporarily suspend the Fund's redemptions pursuant to § 270.2a-7(c)(2)(i); and the size of any liquidity fee imposed pursuant to § 270.2a-7(c)(2)(i) or § 270.2a-7(c)(2)(ii).

2. The disclosure required by Item 16(g)(1) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items E.1, E.2, E.3, E.4, F.1, F.2, and G.1 of Form N-CR [17 CFR 274.222].

3. The disclosure required by Item 16(g)(1) should conclude with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

(2) *Financial Support Provided to Money Market Funds.* During the last 10 years, any occasion on which an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provided any form of financial support to the Fund, including a description of the nature of support, person providing support, brief description of the relationship between the person providing support and the Fund, date support provided, amount of support, security supported (if applicable), and the value of security supported on date support was initiated (if applicable).

*Instructions*

1. The term "financial support" includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a-9, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio; excluding, however, any routine waiver of fees or reimbursement of Fund expenses, routine inter-fund lending, routine inter-fund purchases of Fund shares, or any action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Fund's portfolio.

2. If during the last 10 years, the Fund has participated in one or more mergers with another investment company (a "merging investment company"), provide the information required by Item 16(g)(2) with respect to any merging investment company as

well as with respect to the Fund; for purposes of this Instruction, the term "merger" means a merger, consolidation, or purchase or sale of substantially all of the assets between the Fund and a merging investment company. If the person or entity that previously provided financial support to a merging investment company is not currently an affiliated person, promoter, or principal underwriter of the Fund, the Fund need not provide the information required by Item 16(g)(2) with respect to that merging investment company.

3. The disclosure required by Item 16(g)(2) should incorporate, as appropriate, any information that the Fund is required to report to the Commission on Items C.1, C.2, C.3, C.4, C.5, C.6, and C.7 of Form N-CR [17 CFR 274.222].

4. The disclosure required by Item 16(g)(2) should conclude with the following statement: "The Fund was required to disclose additional information about this event [or "these events," as appropriate] on Form N-CR and to file this form with the Securities and Exchange Commission. Any Form N-CR filing submitted by the Fund is available on the EDGAR Database on the Securities and Exchange Commission's Internet site at http://www.sec.gov."

**Item 17. Management of the Fund**

*Instructions.*

1. For purposes of this Item 17, the terms below have the following meanings:

(a) The term "family of investment companies" means any two or more registered investment companies that:

(1) Share the same investment adviser or principal underwriter; and

(2) Hold themselves out to investors as related companies for purposes of investment and investor services.

(b) The term "fund complex" means two or more registered investment companies that:

(1) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(2) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

(c) The term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

(d) The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Fund separately from the information for directors who are not interested persons of the Fund. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) *Management Information.*

(1) Provide the information required by the following table for each director and officer of the Fund, and, if the Fund has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Name, Address, and Age | Position(s) Held with Fund | Term of Office and Length of Time Served | Principal Occupation(s) During Past 5 Years | Number of Portfolios in Fund Complex Overseen by Director | Other Directorships Held by Director |

*Instructions.*

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Fund, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(2) For each individual listed in column (1) of the table required by paragraph (a)(1) of this Item 17, except for any director who is not an interested person of the

Fund, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Fund.

*Instruction.*

When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(3) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

*Instruction.* Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(b) *Leadership Structure and Board of Directors*

(1) Briefly describe the leadership structure of the Fund's board, including the responsibilities of the board of directors with respect to the Fund's management and whether the chairman of the board is an interested person of the Fund. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the risk oversight of the Fund, such as how the board administers its oversight function and the effect that this has on the board's leadership structure.

(2) Identify the standing committees of the Fund's board of directors, and provide the following information about each committee:

(i) A concise statement of the functions of the committee;

(ii) The members of the committee;

(iii) The number of committee meetings held during the last fiscal year; and

(iv) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(3)(i) Unless disclosed in the table required by paragraph (a)(1) of this Item 17, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Fund, or immediate

family member of the director, during the two most recently completed calendar years with:

(A) The Fund;

(B) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(C) An investment adviser, principal underwriter, or affiliated person of the Fund; or

(D) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

(ii) Unless disclosed in the table required by paragraph (a)(1) of this Item 17 or in response to paragraph (b)(3)(i) of this Item 17, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

*Instruction.* When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(4) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Fund; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Fund.

| (1) | (2) | (3) |
|---|---|---|
| Name of Director | Dollar Range of Equity Securities in the Fund | Aggregate Dollar Range of Equity Securities in All Registered Investment Companies Overseen by Director in Family of Investment Companies |

*Instructions.*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

3. If the SAI covers more than one Fund or Series, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each Fund or Series overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $1-$10,000, $10,001-$50,000, $50,001-$100,000, or over $100,000.

(5) For each director who is not an interested person of the Fund, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund:

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Name of Director | Name of Owners and Relationships to Director | Company | Title of Class | Value of Securities | Percent of Class |

*Instructions.*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d-3 or rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.13d-3or 240.16a-1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(6) Unless disclosed in response to paragraph (b)(5) of this Item 17, describe any direct or indirect interest, the value of which exceeds $120,000, of each director who is not an interested person of the Fund, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) An investment adviser or principal underwriter of the Fund; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

*Instructions.*

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $120,000.

(7) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Fund, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $120,000 and to which any of the following persons was a party:

(i) The Fund;

(ii) An officer of the Fund;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Fund or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Fund;

(v) An investment adviser or principal underwriter of the Fund;

(vi) An officer of an investment adviser or principal underwriter of the Fund;

(vii) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund.

*Instructions.*

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (b)(7) of this Item 17 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the par-

ties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the Class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 unless the director is accorded special treatment.

(8) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $120,000, of any director who is not an interested person of the Fund, or immediate family member of the director, that existed at any time during the two most recently completed calendar years with any of the persons specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17;

(ii) Provision of legal services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17;

(iii) Provision of investment banking services to any person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (b)(8)(i) through (b)(8)(iii) of this Item 17.

*Instructions.*

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (b)(8)(i) of this Item 17, the following may be excluded:

(a) Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

(b) Payments that arise solely from the ownership of securities of a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Fund need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (b)(7)(i) through (b)(7)(viii) of this Item 17 unless the director is accorded special treatment.

(9) If an officer of an investment adviser or principal underwriter of the Fund, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Fund, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Fund who is not an interested person

of the Fund, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the individual named in paragraph (b)(9)(ii) of this Item 17 holds or held office and the office held; and

(iv) The director of the Fund or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(10) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

(c) *Compensation*. For all directors of the Fund and for all members of any advisory board who receive compensation from the Fund, and for each of the three highest paid officers or any affiliated person of the Fund who received aggregate compensation from the Fund for the most recently completed fiscal year exceeding $60,000 ("Compensated Persons"):

(1) Provide the information required by the following table:

**Compensation Table**

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| Name of Person, Position | Aggregate Compensation From Fund | Pension or Retirement Benefits Accrued As Part of Fund Expenses | Estimated Annual Benefits Upon Retirement | Total Compensation From Fund and Fund Complex Paid to Directors |

*Instructions*.

1. For column (1), indicate, as necessary, the capacity in which the remuneration is received. For Compensated Persons who are directors of the Fund, compensation is amounts received for service as a director.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made

pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)] or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of any such investment companies.

(2) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement, other than fee arrangements disclosed in paragraph (c)(1), under which the Compensated Persons are or may be compensated for services provided, including amounts paid, if any, to the Compensated Person under these arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event that gives rise to payment under the plan, and whether the payment of benefits is secured or funded by the Fund.

(d) *Sales Loads*. Disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the Fund. Identify each class of individuals and transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested of the Fund's shares. Explain, as applicable, the reasons for the difference in the price at which securities are offered generally to the public, and the prices at which securities are offered to directors and other affiliated persons of the Fund.

(e) *Codes of Ethics*. Provide a brief statement disclosing whether the Fund and its investment adviser and principal underwriter have adopted codes of ethics under rule

17j-1 of the Investment Company Act [17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Fund.

*Instruction*: A Fund that is not required to adopt a code of ethics under rule 17j-1 of the Investment Company Act is not required to respond to this item.

(f) *Proxy Voting Policies*. Unless the Fund invests exclusively in non-voting securities, describe the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Fund uses when a vote presents a conflict between the interests of Fund shareholders, on the one hand, and those of the Fund's investment adviser; principal underwriter; or any affiliated person of the Fund, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Fund's investment adviser, or any other third party, that the Fund uses, or that are used on the Fund's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Fund voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Fund's website at a specified Internet address; or both; and (2) on the Commission's website at http://www.sec.gov.

*Instructions*.

1. A Fund may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Fund discloses that the Fund's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for this information, the Fund (or financial intermediary) must send the information disclosed in the Fund's most recently filed report on Form N-PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Fund discloses that the Fund's proxy voting record is available on or through its website, the Fund must make available free of charge the information disclosed in the Fund's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Fund's most recently filed report on Form N-PX must remain available on or through the Fund's website for as long as the Fund remains subject to the requirements of Rule 30b1-4 (17 CFR 270.30b1-4) and discloses that the Fund's proxy voting record is available on or through its website.

## Item 18. Control Persons and Principal Holders of Securities

Provide the following information as of a specified date no more than 30 days prior to the date of filing the registration statement or an amendment.

(a) *Control Persons*. State the name and address of each person who controls the Fund and explain the effect of that control on the voting rights of other security holders. For each control person, state the percentage of the Fund's voting securities owned or any other basis of control. If the control person is a company, give the jurisdiction under the laws of which it is organized. List all parents of the control person.

*Instruction*. For purposes of this paragraph, "control" means (i) the beneficial ownership, either directly or through one or more controlled companies, of more than 25% of the voting securities of a company; (ii) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (iii) an adjudication under section 2(a)(9), which has become final, that control exists.

(b) *Principal Holders*. State the name, address, and percentage of ownership of each person who owns of record or is known by the Fund to own beneficially 5% or more of any Class of the Fund's outstanding equity securities.

*Instructions*.

1. Calculate the percentages based on the amount of securities outstanding.

2. If securities are being registered under or in connection with a plan of acquisition, reorganization, readjustment or succession, indicate, as far as practicable, the ownership that would result from consummation of the plan based on present holdings and commitments.

3. Indicate whether the securities are owned of record, beneficially, or both. Show the respective percentage owned in each manner.

(c) *Management Ownership*. State the percentage of the Fund's equity securities owned by all officers, directors, and members of any advisory board of the Fund as a group. If the amount owned by directors and officers as a group is less than 1% of the Class, provide a statement to that effect.

## Item 19. Investment Advisory and Other Services

(a) *Investment Advisers*. Disclose the following information with respect to each investment adviser:

(1) The name of any person who controls the adviser, the basis of the person's control, and the general nature of the person's business. Also disclose, if material, the business history of any organization that controls the adviser.

(2) The name of any affiliated person of the Fund who also is an affiliated person of the adviser, and a list of all capacities in which the person is affiliated with the Fund and with the adviser.

*Instruction*. If an affiliated person of the Fund alone or together with others controls the adviser, state that fact. It is not necessary to provide the amount or percentage of the outstanding voting securities owned by the controlling person.

(3) The method of calculating the advisory fee payable by the Fund including:

(i) The total dollar amounts that the Fund paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years;

(ii) If applicable, any credits that reduced the advisory fee for any of the last three fiscal years; and

(iii) Any expense limitation provision.

*Instructions*.

1. If the advisory fee payable by the Fund varies depending on the Fund's investment performance in relation to a standard, describe the standard along with a fee schedule in tabular form. The Fund may include examples showing the fees that the adviser would earn at various levels of performance as long as the examples include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State separately each type of credit or offset.

3. When a Fund is subject to more than one expense limitation provision, describe only the most restrictive provision.

4. For a Registrant with more than one Series, or a Multiple Class Fund, describe the methods of allocation and payment of advisory fees for each Series or Class.

(b) *Principal Underwriter*. State the name and principal business address of any principal underwriter for the Fund. Disclose, if applicable, that an affiliated person of the Fund is an affiliated person of the principal underwriter and identify the affiliated person.

(c) *Services Provided by Each Investment Adviser and Fund Expenses Paid by Third Parties*.

(1) Describe all services performed for or on behalf of the Fund supplied or paid for wholly or in substantial part by each investment adviser.

(2) Describe all fees, expenses, and costs of the Fund that are to be paid by persons other than an investment adviser or the Fund, and identify those persons.

(d) *Service Agreements*. Summarize the substantive provisions of any other management-related service contract that may be of interest to a purchaser of the Fund's shares, under which services are provided to the Fund, indicating the parties to the contract, and the total dollars paid and by whom for the past three years.

*Instructions*.

1. The term "management-related service contract" includes any contract with the Fund to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Fund, but does not include the following:

(a) Any contract with the Fund to provide investment advice;

(b) Any agreement with the Fund to perform as custodian, transfer agent, or dividend-paying agent for the Fund; and

(c) Any contract with the Fund for outside legal or auditing services, or contract for personal employment entered into with the Fund in the ordinary course of business.

2. No information need be given in response to this paragraph with respect to the service of mailing proxies or periodic reports to the Fund's shareholders.

3. In summarizing the substantive provisions of any management-related service contract, include the following:

(a) The name of the person providing the service;

(b) The direct or indirect relationships, if any, of the person with the Fund, an investment adviser of the Fund or the Fund's principal underwriter; and

(c) The nature of the services provided, and the basis of the compensation paid for the services for the last three fiscal years.

(e) *Other Investment Advice*. If any person (other than a director, officer, member of an advisory board, employee, or investment adviser of the Fund), through any understanding, whether formal or informal, regularly advises the Fund or the Fund's investment adviser with respect to the Fund's investing in, purchasing, or selling securities or other property, or has the authority to determine what securities or other property should be purchased or sold by the Fund, and receives direct or indirect remuneration, provide the following information:

(1) The person's name;

(2) A description of the nature of the arrangement, and the advice or information provided; and

(3) Any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Fund's

portfolio securities) paid for the advice or information, and a statement as to how the remuneration was paid and by whom it was paid for the last three fiscal years.

*Instruction.* Do not include information for the following:

(a) Persons who advised the investment adviser or the Fund solely through uniform publications distributed to subscribers;

(b) Persons who provided the investment adviser or the Fund with only statistical and other factual information, advice about economic factors and trends, or advice as to occasional transactions in specific securities, but without generally advising about the purchase or sale of securities by the Fund;

(c) A company that is excluded from the definition of "investment adviser" of an investment company under section 2(a)(20)(iii) [15 U.S.C. 80a-2(a)(20)(iii)];

(d) Any person the character and amount of whose compensation for these services must be approved by a court; or

(e) Other persons as the Commission has by rule or order determined not to be an "investment adviser" of an investment company.

(f) *Dealer Reallowances.* Disclose any front-end sales load reallowed to dealers as a percentage of the offering price of the Fund's shares.

(g) *Rule 12b-1 Plans.* If the Fund has adopted a plan under rule 12b-1, describe the material aspects of the plan, and any agreements relating to the implementation of the plan, including:

(1) A list of the principal types of activities for which payments are or will be made, including the dollar amount and the manner in which amounts paid by the Fund under the plan during the last fiscal year were spent on:

(i) Advertising;

(ii) Printing and mailing of prospectuses to other than current shareholders;

(iii) Compensation to underwriters;

(iv) Compensation to broker-dealers;

(v) Compensation to sales personnel;

(vi) Interest, carrying, or other financing charges; and

(vii) Other (specify).

(2) The relationship between amounts paid to the distributor and the expenses that it incurs (*e.g.*, whether the plan reimburses the distributor only for expenses incurred or compensates the distributor regardless of its expenses).

(3) The amount of any unreimbursed expenses incurred under the plan in a previous year and carried over to future years, in dollars and as a percentage of the Fund's net assets on the last day of the previous year.

(4) Whether the Fund participates in any joint distribution activities with another Series or investment company. If so, disclose, if applicable, that fees paid under the Fund's rule 12b-1 plan may be used to finance the distribution of the shares of another Series or investment company, and state the method of allocating distribution costs (*e.g.*, relative net asset size, number of shareholder accounts).

(5) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) Any interested person of the Fund; or

(ii) Any director of the Fund who is not an interested person of the Fund.

(6) The anticipated benefits to the Fund that may result from the plan.

(h) *Other Service Providers.*

(1) Unless disclosed in response to paragraph (d), identify any person who provides significant administrative or business affairs management services for the Fund (*e.g.*, an "administrator"), describe the services provided, and the compensation paid for the services.

(2) State the name and principal business address of the Fund's transfer agent and the dividend-paying agent.

(3) State the name and principal business address of the Fund's custodian and independent public accountant and describe generally the services performed by each. If the Fund's portfolio securities are held by a person other than a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of that person or persons.

(4) If an affiliated person of the Fund, or an affiliated person of the affiliated person, acts as custodian, transfer agent, or dividend-paying agent for the Fund, describe the services that the person performs and the basis for remuneration.

(i) *Securities Lending.*

(1) Provide the following dollar amounts of income and fees/compensation related to the securities lending activities of each Series during its most recent fiscal year:

(i) Gross income from securities lending activities, including income from cash collateral reinvestment;

(ii) All fees and/or compensation for each of the following securities lending activities and related services: any share of revenue generated by the securities lending program

paid to the securities lending agent(s) ("revenue split"); fees paid for cash collateral management services (including fees deducted from a pooled cash collateral reinvestment vehicle) that are not included in the revenue split; administrative fees that are not included in the revenue split; fees for indemnification that are not included in the revenue split; rebates paid to borrowers; and any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees;

(iii) The aggregate fees/compensation disclosed pursuant to paragraph (ii); and

(iv) Net income from securities lending activities (i.e., the dollar amount in paragraph (i) minus the dollar amount in paragraph (iii)).

*Instruction*. If a fee for a service is included in the revenue split, state that the fee is "included in the revenue split."

(2) Describe the services provided to the Series by the securities lending agent in the Series' most recent fiscal year.

**Item 20. Portfolio Managers**

(a) *Other Accounts Managed*. If a Portfolio Manager required to be identified in response to Item 5(b) is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(1) The Portfolio Manager's name;

(2) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other pooled investment vehicles; and

(C) Other accounts.

(3) For each of the categories in paragraph (a)(2) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(4) A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Fund's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(2) of this Item, on the other. This description would include, for example, material conflicts between the investment strategy of the Fund and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Fund and other accounts managed by the Portfolio Manager.

*Instructions.*

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to paragraph (a) of this Item.

(b) *Compensation*. Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 5(b). For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on Fund pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Fund's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

*Instructions.*

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement, relocation, and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Fund, the Fund's investment adviser, or any other source with respect to management of the Fund and any other ac-

counts included in the response to paragraph (a)(2) of this Item. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Fund and other accounts, *e.g.*, if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Fund, this must be disclosed.

(c) *Ownership of Securities*. For each Portfolio Manager required to be identified in response to Item 5(b), state the dollar range of equity securities in the Fund beneficially owned by the Portfolio Manager using the following ranges: none, $1- $10,000, $10,001-$50,000, $50,001-$100,000, $100,001-$500,000, $500,001-$1,000,000, or over $1,000,000.

*Instructions.*

1. Provide the information required by this paragraph as of the end of the Fund's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Fund's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

**Item 21. Brokerage Allocation and Other Practices**

(a) *Brokerage Transactions*. Describe how transactions in portfolio securities are effected, including a general statement about brokerage commissions, markups, and markdowns on principal transactions and the aggregate amount of any brokerage commissions paid by the Fund during its three most recent fiscal years. If, during either of the two years preceding the Fund's most recent fiscal year, the aggregate dollar amount of brokerage commissions paid by the Fund differed materially from the amount paid during the most recent fiscal year, state the reason(s) for the difference(s).

(b) *Commissions*.

(1) Identify, disclose the relationship, and state the aggregate dollar amount of brokerage commissions paid by the Fund during its three most recent fiscal years to any broker:

(i) That is an affiliated person of the Fund or an affiliated person of that person; or

(ii) An affiliated person of which is an affiliated person of the Fund, its investment adviser, or principal underwriter.

(2) For each broker identified in response to paragraph (b)(1), state:

(i) The percentage of the Fund's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(ii) The percentage of the Fund's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

(3) State the reasons for any material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, a broker disclosed in response to paragraph (b)(1).

(c) *Brokerage Selection*. Describe how the Fund will select brokers to effect securities transactions for the Fund and how the Fund will evaluate the overall reasonableness of brokerage commissions paid, including the factors that the Fund will consider in making these determinations.

*Instructions*.

1. If the Fund will consider the receipt of products or services other than brokerage or research services in selecting brokers, specify those products and services.

2. If the Fund will consider the receipt of research services in selecting brokers, identify the nature of those research services.

3. State whether persons acting on the Fund's behalf are authorized to pay a broker a higher brokerage commission than another broker might have charged for the same transaction in recognition of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services provided by brokers through which the Fund effects securities transactions may be used by the Fund's investment adviser in servicing all of its accounts and that not all of these services may be used by the adviser in connection with the Fund. If other policies or practices are applicable to the Fund with respect to the allocation of research services provided by brokers, explain those policies and practices.

(d) *Directed Brokerage*. If, during the last fiscal year, the Fund or its investment adviser, through an agreement or understanding with a broker, or otherwise through an internal allocation procedure, directed the Fund's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

(e) *Regular Broker-Dealers*. If the Fund has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 [17 CFR 270.10b-1] or of their parents, identify those brokers or dealers and state the value of the Fund's aggregate holdings of the securities of each issuer as of the close of the Fund's most recent fiscal year.

*Instruction*. The Fund need only disclose information about an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year.

**Item 22. Capital Stock and Other Securities**

(a) *Capital Stock*. For each Class of capital stock of the Fund, provide:

(1) The title of each Class; and

(2) A full discussion of the following provisions or characteristics of each Class, if applicable:

(i) Restrictions on the right freely to retain or dispose of the Fund's shares;

(ii) Material obligations or potential liabilities associated with owning the Fund's shares (not including investment risks);

(iii) Dividend rights;

(iv) Voting rights (including whether the rights of shareholders can be modified by other than a majority vote);

(v) Liquidation rights;

(vi) Preemptive rights;

(vii) Conversion rights;

(viii) Redemption provisions;

(ix) Sinking fund provisions; and

(x) Liability to further calls or to assessment by the Fund.

*Instructions*.

1. If any Class described in response to this paragraph possesses cumulative voting rights, disclose the existence of those rights and explain the operation of cumulative voting.

2. If the rights evidenced by any Class described in response to this paragraph are materially limited or qualified by the rights of any other Class, explain those limitations or qualifications.

(b) *Other Securities*. Describe the rights of any authorized securities of the Fund other than capital stock. If the securities are subscription warrants or rights, state the title and amount of securities called for, and the period during which and the prices at which the warrants or rights are exercisable.

**Item 23. Purchase, Redemption, and Pricing of Shares**

(a) *Purchase of Shares*. To the extent that the prospectus does not do so, describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumu-

lation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of shareholders.

(b) *Fund Reorganizations*. Disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization. Identify each class of individuals to which the arrangements apply and state each different sales load available as a percentage of both the offering price and the net amount invested.

(c) *Offering Price*. Describe the method followed or to be followed by the Fund in determining the total offering price at which its shares may be offered to the public and the method(s) used to value the Fund's assets.

*Instructions*.

1. Describe the valuation procedure(s) that the Fund uses in determining the net asset value and public offering price of its shares.

2. Explain how the excess of the offering price over the net amount invested is distributed among the Fund's principal underwriters or others and the basis for determining the total offering price.

3. Explain the reasons for any difference in the price at which securities are offered generally to the public, and the prices at which securities are offered for any class of transactions or to any class of individuals.

4. Unless provided as a continuation of the balance sheet in response to Item 27, include a specimen price-make-up sheet showing how the Fund calculates the total offering price per unit. Base the calculation on the value of the Fund's portfolio securities and other assets and its outstanding securities as of the date of the balance sheet filed by the Fund.

(d) *Redemption in Kind*. If the Fund has received an order of exemption from section 18(f) or has filed a notice of election under rule 18f-1 that has not been withdrawn, describe the nature, extent, and effect of the exemptive relief or notice.

(e) *Arrangements Permitting Frequent Purchases and Redemptions of Fund Shares*. Describe any arrangements with any person to permit frequent purchases and redemptions of Fund shares, including the identity of the persons permitted to engage in frequent purchases and redemptions pursuant to such arrangements, and any compensation or other consideration received by the Fund, its investment adviser, or any other party pursuant to such arrangements.

*Instructions*.

1. The consideration required to be disclosed by Item 23(e) includes any agreement to maintain assets in the Fund or in other investment companies or accounts managed by the investment adviser or by any affiliated person of the investment adviser.

2. If the Fund has an arrangement to permit frequent purchases and redemptions by a group of individuals, such as the participants in a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), the Fund may identify the group rather than identifying each individual group member.

**Item 24. Taxation of the Fund**

(a) If applicable, state that the Fund is qualified or intends to qualify under Subchapter M of the Internal Revenue Code. Disclose the consequences to the Fund if it does not qualify under Subchapter M.

(b) Disclose any special or unusual tax aspects of the Fund, such as taxation resulting from foreign investment or from status as a personal holding company, or any tax loss carryforward to which the Fund may be entitled.

**Item 25. Underwriters**

(a) *Distribution of Securities*. For each principal underwriter distributing securities of the Fund, state:

(1) The nature of the obligation to distribute the Fund's securities;

(2) Whether the offering is continuous; and

(3) The aggregate dollar amount of underwriting commissions and the amount retained by the principal underwriter for each of the Fund's last three fiscal years.

(b) *Compensation*. Provide the information required by the following table with respect to all commissions and other compensation received by each principal underwriter, who is an affiliated person of the Fund or an affiliated person of that affiliated person, directly or indirectly, from the Fund during the Fund's most recent fiscal year:

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| Name of Principal Underwriter | Net Underwriting Discounts and Commissions | Compensation on Redemptions and Repurchases | Brokerage Commissions | Other Compensation |

*Instruction.*

Disclose in a footnote to the table the type of services rendered in consideration for the compensation listed under column (5).

(c) *Other Payments*. With respect to any payments made by the Fund to an underwriter or dealer in the Fund's shares during the Fund's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the

circumstances surrounding the payments, and the consideration received by the Fund. Do not include information about:

(1) Payments made through deduction from the offering price at the time of sale of securities issued by the Fund;

(2) Payments representing the purchase price of portfolio securities acquired by the Fund;

(3) Commissions on any purchase or sale of portfolio securities by the Fund; or

(4) Payments for investment advisory services under an investment advisory contract.

*Instructions.*

1. Do not include in response to this paragraph information provided in response to paragraph (b) or with respect to service fees under the Instruction to Item 12(b)(2). Do not include any payment for a service excluded by Instructions 1 and 2 to Item 19(d) or by Instruction 2 to Item 34.

2. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

**Item 26. Calculation of Performance Data**

(a) *Money Market Funds*. Yield quotation(s) for a Money Market Fund included in the prospectus should be calculated according to paragraphs (a)(1) - (4).

(1) *Yield Quotation*. Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(2) *Effective Yield Quotation*. Based on the 7 days ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period, subtracting a hypothetical charge reflecting deductions from shareholder accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period re-

turn by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

EFFECTIVE YIELD = $[(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1$.

(3) *Tax Equivalent Current Yield Quotation*. Calculate the Fund's tax equivalent current yield by dividing that portion of the Fund's yield (as calculated under paragraph (a)(1)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(4) *Tax Equivalent Effective Yield Quotation*. Calculate the Fund's tax equivalent effective yield by dividing that portion of the Fund's effective yield (as calculated under paragraph (a)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's effective yield that is not tax-exempt.

*Instructions*.

1. When calculating yield or effective yield quotations, the calculation of net change in account value must include:

(a) The value of additional shares purchased with dividends from the original share and dividends declared on both the original shares and additional shares; and

(b) All fees, other than nonrecurring account or sales charges, that are imposed on all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

2. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.

3. Disclose the amount or specific rate of any nonrecurring account or sales charges not included in the calculation of the yield.

4. If the Fund holds itself out as distributing income that is exempt from federal, state, or local income taxation, in calculating yield and effective yield (but not tax equivalent yield or tax equivalent effective yield), reduce the yield quoted by the effect of any income taxes on the shareholder receiving dividends, using the maximum rate for individual income taxation. For example, if the Fund holds itself out as distributing income exempt from federal taxation and the income taxes of State A, but invests in some securities of State B, it must reduce its yield by the effect of state income taxes that must be paid by the residents of State A on that portion of the income attributable to the securities of State B.

(b) *Other Funds*. Performance information included in the prospectus should be calculated according to paragraphs (b)(1) - (6).

(1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = ERV$$

Where:

P = a hypothetical initial payment of $1,000.
T = average annual total return.
n = number of years.
ERV = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

*Instructions.*

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

5. State the average annual total return quotation to the nearest hundredth of one percent.

6. Total return information in the prospectus need only be current to the end of the Fund's most recent fiscal year.

(2) *Average Annual Total Return (After Taxes on Distributions) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in

the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$$P(1+T)^n = ATV_D$$

Where:

P = a hypothetical initial payment of $1,000.

T = average annual total return (after taxes on distributions).

n = number of years.

$ATV_D$ = ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distributions but not after taxes on redemption.

*Instructions.*

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.,* ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in federal income tax on an individual, *e.g.*, tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.

4. Calculate the taxes due using the highest individual marginal federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (*e.g.*, ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, long-term capital gain rate for long-term capital gain distributions). Note that the required

tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (*e.g.*, state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus. Assume that the redemption has no tax consequences.

7. State the average annual total return (after taxes on distributions) quotation to the nearest hundredth of one percent.

(3) *Average Annual Total Return (After Taxes on Distributions and Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's average annual total return (after taxes on distributions and redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending value, according to the following formula:

$$P(1 + T)^n = ATV_{DR}$$

Where:

P = a hypothetical initial payment of $1,000.

T = average annual total return (after taxes on distributions and redemption).

n = number of years.

$ATV_{DR}$ = ending value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods (or fractional portion), after taxes on fund distribution and redemption.

*Instructions.*

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rates specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.,* ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portion of any distribution that would not result in federal income tax on an individual, *e.g.,* tax-exempt interest or non-taxable returns of capital. The effect of applicable tax credits, such as the foreign tax credit, should be taken into account in accordance with federal tax law.

4. Calculate the taxes due using the highest individual marginal federal income tax rates in effect on the reinvestment date. The rates used should correspond to the tax character of each component of the distributions (*e.g.,* ordinary income rate for ordinary income distributions, short-term capital gain rate for short-term capital gain distributions, and long-term capital gain rate for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (*e.g.,* state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

7. Determine the ending value by subtracting capital gains taxes resulting from the redemption and adding the tax benefit from capital losses resulting from the redemption.

(a) Calculate the capital gain or loss upon redemption by subtracting the tax basis from the redemption proceeds (after deducting any nonrecurring charges as specified by Instruction 6).

(b) The Fund should separately track the basis of shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. In determining the basis for a reinvested distribution, include the distribution net of taxes assumed paid from the distribution, but not net of any sales loads imposed upon reinvestment. Tax basis should be adjusted for any distributions representing returns of capital and any other tax basis adjustments that would apply to an individual taxpayer, as permitted by applicable federal tax law.

(c) The amount and character (*e.g.*, short-term or long-term) of capital gain or loss upon redemption should be separately determined for shares acquired through the $1,000 initial investment and each subsequent purchase through reinvested distributions. The Fund should not assume that shares acquired through reinvestment of distributions have the same holding period as the initial $1,000 investment. The tax character should be determined by the length of the measurement period in the case of the initial $1,000 investment and the length of the period between reinvestment and the end of the measurement period in the case of reinvested distributions.

(d) Calculate the capital gains taxes (or the benefit resulting from tax losses) using the highest federal individual capital gains tax rate for gains of the appropriate character in effect on the redemption date and in accordance with federal tax law applicable on the redemption date. For example, applicable federal tax law should be used to determine whether and how gains and losses from the sale of shares with different holding periods should be netted, as well as the tax character (*e.g.*, short-term or long-term) of any resulting gains or losses. Assume that a shareholder has sufficient capital gains of the same character from other investments to offset any capital losses from the redemption so that the taxpayer may deduct the capital losses in full.

8. State the average annual total return (after taxes on distributions and redemption) quotation to the nearest hundredth of one percent.

(4) *Yield Quotation*. Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's yield by dividing the net investment income per share earned during the period by the maximum offering price per share on the last day of the period, according to the following formula:

$$YIELD = 2\left[\left(\frac{a-b}{cd}+1\right)^{6} - 1\right]$$

Where:

$a$ = dividends and interest earned during the period.

$b$ = expenses accrued for the period (net of reimbursements).

$c$ = the average daily number of shares outstanding during the period that were entitled to receive dividends.

*d* = the maximum offering price per share on the last day of the period.

*Instructions.*

1. To calculate interest earned on debt obligations for purposes of "a" above:

(a) Calculate the yield to maturity of each obligation held by the Fund based on the market value of the obligation (including actual accrued interest) at the close of business on the last business day of each month or, with respect to obligations purchased during the month, the purchase price (plus actual accrued interest). The maturity of an obligation with a call provision(s) is the next call date on which the obligation reasonably may be expected to be called, or if none, the maturity date.

(b) Divide the yield to maturity by 360 and multiply the quotient by the market value of the obligation (including actual accrued interest) to determine the interest income on the obligation for each day of the subsequent month that the obligation is in the portfolio. Assume that each month has 30 days.

(c) Total the interest earned on all debt obligations and all dividends accrued on all equity securities during the 30-day (or one month) period. Although the period for calculating interest earned is based on calendar months, a 30-day yield may be calculated by aggregating the daily interest on the portfolio from portions of 2 months. In addition, a Fund may recalculate daily interest income on the portfolio more than once a month.

(d) For a tax-exempt obligation issued without original issue discount and having a current market discount, use the coupon rate of interest in lieu of the yield to maturity. For a tax-exempt obligation with original issue discount in which the discount is based on the current market value and exceeds the then-remaining portion of original issue discount (market discount), base the yield to maturity on the imputed rate of the original issue discount calculation. For a tax-exempt obligation with original issue discount, where the discount based on the current market value is less than the then-remaining portion of original issue discount (market premium), base the yield to maturity on the market value.

2. For discount and premium on mortgage or other receivables-backed obligations that are expected to be subject to monthly payments of principal and interest ("paydowns"):

(a) Account for gain or loss attributable to actual monthly paydowns as an increase or decrease to interest income during the period; and

(b) The Fund may elect:

(i) To amortize the discount and premium on the remaining securities, based on the cost of the securities, to the weighted average maturity date, if the information is available, or to the remaining term of the securities, if the weighted average maturity date is not available; or

(ii) Not to amortize the discount or premium on the remaining securities.

3. Solely for the purpose of calculating yield, recognize dividend income by accruing 1/360 of the stated dividend rate of the security each day that the security is in the portfolio.

4. Do not use equalization accounting in calculating yield.

5. Include expenses accrued under a plan adopted under rule 12b-1 in the expenses accrued for the period. Reimbursement accrued under the plan may reduce the accrued expenses, but only to the extent the reimbursement does not exceed expenses accrued for the period.

6. Include in the expenses accrued for the period all recurring fees that are charged to all shareholder accounts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size.

7. If a broker-dealer or an affiliate of the broker-dealer (as defined in rule 1-02(b) of Regulation S-X [17 CFR 210.1-02(b)]) has, in connection with directing the Fund's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Fund (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Fund had paid for the services directly in an arm's length transaction.

8. Undeclared earned income, calculated in accordance with generally accepted accounting principles, may be subtracted from the maximum offering price. Undeclared earned income is the net investment income that, at the end of the base period, has not been declared as a dividend, but is reasonably expected to be and is declared as a dividend shortly thereafter.

9. Disclose the amount or specific rate of any nonrecurring account or sales charges.

10. If, in connection with the sale of the Fund's shares, a deferred sales load payable in installments is imposed, the "maximum public offering price" includes the aggregate amount of the installments ("installment load amount").

(5) *Tax* Equivalent *Yield Quotation*. Based on a 30-day (or one month) period ended on the date of the most recent balance sheet included in the registration statement, calculate the Fund's tax equivalent yield by dividing that portion of the Fund's yield (as calculated under paragraph (b)(2)) that is tax-exempt by 1 minus a stated income tax rate and adding the quotient to that portion, if any, of the Fund's yield that is not tax-exempt.

(6) *Non-Standardized Performance Quotation*. A Fund may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

**Item 27. Financial Statements**

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## APPENDIX C
## Selected Items from Form N-2

### Item 3. Fee Table and Synopsis

1. If the prospectus offers common stock of the Registrant, include information about the costs and expenses that the investor will bear directly or indirectly, using the captions and tabular format illustrated below:

***Shareholder Transaction Expenses***

| | |
|---|---|
| Sales Load (as a percentage of offering price) | __% |
| Dividend Reinvestment and Cash Purchase Plan Fees | __% |

***Annual Expenses*** (as a percentage of net assets attributable to common shares)

| | |
|---|---|
| Management Fees | __% |
| Interest Payments on Borrowed Funds | __% |
| Other expenses | __% |
| _____ | __% |
| _____ | __% |
| _____ | __% |
| Total Annual Expenses | __% |

***Example***

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| You would pay the following expenses on a $1,000 investment, assuming a 5% annual return: | $ ____ | $ _____ | $_____ | $_____ |

*Instructions*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. Any caption not applicable to the Registrant may be omitted from the table.

3. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

*Shareholder Transaction Expenses*

4. "Dividend Reinvestment and Cash Purchase Plan Fees" include all fees (except brokerage commissions) that are charged to participating shareholder accounts. The basis on which such fees are imposed should be described briefly in a note to the table.

5. If the Registrant (or any other party under an agreement with the Registrant) charges any other transaction fee, add another caption describing it, and list the maximum amount of the fee or basis on which the fee is deducted. Underwriters' compensation that is paid with the proceeds of debt that is not to be repaid within one year need not be identified as sales load, but should be set forth as a shareholder transaction expense with a brief narrative following the table explaining the nature of such payments.

*Annual Expenses*

6. State the basis on which payments will be made. "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net asset value attributable to common shares. State in the narrative following the table that "Other Expenses" are based on estimated amounts for the current fiscal year.

7. a. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses," and any expenses incurred within the Registrant's own organization in connection with the research, selection, and supervision of investments. Where management fees are "tiered" or based on a "sliding scale," they should be calculated based on the fund's asset size after giving effect to the anticipated net proceeds of the present offering. In the case of a performance fee arrangement, assume the base fee. With respect to a best-efforts offering with breakpoints, assume the maximum fee will be payable.

b. In lieu of the information about management fees required by Item 3.1, a business development company with a fee structure that is not based solely on the aggregate amount of assets under management should provide disclosure concerning the fee arrangement to allow investors to assess its impact on the Registrant's expenses; a business development company may use any appropriate expense categories and may include items that may not, for accounting purposes, be treated as expenses. A business development company with special fee arrangements should provide a cross reference, where applicable, to the discussion in Item 9.1.a of special management compensation plans.

8. "Interest Payments on Borrowed Funds" include all interest paid in connection with outstanding loans (including interest paid on funds borrowed to pay underwriting expenses), bonds, or other forms of debt. Show interest expenses as a percentage of net assets attributable to common shares and not the face amount of debt.

9. "Other Expenses" include all expenses (except fees and expenses reported in other items in the table) that are deducted from the Registrant's assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6-07 [17 CFR 210.6-07] of Regulation S-X).

10. a. If the Registrant invests, or intends to invest based upon the anticipated net proceeds of the present offering, in shares of one or more "Acquired Funds," add a subcaption to the "Annual Expenses" portion of the table directly above the subcaption titled "Total Annual Expenses." Title the additional subcaption: "Acquired Fund Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds. For purposes of this item, an "Acquired Fund" means any company in which the Registrant invests or intends to invest (A) that is an investment company or (B) that would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)). If a Registrant uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Registrant, the Registrant may include these fees and expenses under the subcaption "Other Expenses" in lieu of this disclosure requirement.

b. Determine the "Acquired Fund Fees and Expenses" according to the following formula:

$$\text{AFFE} = \frac{[(F1/FY)*AI1*D1]+[(F2/FY)*AI2*D2]+[(F3/FY)*AI3*D3] + \text{Transaction Fees} + \text{Incentive Allocations}}{\text{Average Net Assets of the Registrant}}$$

Where:

| | | |
|---|---|---|
| AFFE | = | Acquired Fund fees and expenses; |
| F1, F2, F3, … | = | Total annual operating expense ratio for each Acquired Fund; |
| FY | = | Number of days in the relevant fiscal year; |
| AI1, AI2, AI3, | = | Average invested balance in each Acquired Fund; |
| D1, D2, D3, | = | Number of days invested in each Acquired Fund; |
| "Transaction Fees" | = | The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year; and |
| "Incentive Allocations" | = | Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Fund's income, capital gains and/or appreciation in the Acquired Fund. |

c. Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4.1 (see Instruction 15 to Item 4.1) and include the anticipated net proceeds of the present offering.

d. The total annual operating expense ratio used for purposes of this calculation (F 1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Registrant. If the Registrant has a written fee agreement with the Acquired Fund that would affect the ratio of expenses to average net assets as disclosed in the Acquired Fund's most recent shareholder report, the Registrant should determine the ratio of expenses to average net assets for the Acquired Fund's most recent fiscal period using the written fee agreement. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include any expenses (i.e., performance fees) that are calculated solely upon the realization and/or distribution of gains, or the sum of the realization and/or distribution of gains and unrealized appreciation of assets distributed in-kind. If an Acquired Fund has no

operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

e. If a Registrant has made investments in the most recent fiscal year, to determine the average invested balance (AI 1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (i.e., if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

f. For investments based upon the anticipated net proceeds from the present offering, base the "Acquired Fund Fees and Expenses" on: (i) assumptions about specific funds in which the Registrant expects to invest, (ii) estimates of the amount of assets the Registrant expects to invest in each of those Acquired Funds, and (iii) an assumption that the investment was held for all of the Registrant's most recent fiscal year and was subject to the Acquired Funds' fees and expenses for that year. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

g. If an Acquired Fund charges an Incentive Allocation or any other fee based on income, capital gains and/or appreciation ( i.e., performance fee), the Registrant must include a footnote to the "Acquired Fund Fees and Expenses" subcaption that: (i) discloses the typical Incentive Allocation or such other fee (expressed as a percentage) to be paid to the investment advisers of the Acquired Funds (or an affiliate); (ii) discloses that Acquired Funds' fees and expenses are based on historic fees and expenses; and (iii) states that future Acquired Funds' fees and expenses may be substantially higher or lower because certain fees are based on the performance of the Acquired Funds, which may fluctuate over time.

h. If the Registrant is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in the "Acquired Fund Fees and Expenses." The aggregate expenses of the Master-Feeder Fund must include the fees and expenses incurred indirectly by the Feeder Fund as a result of the Master Fund's investment in shares of one or more companies (A) that are investment companies or (B) that would be investment companies under section 3(a) of the 1940 Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)). For purposes of this instruction, a

"Master-Feeder Fund" means a two-tiered arrangement in which one or more investment companies registered under the 1940 Act (each a "Feeder Fund") holds shares of a single management investment company registered under the 1940 Act (the "Master Fund") in accordance with section 12(d)(1)(E) of the 1940 Act [15 U.S.C. 80a-12(d)(1)(E)].

i. The Registrant may clarify in a footnote to the fee table that the total annual expenses item under Item 3.1 is different from the ratio of expenses to average net assets given in response to Item 4.1, which reflects the operating expenses of the Registrant and does not include Acquired Fund fees and expenses.

*Example*

11. For purposes of the Example in the table:

a. assume that the rates listed under "Annual Expenses" remain the same each year, except to reduce annual expenses to reflect the scheduled maturity of outstanding debt or the completion of organization expense amortization;

b. assume reinvestment of all dividends and distributions at net asset value;

c. reflect all recurring and nonrecurring fees including underwriting discounts and commissions; and

d. prominently disclose that the Example should not be considered a representation of future expenses and that actual expenses may be greater or lesser than those shown.

12. Include a synopsis of information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve or fewer printed pages.

*Instruction*

The synopsis should provide a clear and concise description of the key features of the offering and the Registrant, with cross references to relevant disclosures elsewhere in the prospectus or Statement of Additional Information.

13. In the case of a business development company, include the information required by Item 101(e) of Regulation S-K [17 CFR 229.101(e)] (concerning reports and other information filed with the Commission).

**Item 4. Financial Highlights**

1. *General:* Furnish the following information for the Registrant, or for the Registrant and its subsidiaries, consolidated as prescribed in Rule 6-03 [17 CFR 210.6-03] of Regulation S-X:

*Financial Highlights*

(Introduction)

*Per Share Operating Performance*

a. Net Asset Value, Beginning of Period

1. Net Investment Income

2. Net Gains or Losses on Securities (both realized and unrealized)

b. Total From Investment Operations

c. Less Distributions

1. Dividends (from net investment income)

i. To Preferred Shareholders

ii. To Common Shareholders

2. Distributions (from capital gains)

i. To Preferred Shareholders

ii. To Common Shareholders

3. Returns of Capital

i. To Preferred Shareholders

ii. To Common Shareholders

d. Total Distributions

e. Net Asset Value, End of Period

f. Per Share Market Value, End of Period

g. Total Investment Return

*Ratios/Supplemental Data*

h. Net Assets, End of Period

i. Ratio of Expenses to Average Net Assets

j. Ratio of Net Income to Average Net Assets

k. Portfolio Turnover Rate

l. Average Commission Rate Paid

*Instructions:*

*General Instructions*

1. A Registrant that is regulated as a business development company may omit the information called for by Item 4.1. *See* Item 4.2.

2. Briefly explain the nature of the information contained in the table and its source. The auditor's report as to the financial highlights need not be included in the prospectus. Note that the auditor's report is contained elsewhere in the registration statement, specify its location, and state that it can be obtained by shareholders.

3. Present the information in comparative columns for each of the last ten fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less), but only for periods subsequent to the effective date of the Registrant's first 1933 Act registration statement. In addition, present the information for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities. Where the period for which the Registrant provides financial highlights is less than a full fiscal year, the ratios set forth in the table may be annualized but the fact of this annualization must be disclosed in a note to the table.

4. List per share amounts at least to the nearest cent. If the offering price is computed in tenths of a cent or more, state the amounts on the table in tenths of a cent. Present all information using a consistent number of decimal places.

5. Provide all information in the table, including distributions to preferred shareholders, on a common share equivalent basis.

6. Make, and indicate in a note, appropriate adjustments to reflect any stock split or stock dividend during the period.

7. If the investment adviser has been changed during the period covered by this item, indicate the date(s) of the change(s) in a note.

8. The financial highlights for at least the latest five fiscal years must be audited and must so state.

*Per Share Operating Performance*

9. Derive the amount for caption a.1 by adding (deducting) the increase (decrease) per share in undistributed net investment income for the period to (from) dividends from net investment income per share for the period. The increase (decrease) may be derived by comparing the per share figures obtained by dividing undistributed net investment income at the beginning and end of the period by the number of shares outstanding on those dates. Other methods may be acceptable but should be explained briefly in a note to the table.

10. The amount shown at caption a.2 is the balancing figure derived from other figures in the statement. The amount shown at this caption for a share outstanding throughout the year may not agree with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of sales and repurchases of the Registrant's shares in relation to fluctuating market values for the portfolio.

11. For any distributions made from sources other than net investment income and capital gains, state the per share amounts thereof separately at caption c.3 and note the nature of the distributions.

12. In caption e, use the net asset value for the end of each period for which information is being provided. If the Registrant has not been in operation for a full fiscal year, state its net asset value immediately after the closing of its first public offering in a note to the caption.

*Total Investment Return*

13. When calculating "total investment return" for caption g:

a. assume a purchase of common stock at the current market price on the first day and a sale at the current market price on the last day of each period reported on the table;

b. note that the total investment return does not reflect sales load; and

c. assume reinvestment of dividends and distributions at prices obtained by the Registrant's dividend reinvestment plan or, if there is no plan, at the lower of the per share net asset value or the closing market price of the Registrant's shares on the dividend/distribution date.

14. A Registrant also may include, as a separate caption, total return based on per share net asset value, provided the Registrant briefly explains in a note the differences between this calculation and the calculation required by caption g.

*Ratios and Supplemental Data*

15. Compute "average net assets" for captions i and j based on the value of net assets determined no less frequently than the end of each month. Indicate in a note that the expense ratio and net investment income ratio do not reflect the effect of dividend payments to preferred shareholders.

16. Compute the "ratio of expenses to average net assets" using the amount of expenses shown in the Registrant's statement of operations for the relevant fiscal year, including increases resulting from complying with paragraph 2(g) of Rule 6-07 [17 CFR 210.6-07] of Regulation S-X, and including reductions resulting from complying with paragraphs 2(a) and (f) of Rule 6-07 regarding fee waivers and reimbursements. If a change in the methodology for determining the ratio of expenses to average net assets results from

applying paragraph 2(g) of Rule 6-07, explain in a note that the ratio reflects fees paid with brokerage commissions and fees reduced in connection with specific agreements only for fiscal years ending after September 1, 1995.

17. Compute portfolio turnover rate as follows:

a. Divide (A) the lesser of purchases or sales of portfolio securities for the fiscal year by (B) the monthly average of the value of portfolio securities owned by the Registrant during the fiscal year. Calculate the monthly average by totalling the values of portfolio securities as of the beginning and end of the first month of the fiscal year and as of the end of each of the succeeding eleven months and dividing the sum by 13.

b. Exclude from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. Include all long-term securities, including U.S. Government securities. Purchases include cash paid upon conversion of one portfolio security into another and the cost of rights or warrants. Sales include net proceeds of the sale of rights or warrants and net proceeds of portfolio securities that have been called or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares, exclude from purchases the value of securities so acquired, and, from sales, all sales of the securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. Appropriately adjust the denominator of the portfolio turnover computation, and disclose the exclusions and adjustments.

d. Include in purchases and sales short sales that the Registrant intends to maintain for more than one year and put and call options with expiration dates more than one year from the date of acquisition. Include proceeds from a short sale in the value of portfolio securities sold during the period; include the cost of covering a short sale in the value of portfolio securities purchased during the period. Include premiums paid to purchase options in the value of portfolio securities purchased during the reporting period; include premiums received from the sale of options in the value of portfolio securities sold during the period.

*Average Commission Rate Paid*

18. A Registrant that invests not more than ten percent of the value of its average net assets in equity securities on which commissions are charged on trades may omit "average commission rate paid." Compute average net assets based on amounts invested at the end of each fiscal quarter.

19. Compute the "average commission rate paid" as follows: (A) divide the total dollar amount of commissions paid during the fiscal year by (B) the total number of shares

purchased and sold during the fiscal year for which commissions were charged. Carry the amount of the average commission rate paid to no fewer than four decimal places. Convert commissions paid in foreign currency into U.S. dollars and cents per share using consistently either the prevailing exchange rate on the date of the transaction or average exchange rate over such period as related transactions took place. Do not include mark-ups, mark-downs, or spreads paid on shares traded on a principal basis unless such mark-ups, mark-downs, or spreads are disclosed on confirmations prepared in accordance with Rule 10b-10 under the 1934 Act [17 CFR 240.10b-10].

2. *Business Development Companies:* If the Registrant is regulated as a business development company under the 1940 Act, furnish in a separate section the information required by Items 301, 302, and 303 of Regulation S-K [17 CFR 229.301, 229.302, and 229.303].

3. *Senior Securities:* Furnish the following information as of the end of the last ten fiscal years for each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, furnish the information on a consolidated basis:

| (1) Year | (2) Total Amount Outstanding Exclusive of Treasury Securities | (3) Asset Coverage Per Unit | (4) Involuntary Liquidating Preference Per Unit | (5) Average Market Value Per Unit (Exclude Bank Loans) |
|---|---|---|---|---|

*Instructions:*

1. Instructions 2, 3, and 8 to Item 4.1 also apply to this sub-item.

2. Use the method described in Section 18(h) of the 1940 Act [15 U.S.C. 80a-18(h)] to calculate the asset coverage to be set forth in column (3). However, in lieu of expressing asset coverage in terms of a ratio, as described in Section 18(h), express it for each class of senior securities in terms of dollar amounts per share (in the case of preferred stock) or per $ 1,000 of indebtedness (in the case of senior indebtedness).

3. Column (4) need be included only with respect to senior stock.

4. Set forth in a note to the table the method used to determine the averages called for by column (5) (*e.g.*, weighted, monthly, daily, etc.).

5. Briefly explain the terms used in the headings of the columns.

**Item 8. General Description of the Registrant**

Concisely discuss the organization and operation, or proposed operation, of the Registrant. Include the information specified below.

1. *General:* Briefly describe the Registrant, including:

a. the date and form of organization and the name of the state or other jurisdiction under whose laws it is organized; and

b. the classification and subclassification under Sections 4 and 5 of the 1940 Act [15 U.S.C. 80a-4 through 80a-5].

2. *Investment Objectives and Policies:* Concisely describe the investment objectives and policies of the Registrant that will constitute its principal portfolio emphasis, including the following:

a. If these objectives may be changed without a vote of the holders of a majority of voting securities, a brief statement to that effect;

b. How the Registrant proposes to achieve its objectives, including:

1. The types of securities in which the Registrant invests or will invest principally;

2. The identity of any particular industry or group of industries in which the Registrant proposes to concentrate.

*Instruction:*

Concentration, for purposes of this item, is deemed 25 percent or more of the value of the Registrant's total assets invested or proposed to be invested in a particular industry or group of industries. The policy on concentration should not be inconsistent with the Registrant's name.

c. Identify other policies of the Registrant that may not be changed without the vote of a majority of the outstanding voting securities, including those policies that the Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act [15 U.S.C. 80a-8(b)]; and

d. Briefly describe the significant investment practices or techniques that the Registrant employs or intends to employ (such as risk arbitrage, reverse repurchase agreements, forward delivery contracts, when-issued securities, stand-by commitments, options and futures contracts, options on futures contracts, currency transactions, foreign securities, investing for control of management, and/or lending of portfolio securities) that are not described pursuant to subparagraph 2.c above or subparagraph 3 below.

3. *Risk Factors:* Concisely describe the risks associated with an investment in the Registrant, including the following:

a. *General:* discuss the principal risk factors associated with investment in the Registrant specifically as well as those factors generally associated with investment in a company with investment objectives, investment policies, capital structure or trading markets similar to the Registrant's; and

b. *Effects of Leverage:* if the prospectus offers common stock of the Registrant and the Registrant has outstanding or is offering a class of senior securities as defined in Section 18 of the 1940 Act [15 U.S.C. 80a-18], then

(1) Set forth the annual rate of interest or dividend payments on the senior securities;

*Instruction*

If payments will vary because the interest or dividend rate is variable, provide the initial rate or, if the security is currently outstanding, the current rate.

(2) Set forth the annual return that the Registrant's portfolio must experience in order to cover annual interest or dividend payments on senior securities; and

(3) Provide a table illustrating the effect on return to a common stockholder of leverage (using senior securities) in the format illustrated below, using the captions provided, and assuming annual returns on the Registrant's portfolio (net of expenses) of minus ten, minus five, zero, five, and ten percent:

(4) The table should be accompanied by a brief narrative explaining that the purpose of the table is to assist the investor in understanding the effects of leverage. Indicate that the figures appearing in the table are hypothetical and that actual returns may be greater or less than those appearing in the table.

| **Assumed Return on Portfolio (Net of Expenses)** | **-10%** | **-5%** | **0%** | **-5%** | **10%** |
|---|---|---|---|---|---|
| Corresponding Return to Common Stockholder . . . . . | % | % | % | % | % |

*Instructions*

1. Round all percentages to the nearest hundredth of one percent.

2. A Registrant may assume additional rates of return on its portfolio; however, to the extent a Registrant shows an additional positive rate of return, it must also show an additional negative rate of return of the same magnitude. A Registrant may show the positive rate of return at which the corresponding rate of return to the common stockholder is zero without showing the corresponding negative rate of return.

3. Compute the "corresponding return to common stockholder" as follows: multiply the total amount of fund assets at the beginning of the period by the assumed rate of return; subtract from the resulting product all interest accrued or dividends declared on senior securities that would be made during the year following the offering; and divide the resulting difference by the total amount of fund assets attributable to common stock. If payments will vary because the interest or dividend rate is variable, use the initial rate or, if the security is currently outstanding, the current rate.

4. *Other Policies:* Briefly discuss the types of investments that will be made by the Registrant, other than those that will constitute its principal portfolio emphasis (as discussed in Item 8.2 above), and any policies or practices relating to those investments.

*Instructions:*

a. This discussion should receive less emphasis in the prospectus than that required by Item 8.2 and, if appropriate in light of Instructions b and c below, may be omitted or limited to the information necessary to identify the type of investment, policy, or practice.

b. Do not discuss a policy that prohibits a particular practice or permits a practice that the Registrant has not used within the past twelve months (or since its initial public offering, if that period is shorter) and does not intend to use in the future.

c. If a policy limits a particular practice so that no more than five percent of the Registrant's net assets are at risk, or if the Registrant has not followed that practice within the last year (or since its initial public offering, if such period is shorter) in such a manner that more than five percent of net assets were at risk and does not intend to follow such practice so as to put more than five percent of net assets at risk, limit the prospectus disclosure about such practice to that necessary to identify the practice. Disclose whether or not the Registrant will provide prior notice to security holders of its intention to commence or expand the use of such practice.

*Instruction:*

The amount of the Registrant's net assets that are at risk for purposes of determining whether "more than five percent of net assets are at risk" is not limited to the initial amount of the Registrant's assets that are invested in a particular practice, *e.g.,* the purchase price of an option. The amount of net assets at risk is determined by reference to the potential liability or loss that may be incurred by the Registrant in connection with a particular practice.

5. *Share Price Data:* If the prospectus offers common stock or other type of common equity security ("common stock") and if the Registrant's common stock is publicly held, provide the following information:

a. Identify the principal United States market or markets in which the common stock is being traded. Where there is no established public trading market, furnish a statement to that effect.

*Instruction:* The existence of limited or sporadic quotations should not itself be deemed to constitute an "established public trading market."

b. If the principal United States market for the common equity is an exchange, state the high and low sales prices for the stock for each full quarterly period within the two most recent fiscal years and each full fiscal quarter since the beginning of the current fiscal year, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for the stock. If the principal United States market for the common stock is not an exchange, state the range of high and low bid information

for the common stock for the periods described in the preceding sentence, as regularly quoted in the automated quotation system of a registered securities association, or if not so quoted, the range of reported high and low bid quotations, indicating the source of the quotations.

*Instructions:*

1. This information should be set forth in tabular form.

2. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not necessarily represent actual transactions.

3. Where there is an absence of an established public trading market, qualify reference to quotations by an appropriate explanation.

4. With respect to each quotation, disclose the net asset value and the discount or premium to net asset value (expressed as a percentage) represented by the quotation.

5. Where the shares of the Registrant trade at their high or low share price for more than one day during the period, the Registrant should provide the discount or premium information for the day on which the premium or discount was greatest.

c. Include share price and corresponding net asset value and premium/discount information as of the latest practicable date.

d. Disclose whether the Registrant's common stock has historically traded for an amount less than, equal to, or exceeding net asset value. Disclose any methods undertaken or to be undertaken by the Registrant that are intended to reduce any discount (such as the repurchase of fund shares, providing for the ability to convert to an open-end investment company, guaranteed distribution plans, etc.), and briefly discuss the effects that these measures have or may have on the Registrant.

e. If the shares of the Registrant have no history of public trading, discuss the tendency of closed-end fund shares to trade frequently at a discount from net asset value and the risk of loss this creates for investors purchasing shares in the initial public offering. If the Registrant has omitted the statement required by Item 1.i, describe the basis for the Registrant's belief that its shares will not trade at a discount from net asset value.

6. *Business Development Companies:* A Registrant that is a business development company should, in addition, provide the following information:

a. *Portfolio Companies:* For each portfolio company in which the Registrant is investing, disclose: (1) the name and address; (2) nature of business; (3) title, class, percentage of class, and value of portfolio company securities held by the Registrant; (4) amount and general terms of all loans to portfolio companies; and (5) the relationship of the portfolio companies to the Registrant.

*Instructions:*

1. The description of the nature of the business of a portfolio company in which the Registrant is investing may vary according to the extent of the Registrant's investment in the particular portfolio company. The Registrant need only briefly identify the nature of the business of a portfolio company in which the Registrant's investment constitutes less than five percent of the Registrant's assets.

2. In describing the nature of the business of a portfolio company, include matters such as the competitive conditions of the business of the company; its market share; dependence on a single or small number of customers; importance to it of any patents, trademarks, licenses, franchises, or concessions held; key operating personnel; and particular vulnerability to changes in government regulation, interest rates, or technology.

3. In describing the relationship of portfolio companies to the Registrant, include a discussion of the extent to which the Registrant makes available significant managerial assistance to its portfolio companies. Disclose any other material business, professional, or family relationship between the officers and directors of the Registrant and any portfolio company, its officers, directors, and affiliates (as defined in Rule 12b-2 [17 CFR 240.12b-2] under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]).

b. *Certain Subsidiaries:* If the Registrant has a wholly-owned small business investment company subsidiary, disclose: (1) whether the subsidiary is regulated as a business development company or investment company under the 1940 Act; (2) the percentage of the Registrant's assets invested in the subsidiary; and (3) material information about the small business investment company's operations, including the special risks of investing in a portfolio heavily invested in securities of small and developing or financially troubled businesses.

c. *Financial Statements:* Unless the business development company has had less than one fiscal year of operations, provide the financial statements of the Registrant.

*Instructions:*

1. a. Furnish, in a separate section following the responses to the above items in Part A of the registration statement, the financial statements and schedules required by Regulation S-X [17 CFR Part 210]. A business development company should comply with the provisions of Regulation S-X generally applicable to registered management investment companies. (*See* Section 210.3-18 [17 CFR 210.3-18] and Sections 210.6-01 through 210.6-10 of Regulation S-X [17 CFR 210.6-01 through 210.6-10]).

b. A business development company should provide an indication in its Schedule of Investments of those investments that are not qualifying investments under Section 55(a) of the 1940 Act and, in a footnote, briefly explain the significance of non-qualification.

2. Notwithstanding the requirements of Instruction 1 above, the following statements and schedules required by Regulation S-X may be omitted from Part A and included in Part C of the Registration statement:

a. the statement of any subsidiary that is not a majority-owned subsidiary; and

b. columns C and D of Schedule IV [17 CFR 210.12-03] in support of the most recent balance sheet.

3. A business development company with less than one fiscal year of operations should provide its financial statements in the Statement of Additional Information in response to Item 24.

d. *Prior Operations:* If the Registrant has had an operating history prior to electing to be regulated as a business development company, disclose any anticipated changes in its operations as a result of coming into compliance with Section 55(a) of the 1940 Act [15 U.S.C. 80a-54(a)]. This information may be omitted in a prospectus used a sufficient time after election to be regulated as a business development company so that it is no longer material.

e. *Special Risk Factors:* To the extent not disclosed in response to this item or Item 8.3, concisely describe the special risks of investing in a business development company, including the risks associated with investing in a portfolio of small and developing or financially troubled businesses. (*See* Section 64(b)(1) of the 1940 Act [15 U.S.C. 80a-63(b)(1)].)

**Item 9. Management**

1. *General:* Describe concisely how the business of the Registrant is managed, including:

a. *Board of Directors:* a description of the responsibilities of the board of directors with respect to the management of the Registrant;

*Instructions:*

1. In responding to this item, it is sufficient to include a general statement as to the responsibilities of the board of directors under the applicable laws of the Registrant's jurisdiction of organization.

2. A Registrant that has elected to be regulated as a business development company should briefly describe the terms of any special compensation plans available to management.

b. *Investment Advisers:* for each investment adviser of the Registrant:

(1) its name and principal business address, a description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business;

*Instruction:*

If the investment adviser is subject to more than one level of control, it is sufficient to provide the name of the ultimate control person.

(2) a description of the services provided by the investment adviser;

*Instructions:*

1. If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the investment adviser are subject to the authority of the board of directors, responsible for overall management of the Registrant's business affairs, it is sufficient to state that fact instead of listing all services provided.

2. A Registrant that has elected to be regulated as a business development company should describe briefly the type of managerial assistance that is or will be provided to the businesses in which it is investing and the qualifications of the investment adviser to render such management assistance.

(3) a description of its compensation; and

*Instructions:*

1. State generally what the adviser's fee is or will be as a percentage of average net assets, including any break-point. It is not necessary to include precise details as to how the fee is computed or paid.

2. If the investment advisory fee is paid in some manner other than on the basis of average net assets, briefly describe the basis of payment.

(4) a statement, adjacent to the disclosure required by paragraph 1.b.(3) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Registrant is available in the Registrant's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

c. *Portfolio Management*: the name, title, and length of service of the person or persons employed by or associated with the Registrant or an investment adviser of the Registrant who are primarily responsible for the day-to-day management of the Registrant's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Registrant.

*Instruction:*

If a committee, team, or other group of persons associated with the Registrant or an investment adviser of the Registrant is jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other

group (*e.g.*, lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Registrant's portfolio. If more than five persons are jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, the Registrant need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Registrant's portfolio.

d. *Administrators:* the identity of any other person who provides significant administrative or business affairs management services (*e.g.,* an "Administrator" or "Sub-Administrator"), a description of the services provided, and the compensation to be paid;

e. *Custodians:* the name and principal business address of the custodian(s), transfer agent, and dividend paying agent;

f. *Expenses:* the type of expenses for which the Registrant is responsible, and, if organization expenses of the Registrant are to be paid out of its assets, how the expenses will be amortized and the period over which the amortization will occur; and

g. *Affiliated Brokerage:* if the Registrant pays (or will pay) brokerage commissions to any broker that is an (1) affiliated person of the Registrant, (2) affiliated person of such person, or (3) affiliated person of an affiliated person of the Registrant, its investment adviser, or its principal underwriter, a statement to that effect.

2. *Non-resident Managers:* If any non-resident officer, director, underwriter, investment adviser, or expert named in the registration statement has a substantial portion of its assets located outside the United States, identify each person, and state how the enforcement by investors of civil liabilities under the federal securities laws may be affected. This disclosure should indicate:

a. whether investors will be able to effect service of process within the United States upon these persons;

b. whether investors will be able to enforce, in United States courts, judgments against these persons obtained in such courts predicated upon the civil liability provisions of the federal securities laws;

c. whether the appropriate foreign courts would enforce judgments of United States courts obtained in actions against these persons predicated upon the civil liability provisions of the federal securities laws; and

d. whether the appropriate foreign courts would enforce, in original actions, liabilities against these persons predicated solely upon the federal securities laws.

*Instruction:*

If any portions of this disclosure are stated to be based upon an opinion of counsel, name the counsel in the prospectus, and include an appropriate manually signed consent to the use of counsel's name and opinion as an exhibit to the registration statement.

3. *Control Persons:* Identify each person who, as of a specified date no more than 30 days prior to the date of filing the registration statement (or amendment to it), controls the Registrant.

*Instruction:*

For the purposes of this item, "control" means (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the 1940 Act [15 U.S.C. 80a-2(a)(9)], which has become final, that control exists.

**Item 10. Capital Stock, Long-Term Debt, and Other Securities**

1. *Capital Stock:* For each class of capital stock of the Registrant, state the title of the class and briefly describe all of the matters listed in paragraphs 1.a through 1.f that are relevant:

a. concisely discuss the nature and most significant attributes, including, where applicable, (1) dividend rights, policies, or limitations; (2) voting rights; (3) liquidation rights; (4) liability to further calls or to assessments by the Registrant; (5) preemptive rights, conversion rights, redemption provisions, and sinking fund provisions; and (6) any material obligations or potential liability associated with ownership of the security (not including investment risks);

*Instructions:*

1. A complete legal description of the securities should not be given.

2. If the Registrant has a policy of making distribution or dividend payments at predetermined times and minimum rates, disclosure should include a statement that, if the fund's investments do not generate sufficient income, the fund may be required to liquidate a portion of its portfolio to fund these distributions, and therefore these payments may represent a reduction of the shareholders' principal investment. The tax consequences of such payments also should be described briefly.

b. with respect to preferred stock, (1) state whether there are any restrictions on the Registrant while there is an arrearage in the payment of dividends or sinking fund installments, and, if so, concisely describe the restrictions and (2) briefly describe provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, requiring the creation or maintenance of reserves, or permitting or restricting the issuance of additional securities;

c. If the rights of holders of the security may be modified other than by a vote of a majority or more of the shares outstanding, voting as a class, so state, and briefly explain;

d. If rights evidenced by, or the amounts payable with respect to, any class of securities being described are, or may be, materially limited or qualified by the rights of any other

authorized class of securities, include the information regarding the other securities as will enable investors to understand such rights and limitations;

e. if the Registrant has a dividend reinvestment plan, briefly discuss the material aspects of the plan including, but not limited to, (1) whether the plan is automatic or whether shareholders must affirmatively elect to participate; (2) the method by which shareholders can elect to reinvest stock dividends or, if the plan is automatic, to receive cash dividends; (3) from whom additional information about the plan may be obtained (including a telephone number or address); (4) the method of determining the number of shares that will be distributed in lieu of a cash dividend; (5) the income tax consequences of participation in the plan (*i.e.,* that capital gains and income are realized, although cash is not received by the shareholder); (6) how to terminate participation in the plan and rights upon termination; (7) if applicable, that an investor holding shares that participate in the dividend reinvestment plan in a brokerage account may not be able to transfer the shares to another broker and continue to participate in the dividend reinvestment plan; (8) the type and amount (if known) of fees, commissions, and expenses payable by participants in connection with the plan; and (9) if a cash purchase plan option is available, any minimum or maximum investment required; and

f. briefly describe any provision of the Registrant's charter or bylaws that would have an effect of delaying, deferring or preventing a change of control of the Registrant and that would operate only with respect to an extraordinary corporate transaction involving the Registrant, such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation.

*Instruction:*

Provisions and arrangements required by law or imposed by governmental or judicial authority need not be discussed. Provisions or arrangements adopted by the Registrant to effect or further compliance with laws or governmental or judicial mandate must be described where compliance does not require the specific provisions or arrangements adopted.

2. *Long-Term Debt:* If the Registrant is issuing or has outstanding a class of long-term debt, state the title of the debt securities and their principal amount, and concisely describe any of the matters listed in paragraphs 2.a through 2.e that are relevant:

a. provisions concerning maturity, interest, conversion, redemption, amortization, sinking fund, and/or retirement;

b. provisions restricting the declaration of dividends, requiring the maintenance of any ratio or assets, and/or requiring the creation or maintenance of reserves;

c. provisions permitting or restricting the issuance of additional securities, incurring of additional debt, the release or substitution of assets securing the issue, and/or the modification of the terms of the securities;

*Instruction:*

A complete legal description of the securities should not be given.

d. for each trustee, its name, the nature of any material relationship it has with the Registrant or any of its affiliates, the percentage of securities necessary to require the trustee to take action, and any indemnification the trustee may require before proceeding against assets of the Registrant; and

e. to the extent not otherwise disclosed in response to this item, whether the rights evidenced by the long-term debt are, or may be, materially limited or qualified by the rights of any other authorized class of securities, and, if so, include sufficient information regarding such other securities to enable investors to understand such rights and limitations.

3. *General:* Concisely describe the significant attributes of each other class of the Registrant's authorized securities. The description should be comparable to that called for by paragraphs 1 and 2 of this item. If the securities are subscription warrants or rights, state the title and amount of securities called for and the period during which, and the prices at which, the warrants or rights are exercised.

4. *Taxes:* Concisely describe the tax consequences to investors of an investment in the securities being offered. If the Registrant intends to qualify for treatment under Subchapter M of the Internal Revenue Code of 1986 [26 U.S.C. 851-856], it is sufficient, in the absence of special circumstances, to state that: (i) the Registrant will distribute all of its net investment income and gains to shareholders and that these distributions are taxable as ordinary income or capital gains; (ii) shareholders may be proportionately liable for taxes on income and gains of the Registrant but shareholders not subject to tax on their income will not be required to pay tax on amounts distributed to them: and (iii) the Registrant will inform shareholders of the amount and nature of the income or gains.

*Instructions:*

1. The description should not include detailed discussions of applicable law.

2. The Registrant should specifically address whether shareholders will be subject to the alternative minimum tax.

5. *Outstanding Securities:* Furnish the following information, in substantially the tabular form indicated, for each class of authorized securities of the Registrant. The information must be current within 90 days of the filing of this registration statement or amendment to it.

| (1)<br>Title of Class | (2)<br>Amount Authorized | (3)<br>Amount Held by Registrant or for its Account | (4)<br>Amount Outstanding Exclusive of Amount Shown Under (3) |
|---|---|---|---|

6. *Securities Ratings:* If the prospectus relates to senior securities of the Registrant that have been assigned a rating by a nationally recognized securities rating organization and the rating is disclosed in the prospectus, briefly discuss the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by the NRSRO for the Registrant to maintain the rating, and whether or not the Registrant intends, or has any contractual obligation, to comply with these conditions or guidelines. In addition, disclose the material terms of any agreement between the Registrant or any of its affiliates and the NRSRO under which the NRSRO provides such rating. If the prospectus relates to securities other than senior securities of the Registrant that have been assigned a rating by a NRSRO, the information required by this paragraph may be provided in the Statement of Additional Information unless the rating criteria will materially affect the investment policies of the Registrant (*e.g.,* if the rating agency establishes criteria for selection of the Registrant's portfolio securities with which the Registrant intends to comply), in which case it should be included in the prospectus.

*Instructions:*

1. The term "nationally recognized securities rating organization" has the same meaning as used in Rule 15c3-1(c)(2)(vi)(F) [17 CFR 240.15c3-1(c)(2)(vi)(F)] under the Exchange Act.

2. Rule 436(g)(1) of Regulation C under the 1933 Act [17 CFR 230.436(g)(1)] provides that a security rating assigned by an NRSRO to a class of debt securities, a class of convertible debt securities, or a class of preferred stock is not considered a part of the registration statement for purposes of Sections 7 and 11 of the 1933 Act [15 U.S.C. 77g and 77k]. Therefore, in the case of disclosure of a rating assigned to these types of securities issued by the Registrant, the Registrant need not include a written consent of the NRSRO as an exhibit to the registration statement as required by Item 25.2.n but must provide the disclosure called for by this item.

3. Reference should be made to the statement of the Commission's policy on security ratings set forth under the section "General" in Regulation S-K [17 CFR 229.10] for the Commission's views on other important matters to be considered in disclosing securities ratings.

**Item 11. Defaults and Arrears on Senior Securities**

1. State the nature, date, and amount of default of payment of principal, interest, or amortization for each issue of long-term debt of the Registrant that is in default on the date of filing.

2. If an issue of capital stock has any accumulated dividend in arrears at the date of filing, state the title of each issue and the amount per share in arrears.

**Item 12. Legal Proceedings**

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or the

Registrant's investment adviser or principal underwriter is a party. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceeding instituted by a governmental authority or known to be contemplated by a governmental authority.

***Instruction:***

Legal Proceedings, for purposes of this item, are material only to the extent that they are likely to have a material adverse effect upon: (1) the ability of the investment adviser or principal underwriter to perform its contract with the Registrant; or (2) the Registrant.

## Part B—INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

### Item 14. Cover Page

1. The outside cover page must contain the following information:

a. the Registrant's name;

b. a statement or statements (1) that the Statement of Additional Information is not a prospectus, (2) that the Statement of Additional Information should be read with the prospectus, and (3) how a copy of the prospectus may be obtained;

c. the date of the Statement of Additional Information;

d. the date of the related prospectus and any other identifying information that the Registrant deems appropriate; and

e. the statement required by paragraph (b)(2) of Rule 481 under the Securities Act [17 CFR 230.481(b)(2)].

2. The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

### Item 15. Table of Contents

List the contents of the Statement of Additional Information, and, where useful, provide a cross reference to related disclosure in the prospectus.

### Item 16. General Information and History

If the Registrant has engaged in a business other than that of an investment company during the past five years, state the nature of the other business and give the approximate date on which the Registrant commenced business as an investment company. If the Registrant's name was changed during that period, state its former name and the approximate date on which it was changed. If the change in the Registrant's business or name occurred in connection with any bankruptcy, receivership, or similar proceeding or any other material reorganization, readjustment, or succession, briefly describe the nature and results of the same.

**Item 17. Investment Objective and Policies**

1. Describe clearly and concisely the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, the Registrant should refer to the prospectus when necessary to clarify the additional information called for by this item.

2. Concisely describe any fundamental policy of the Registrant not described in the prospectus with respect to each of the following activities:

a. the issuance of senior securities;

b. short sales, purchases on margin, and the writing of put and call options;

c. the borrowing of money (Describe briefly any fundamental policy that limits the Registrant's ability to borrow money, and state the purpose for which the proceeds will be used.);

d. the underwriting of securities of other issuers (Include any fundamental policy concerning the acquisition of restricted securities, *i.e.,* securities that must be registered under the 1933 Act before they may be offered or sold to the public.);

e. the concentration of investments in a particular industry or groups of industries;

f. the purchase or sale of real estate and real estate mortgage loans;

g. the purchase or sale of commodities or commodity contracts, including futures contracts;

h. the making of loans (For purposes of this item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities. However, the term "loan" includes the loaning of cash or portfolio securities to any person.); and

i. any other policy that the Registrant deems fundamental.

*Instructions:*

1. For purposes of this item, the term "fundamental policy" is defined as any policy that the Registrant has deemed to be fundamental or that may not be changed without the approval of a majority of the Registrant's outstanding voting securities.

2. If the Registrant reserves freedom of action with respect to any of the foregoing activities (other than the activity described in paragraph e), it must disclose the maximum percentage of assets to be devoted to the particular activity.

3. Describe fully any significant investment policies of the Registrant not described in the prospectus that are not deemed fundamental and that may be changed without the

approval of the holders of a majority of the voting securities (*e.g.*, investing for control of management, investing in foreign securities, or arbitrage activities).

*Instruction:*

The Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in such policies.

4. Briefly explain any significant change in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant anticipates a significant change in the portfolio turnover rate from that reported under caption k of Item 4.1 for its most recent fiscal year, so state. In the case of a new registration, the Registrant should state its policy with respect to portfolio turnover.

**Item 18. Management**

*Instructions:*

1. For purposes of this Item 18, the terms below have the following meanings:

a. The term "family of investment companies" means any two or more registered investment companies that:

(i) Share the same investment adviser or principal underwriter; and

(ii) Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term "fund complex" means two or more registered investment companies that:

(i) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(ii) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in *Section 152 of the Internal Revenue Code (26 U.S.C. 152)*.

d. The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing

information in a table, you should provide separate tables (or separate sections of a single table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

1. Provide the information required by the following table for each director and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

| (1) Name, Address, and Age | (2) Position(s) Held with Registrant | (3) Term of Office and Length of Time Served | (4) Principal Occupation(s) During Past 5 Years | (5) Number of Portfolios in Fund Complex Overseen by Director | (6) Other Directorships Held by Director |
|---|---|---|---|---|---|

*Instructions:*

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act *(15 U.S.C. 80a-2*(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act (15 U.S.C. 80a), and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

2. For each individual listed in column (1) of the table required by paragraph 1 of this Item 18, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

*Instruction:*

When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

3. Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

*Instruction:*

Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

4. For each non-resident director or officer of the Registrant listed in column (1) of the table required by paragraph 1, disclose whether he has authorized an agent in the United States to receive notice and, if so, disclose the name and address of the agent.

5.(a) Briefly describe the leadership structure of the Registrant's board, including whether the chairman of the board is an interested person of the Registrant, as defined in section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)). If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In addition, disclose the extent of the board's role in the risk oversight of the Registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

(b) Identify the standing committees of the Registrant's board of directors, and provide the following information about each committee:

(1) A concise statement of the functions of the committee;

(2) The members of the committee;

(3) The number of committee meetings held during the last fiscal year; and

(4) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

6.(a) Unless disclosed in the table required by paragraph 1 of this Item 18, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(1) The Registrant;

(2) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(3) An investment adviser, principal underwriter, or affiliated person of the Registrant; or

(4) Any person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

(b) Unless disclosed in the table required by paragraph 1 of this Item 18 or in response to paragraph 6(a) of this Item 18, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships were held.

*Instruction:*

When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

7. For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Registrant; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

| (1)<br>Name of<br>Director | (2)<br>Dollar<br>Range of Equity Securities in<br>the Registrant | (3)<br>Aggregate Dollar Range of<br>Equity Securities in All<br>Registered Investment<br>Companies Overseen by<br>Director in Family of<br>Investment Companies |
|---|---|---|

*Instructions:*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

3. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $ 1-$ 10,000, $ 10,001-$ 50,000, $ 50,001-$ 100,000, or over $ 100,000.

8. For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(a) An investment adviser or principal underwriter of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant:

| (1) Name of Director | (2) Name of Owners and Relationships to Director | (3) Company | (4) Title of Class | (5) Value of Securities | (6) Percent of Class |
|---|---|---|---|---|---|

*Instructions:*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d-3 or rule 16a-1(a)(2) under the Exchange Act (*17 CFR 240.13d-3* or *240.16a-1(a)(2)*).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter, describe the company's relationship with the investment adviser or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

9. Unless disclosed in response to paragraph 8 of this Item 18, describe any direct or indirect interest, the value of which exceeds $ 120,000, of each director who is not an interested person

of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

(a) An investment adviser or principal underwriter of the Registrant; or

(b) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

*Instructions:*

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $ 120,000.

10. Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $ 120,000 and to which any of the following persons was a party:

(a) The Registrant;

(b) An officer of the Registrant;

(c) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(d) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same investment adviser or principal underwriter as the Registrant or having an investment adviser or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with an investment adviser or principal underwriter of the Registrant;

(e) An investment adviser or principal underwriter of the Registrant;

(f) An officer of an investment adviser or principal underwriter of the Registrant;

(g) A person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant; or

(h) An officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant.

*Instructions:*

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph 10 of this Item 18 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs 10(a) through (h) of this Item 18, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person

specified in paragraphs 10(a) through (h) of this Item 18 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

11. Describe briefly any direct or indirect relationship, in which the amount involved exceeds $ 120,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs 10(a) through (h) of this Item 18. Relationships include:

(a) Payments for property or services to or from any person specified in paragraphs 10(a) through (h) of this Item 18;

(b) Provision of legal services to any person specified in paragraphs 10(a) through (h) of this Item 18;

(c) Provision of investment banking services to any person specified in paragraphs 10(a) through (h) of this Item 18, other than as a participating underwriter in a syndicate; and

(d) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs 11(a) through (c) of this Item 18.

*Instructions:*

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs 10(a) through (h) of this Item 18 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs 10(a) through (h) of this Item 18 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $ 120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs 10(a) through (h) of this Item 18 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs 10(a) through (h) of this Item 18 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph 11(a) of this Item 18, the following may be excluded:

a. Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

b. Payments that arise solely from the ownership of securities of a person specified in paragraphs 10(a) through (h) of this Item 18 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs 10(a) through (h) of this Item 18 unless the director is accorded special treatment.

12. If an officer of an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, controlled by, or under common control with an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(a) The company;

(b) The individual who serves or has served as a director of the company and the period of service as director;

(c) The investment adviser or principal underwriter or person controlling, controlled by, or under common control with the investment adviser or principal underwriter where the in-

dividual named in paragraph 12(b) of this Item 18 holds or held office and the office held; and

(d) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

13. In the case of a Registrant that is not a business development company, provide the following for all directors of the Registrant, all members of the advisory board of the Registrant, and for each of the three highest paid officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $ 60,000 ("Compensated Persons").

(a) Furnish the information required by the following table:

**COMPENSATION TABLE**

| (1) Name of Person, Position | (2) Aggregate Compensation From Fund | (3) Pension or Retirement Benefits Accrued As Part of Fund Expenses | (4) Estimated Annual Benefits Upon Retirement | (5) Total Compensation From Fund and Fund Complex Paid to Directors |
|---|---|---|---|---|

*Instructions:*

1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Registrant, compensation is amounts received for service as a director.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide

the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(b) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (a) pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Registrant.

14. In the case of a Registrant that is a business development company, provide the information required by Item 402 of Regulation S-K [17 CFR 229.402].

15. *Codes of Ethics:* Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 of the 1940 Act [17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1-202-551-8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549-0102.

*Instruction:*

A Registrant that is not required to adopt a code of ethics under Rule 17j-1 under the 1940 Act [17 CFR 270.17j-1] is not required to respond to this item.

16. Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interest of the Registrant's shareholders, on the one hand, and those of the Registrant's investment adviser, principal underwriter, or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a-2(a)(3)) and the rules thereunder) of the Registrant, its invest-

ment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number, or on or through the Registrant's website at a specified Internet address; or both; and (ii) on the Commission's website at http://www.sec.gov.

*Instructions.*

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N-PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its website, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N-PX must remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1-4 under the 1940 Act (17 CFR 270.30b1-4) and discloses that the Registrant's proxy voting record is available on or through its website.

17. For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Registrant at the time that the disclosure is made, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

**Item 19. Control Persons and Principal Holders of Securities**

Furnish the following information as of a specified date no more than 30 days prior to the date of filing of the registration statement or amendment to it.

1. State the name and address of each person who controls the Registrant, and briefly explain the effect of such control on the voting rights of other shareholders. For each control person,

state the percentage of the Registrant's voting securities owned or any other basis of control. If the control person is a company, disclose the state or other jurisdiction under the laws of which it is organized. List all parents of each control person.

*Instructions:*

1. The term "control" is defined in the instruction to Item 9.3 of this form.

2. A Registrant that is controlled by its adviser or underwriter(s) before the effective date of the registration statement need not respond to this item if, immediately after the public offering, there will be no control person.

2. State the name, address, and percentage of ownership of each person who owns of record or is known by the Registrant to own of record or beneficially five percent or more of any class of the Registrant's outstanding equity securities.

*Instructions:*

1. Calculate the percentages on the basis of the amount of securities outstanding.

2. If securities are being registered in connection with or pursuant to a plan of acquisition, reorganization, readjustment, or succession, indicate, to the extent practicable, the status to exist upon consummation of the plan on the basis of present holdings and commitments.

3. If, to the knowledge of the Registrant or any principal underwriter of its securities, five percent or more of any class of voting securities of the Registrant are or will be held subject to any voting trust or other similar agreement, disclose this fact.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and disclose the respective percentage owned in each manner.

3. Disclose all equity securities of the Registrant owned by all officers, directors, and members of the advisory board of the Registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than one percent of the class, a statement to that effect is sufficient.

**Item 20. Investment Advisory and Other Services**

1. Furnish the following information about each investment adviser:

a. the names of all controlling persons, the basis of such control, and, if material, the business history of any organization that controls the adviser;

b. the name of any affiliated person of the Registrant who is also an affiliated person of the investment adviser and a list of all capacities in which such person named is affiliated with the Registrant and/or with the investment adviser; and

*Instruction:*

If an affiliated person of the Registrant, either alone or together with others, is a controlling person of the investment adviser, the Registrant must disclose that fact but need not supply the specific amount of percentage of the outstanding voting securities of the investment adviser that are owned by the controlling person.

c. the method of computing the advisory fee payable by the Registrant, including:

(1) the total dollar amounts paid to the adviser by the Registrant under the investment advisory contract for the last three fiscal years;

(2) if applicable, any credits that reduced the advisory fee for any of the last fiscal years; and

(3) any expense limitation provision.

*Instructions:*

1. If the advisory fee payable by the Registrant varies depending on the Registrant's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. The Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Where the Registrant is subject to more than one expense limitation provision, describe only the most restrictive provision.

2. Concisely describe all services performed for or on behalf of the Registrant that are supplied or paid for wholly or in substantial part by the investment adviser in connection with the investment advisory contract.

3. Describe briefly all fees, expenses, and costs of the Registrant that are to be paid by persons other than the investment adviser or the Registrant, and identify such persons.

4. Summarize any management-related service contract under which services are provided to the Registrant that is not otherwise disclosed in response to an item of this form and may be of interest to a purchaser of the Registrant's securities, indicating the parties to the contract and the total dollars paid, and by whom, for the past three years.

*Instructions:*

1. A "management-related service contract" includes any agreement whereby another person contracts with the Registrant to keep, prepare, and/or file accounts, books, records, or other documents that the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily administration of

the Registrant, but does not include the following: (1) any contract with the Registrant to provide investment advice; (2) any agreement to act as custodian, transfer agent, or dividend-paying agent; and (3) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. No information is required about the service of mailing proxies or periodic reports to shareholders of the Registrant.

3. In summarizing the substantive provisions of a management-related service contract, include: (1) the name of the person providing the service; (2) any direct or indirect relationship of that person with the Registrant, its investment adviser, or its principal underwriter; (3) the nature of the services provided; and (4) the basis of the compensation paid for the last three fiscal years.

5. If any person (other than a bona fide director, officer, member of an advisory board, employee of the Registrant, or a person named as an investment adviser in response to paragraph 1 of this item), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Registrant or the investment adviser of the Registrant with respect to the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine which securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration from the Registrant, furnish the following information:

a. the name of the person;

b. a description of the nature of the arrangement and the advice or information given; and

c. any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in the Registrant's portfolio securities) paid for the advice or information, and a statement as to how and by whom such remuneration was paid for the last three fiscal years.

*Instruction:*

No information is required with respect to any of the following:

a. persons whose advice was furnished solely through uniform publications distributed to subscribers;

b. persons who furnished only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Registrant;

c. a company that is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the 1940 Act [15 U.S.C. 80a-2(a)(20)(iii)];

d. any person the character and amount of whose compensation for such service must be approved by a court; or

e. such other persons as the Commission has by rules and regulations or order determined not to be an "investment adviser" of an investment company.

6. Furnish the name and principal business address of each of the Registrant's custodians, the nature of the business of each such person, and a general description of the services performed by each.

7. Furnish the name and principal business address of the Registrant's independent public accountant, and provide a general description of the services performed by such person.

8. If an affiliated person of the Registrant, or an affiliated person of an affiliated person of the Registrant, acts as custodian, transfer agent, or dividend-paying agent for the Registrant, furnish a description of the services performed by that person and the basis for remuneration (*e.g.,* the method by which that person's fee is calculated).

**Item 21. Portfolio Managers**

1. *Other Accounts Managed:* If a Portfolio Manager required to be identified in response to Item 9.1.c is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

a. The Portfolio Manager's name;

b. The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(1) Registered investment companies;

(2) Other pooled investment vehicles; and

(3) Other accounts.

c. For each of the categories in Item 21.1.b., the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

d. A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Registrant's investments, on the one hand, and the investments of the other accounts included in response to Item 21.1b., on the other. This description would include, for example, material conflicts between the investment strategy of the Registrant and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Registrant and other accounts managed by the Portfolio Manager.

*Instructions:*

1. Provide the information required by Item 21.1 as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement

or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to Item 21.1.

2. *Compensation:* Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 9.1.c. For each type of compensation (*e.g.,* salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on the Registrant's pre-or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Registrant's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

*Instructions:*

1. Provide the information required by Item 21.2 as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Registrant, the Registrant's investment adviser, or any other source with respect to management of the Registrant and any other accounts included in the response to Item 21.1.b. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Registrant and other accounts, *e.g.,* if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Registrant, this must be disclosed.

3. *Ownership of Securities:* For each Portfolio Manager required to be identified in response to Item 9.1.c, state the dollar range of equity securities in the Registrant beneficially owned by the Portfolio Manager using the following ranges: none, $ 1-$ 10,000, $ 10,001-$ 50,000, $ 50,001-$ 100,000, $ 100,001-$ 500,000, $ 500,001-$ 1,000,000, or over $ 1,000,000.

*Instructions:*

1. Provide the information required by Item 21.3 as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

**Item 22. Brokerage Allocation and Other Practices**

1. Concisely describe how transactions in portfolio securities are or will be effected. Provide a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. Concisely explain any material change in brokerage commissions paid by the Registrant during the most recent fiscal year as compared to the two prior fiscal years.

2. a. State the total dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker that: (1) is an affiliated person of the Registrant; (2) is an affiliated person of an affiliated person of the Registrant; or (3) has an affiliated person that is an affiliated person of the Registrant, its investment adviser, or principal underwriter. In the case of an initial public offering, disclose whether or not the Registrant intends to use any brokers described in this subparagraph a. Identify each broker, and state the relationships that cause the broker to be identified in this item.

b. State for each broker identified in response to paragraph 2.a of this item:

(1) the percentage of the Registrant's aggregate brokerage commissions paid to the broker during the most recent fiscal year; and

(2) the percentage of the Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through the broker during the most recent fiscal year.

c. Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph 2.a of this item, state the reasons for the difference.

3. Describe briefly how brokers will be selected to effect securities transactions for the Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

*Instructions:*

1. If the receipt of products or services other than brokerage or research services is a factor considered in the selection of brokers, specify the products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of the research services.

3. State whether persons acting on behalf of the Registrant are authorized to pay a broker a commission in excess of that which another broker might have charged for effecting the same transaction because of the value of brokerage or research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom the Registrant effects securities transactions may be used by the Registrant's investment adviser in servicing all of its accounts and that not all the services may be used by the investment adviser in connection with the Registrant; or, if other policies or practices are applicable to the Registrant with respect to the allocation of research services provided by brokers, concisely explain the policies and practices.

5. Registrants should refer to Rule 17e-1 under the 1940 Act [17 CFR 270.17e-1] with respect to securities transactions executed by exchange members.

4. If during the last fiscal year the Registrant or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the Registrant's brokerage transactions to a broker because of research services provided, state the amount of the transactions and related commissions.

5. If the Registrant has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers, as defined in Rule 10b-1 under the 1940 Act [*17 CFR 270.10b-1*], or their parents, identify those brokers or dealers, and state the value of the Registrant's aggregate holdings of the securities of each subject issuer as of the close of the Registrant's most recent fiscal year.

*Instruction:*

The Registrant need only disclose information with respect to the parent of a broker or dealer that derived more than fifteen percent of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser.

**Item 23. Tax Status**

Provide information about the Registrant's tax status that is not required to be in the prospectus but that the Registrant believes is of interest to investors, including, but not limited to, an explanation of the legal basis for the Registrant's tax status. If the Registrant is qualified or intends to qualify under Subchapter M of the Internal Revenue Code and has not disclosed that fact in the prospectus, then disclosure of that fact will be sufficient. If not otherwise disclosed,

concisely describe any special or unusual tax aspects of the Registrant, *e.g.,* taxes resulting from foreign investment or from status as a personal holding company, or any tax loss carry-forward to which the Registrant may be entitled.

**Item 24. Financial Statements**

Provide the financial statements of the Registrant.

[Instructions to this Item have been omitted]

* * * * *

**Item 4.2. Business Development Companies**

If the registrant is regulated as a business development company under the 1940 Act, furnish in a separate section the information required by Items 301, 302 and 303 of Regulation S-K. [17 CFR 229.301, 229.302, and 229.303]

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# APPENDIX D

## Selected Items from Form N-3

### Item 2. Definitions

Define the special terms used in the prospectus (*e.g.*, accumulation unit, contractowner, participant, sub-account, etc.) in a glossary. In lieu of a glossary, Registrants may use an index of special terms that refers to the page on which each special term is defined.

> *Instruction:* Only special terms used throughout the prospectus must be defined or listed. If a special term, *e.g.*, net investment factor, is used in only one section of the prospectus, it may be defined there. However, all special terms used in the prospectus must be defined.

### Item 3. Synopsis or Highlights

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

***Contractowner Transaction Expenses***

| | |
|---|---|
| Sales Load Imposed on Purchases (as a percentage of purchase payments) | __% |
| Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable) | __% |
| Surrender Fees (as a percentage of amount surrendered, if applicable) | __% |
| Exchange Fee | __% |
| [*Annual*] Contract Fee | __% |

***Annual Expenses*** (as a percentage of average net assets)

| | |
|---|---|
| Management Fees | __% |
| Mortality and Expenses Risk Fees | __% |
| Other Expenses | __% |
| _____ | __% |
| _____ | __% |
| _____ | __% |
| Total Annual Expenses | __% |

*Example*

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| If you surrender your contract at the end of the applicable time period, you would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets: | $ ____ | $ _____ | $_____ | $_____ |
| | **1 year** | **3 years** | **5 years** | **10 years** |
| If you annuitize at the end of the applicable time period, you would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets: | $ ____ | $ _____ | $_____ | $_____ |
| | **1 year** | **3 years** | **5 years** | **10 years** |
| If you do not surrender your contract, you would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets: | $ ____ | $ _____ | $_____ | $_____ |

Instructions:

1. *General Instructions*

(a) Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

(b) Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

(c) If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

(d) Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

(e) If the Registrant has sub-accounts, list separately the data for each sub-account.

(f) Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or b) provide a separate table for group and individual contracts.

2. *Contractowner Transaction Expenses*

(a) "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

(b) "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of purchase payments or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

(c) "Surrender Fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

(d) "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

(e) If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

3. *[Annual] Contract Fee*

"[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

4. Annual Expenses

(a) "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

(b) "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

(c) "Other Expenses" includes all expenses (except fees and expenses reported in other items in the table) that are deducted from separate account assets and will be reflected as expenses in the Registrant's statement of operations (including increases resulting from complying with paragraph 2(g) of Rule 6-07 [ 17 CFR 210.6-07] of Regulation S-X).

(i) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (see FASB ASC Subtopic 225-20, Income Statement – Extraordinary and Unusual Items). If extraordinary expenses were incurred that materially affected the Registrant's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(ii) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

(d) Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year.

(i) A New Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 18(b), 19(f), 20(e), and 20(f) is a Registrant (or series of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for period of less than ten months.

(ii) If the Registrant has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual expenses.

(e) If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(i) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(ii) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a separate account whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

(f) (i) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of the actual expenses incurred, (i.e., net of the amount reimbursed or waived); and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(ii) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a new Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (i.e., net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

(g) (i) If the Registrant invests in shares of one or more Acquired Funds, add a subcaption to the "Annual Expenses" portion of the table directly above the subcaption titled "Total Annual Expenses." Title the additional subcaption: "Acquired Fund Fees and Expenses." Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds. For purposes of this Item, an "Acquired Fund" means any company in which the Fund invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)). If a Registrant uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Registrant, the Registrant may include these fees and expenses under the subcaption "Other Expenses" in lieu of this disclosure requirement.

(ii) Determine the "Acquired Fund Fees and Expenses" according to the following formula:

$$\text{AFFE} = \frac{(F\ 1/FY)*AI\ 1*\ D\ 1]+[(F\ 2/FY)*AI\ 2*\ D\ 2]+[(F\ 3/FY)*AI\ 3*D\ 3] + \text{Transaction Fees}}{\text{Average Net Assets of the Fund}}$$

Where:

| | | |
|---|---|---|
| AFFE | = | Acquired Fund fees and expenses; |
| F 1, F 2, F 3, … | = | Total annual operating expense ratio for each Acquired Fund; |
| FY | = | Number of days in the relevant fiscal year; |
| AI 1, AI 2, AI 3, … | = | Average invested balance in each Acquired Fund; |
| D 1, D 2, D 3, … | = | Number of days invested in each Acquired Fund; and |
| "Transaction Fees" | = | The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year. |

(iii) Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4(a) (see Instruction 10 to Item 4(a)).

(iv) The total annual operating expense ratio used for purposes of this calculation (F 1) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Registrant. For purposes of this instruction, Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors.

(v) To determine the average invested balance (AI 1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Di-

vide the numerator by the number of measurement points included in the calculation of the numerator (i.e., if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vi) A New Registrant should base the "Acquired Fund Fees and Expenses" on assumptions as to the specific Acquired Funds in which the New Registrant expects to invest. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

(vii) The Registrant may clarify in a footnote to the fee table that the total annual expenses under Item 3 are different from the ratio of expenses to average net assets given in response to Item 4, which reflects the operating expenses of the Registrant and does not include Acquired Fund fees and expenses.

**Example**

**For purposes of the Example in the table:**

(a) Assume that the percentage amounts listed under "Annual Expenses" remain the same in each year of the one, three, five, and ten-year periods, except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made;

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten-year periods. New Registrants should estimate [annual] contract fees collected;

(f) A New Registrant should complete only the one and three year portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon complete surrender;

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown; and

(j) Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

(k) The Registrant should include a synopsis of the information contained in the prospectus when the prospectus is long or complex. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

(l) The synopsis should be a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus.

(m) If the prospectus does not include a synopsis and the variable annuity contract contains any of the following characteristics, they must be highlighted;

(i) any portion of the sales load is assessed upon redemption or annuitization;

**Instruction:**

If any portion of the sales load is assessed upon redemption or annuitization, the response to this Item need only state the maximum percentage load that may be assessed against any given amount redeemed or annuitized and a cross-reference to a more complete description of the sales load in the prospectus.

(ii) a penalty tax may be assessed pursuant to Section 72(q) of the Internal Revenue Code [26 U.S.C. 72(q)] upon withdrawal of amounts accumulated under any variable annuity contract; or

(iii) the variable annuity contract contains a revocation right (e.g., a "ten-day free look" provision).

**Instruction:**

The highlighted information may not be preceded by the response to any Item except 1 or 2. It may precede Item 2 or be on the cover page. The information does not have to appear under a separate caption.

**Item 4. Condensed Financial Information**

(a) Furnish the following information for each class of accumulation units of the Registrant and its subsidiaries consolidated as prescribed in Rule 6-03 of Regulation S-X [17 CFR 210.6-03].

## PER ACCUMULATION UNIT INCOME AND CAPITAL CHANGES

(for an accumulation unit outstanding throughout the period)

1. investment income;

2. expenses;

3. net investment income;

4. net realized and unrealized gains (losses) on securities;

5. net increase (decrease) in accumulation unit value;

6. accumulation unit value at beginning of period;

7. accumulation unit value at end of period;

8. expenses to average net assets;

9. net investment income to average net assets;

10. portfolio turnover rate; and

11. number of accumulation units outstanding at end of period.

*Instructions:*

1. The above information must be provided for each class of accumulation units of the Registrant derived from contracts offered by means of this prospectus and each class derived from contracts no longer offered for sale, but for which Registrant may continue to accept payments. Information need not be provided for any class of accumulation units of the Registrant derived from contracts that are currently offered for sale by means of a different prospectus. Also, information need not be provided for any class of accumulation units that is no longer offered for sale but for which Registrant may continue to accept payments, if the information is provided in a different, but current prospectus of the Registrant.

2. The information shall be presented in comparative columns for each of the last ten fiscal years of the Registrant (or for the life of the Registrant and its immediate predecessors, if less) but only for periods after the effective date of Registrant's first 1933 Act Registration Statement. In addition, the information shall be presented for the period between the end of the latest fiscal year and the date of the latest balance sheet or statement of assets and liabilities furnished.

3. Per accumulation unit amounts shall be given at least to the nearest cent. If the computation of the offering price is extended to tenths of a cent or more, then the amounts on the table shall be given in tenths of a cent.

4. Per accumulation unit income and capital changes should only be given for sub-accounts that fund obligations of the Registrant under variable annuity contracts offered by means of this prospectus.

5. If the investment adviser has been changed during the period covered by this Item, the date(s) of such change(s) should be shown in a footnote.

6. The condensed financial information for not less than the latest five fiscal years shall be audited and shall so state. The auditor's statement pertaining to the condensed financial information need not be included in the prospectus.

7. The amount to be shown at caption 3 may be derived from the difference between the per accumulation unit figures obtained by dividing the amount of undistributed net income attributable to an accumulation unit at the beginning and end of the year by the number of accumulation units outstanding on those respective dates. (Other acceptable methods may be used. If another method is used, the method should be explained in a footnote to this table.) The amounts to be shown at captions 1 and 2 are derived by applying to the net investment income on a per accumulation unit basis the ratio of such items, as shown in the financial statements prepared under Rule 6-04 of Regulation S-X [17 CFR 210.6-04], to the net income as shown in such statements.

8. "Expenses," as used in caption 2 above, include the expenses described in caption 2 of Rule 6-07 of Regulation S-X. If there were income deductions such as those described in captions 3 and 5 of that Rule, compute the per accumulation unit amounts thereof and state them separately immediately after caption 2 above.

9. The amount to be shown at caption 4, while mathematically determinable by the summation of amounts computed for as many periods during the year as the number of accumulation units increased or decreased is also the balancing figure derived from the other figures in the statement and should be so computed. The amount shown at this caption for an accumulation unit outstanding throughout the year may not accord with the change in the aggregate gains and losses in the portfolio securities for the year because of the timing of increases and decreases in the number of accumulation units in relation to fluctuating market values for the portfolio.

10. The "average net assets," as used in captions 8 and 9, shall be computed upon the basis of the value of the net assets determined no less frequently than as of the end of each month.

11. The portfolio turnover rate to be shown at caption 10 shall be calculated as follows:

a. The rate of portfolio turnover shall be calculated by dividing (A) the lesser of purchases or sales of portfolio securities for the particular fiscal year by (B) the monthly average of the value of the portfolio securities owned by the Registrant during the particular fiscal year. Such monthly average shall be calculated by totaling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as of the end of each of the succeeding eleven months, and dividing the sum by 13.

b. For the purposes of this Item, exclude from both the numerator and the denominator all securities, including options whose maturities or expiration dates at the time

of acquisition were one year or less. All long-term securities, including United States Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. If during the fiscal year the Registrant acquired the assets of another separate account in exchange for its own accumulation units, it shall exclude from purchases the value of securities so acquired, and from sales all sales of such securities made following a purchase-of-assets transaction to realign the Registrant's portfolio. In such event, the Registrant shall also make appropriate adjustment in the denominator of the portfolio turnover computation. The Registrant must disclose such exclusions and adjustments in its answer to this Item.

d. Short sales which the Registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from date of acquisition are included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the Registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the Registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the Registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the Registrant sold during the period.

e. A registrant that holds itself out as a money market fund is not required to provide a portfolio turnover rate in response to this Item.

12. The number of accumulation units outstanding at the end of each period may be shown to the nearest thousand (000 omitted), provided it is indicated that such has been done.

(b) Give the following information as of the end of each of the Registrant's last ten fiscal years for each class of senior securities (including bank loans) of the Registrant. If consolidated statements were prepared as of any of the dates specified, the information shall be furnished on a consolidated basis:

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| Year | Amount of Debt Outstanding at End of Period | Average Amount of Debt Outstanding During the Period | Average Number of Registrant's Units Outstanding During the Period | Average Amount of Debt Per Unit During the Period |

*Instructions:*

1. Instructions 2, 3, and 6 to Item 4(a) also apply here.

2. The method used to determine the averages shown above (*e.g.*, weighted, monthly, daily, etc.) must be described.

3. Column 5 is derived by dividing the amount shown in column 3 by the number shown in column 4.

(c) If all the required financial statements of the Registrant and the Insurance Company (*See* Item 28) are not in the prospectus, state under a separate caption, where the financial statements may be found. Briefly explain how any financial statements not in the Statement of Additional Information may be obtained.

**Item 5. General Description of Registrant and Insurance Company**

Concisely discuss the organization and operation or proposed operation of the Registrant. Include the information specified below.

(a) Briefly describe the Insurance Company including:

(i) its name, address, and a description of the general nature of its business;

*Instruction:*

The description of the Insurance Company's business should be short and need not list all of the businesses in which the Insurance Company engages or identify the jurisdictions where it does business, if a general description (*e.g.*, "life insurance" or "reinsurance") is provided.

(ii) the date and form of organization of the Insurance Company and the name of the state or other jurisdiction under whose laws it is organized; and

(iii) if the Insurance Company is controlled by another person, the name of that person and the general nature of its business (If the Insurance Company is subject to more than one level of control, simply give the name of the ultimate control person.).

(b) Briefly describe the Registrant, including:

(i) the date and form of organization of the Registrant and the Registrant's classification pursuant to Section 4 of the 1940 Act [15 U.S.C. 80a-4] (i.e., a separate account and an open-end investment company);

(ii) the subclassification of the Registrant pursuant to Section 5(b) of the 1940 Act [15 U.S.C. 80a-5(b)];

(iii) a statement indicating:

(A) that income, gains, and losses, whether or not realized, from assets allocated to the Registrant are, in accordance with the applicable variable annuity contracts, credited to or charged against the Registrant without regard to other income, gains, or losses of the Insurance Company;

(B) that the assets of the Registrant may not be charged with liabilities arising out of any other business of the Insurance Company; and

(C) whether the obligations arising under the variable annuity contracts are obligations of the Insurance Company.

(iv) whether there are sub-accounts of the Registrant (i.e., for qualified and non-qualified contracts or for different portfolios of the Registrant); and

(v) if 10 percent or more of the assets of any sub-account are attributable to one variable annuity contract, the name and address of the contractowner of, and the percentage of assets attributable to, the variable annuity contract.

*Instruction:*

Sub-accounts that fund obligations of the Registrant under contracts that are not offered by means of this prospectus need not be described.

(c) Concisely describe the investment objectives and policies of the Registrant, including:

(i) whether those objectives may be changed without the approval of a majority of votes;

(ii) how the Registrant proposes to achieve its objectives including:

(A) the types of securities in which Registrant invests or will invest principally and any special investment practices or techniques that will be used; and

(B) the identity of any particular industry or group of industries in which the Registrant proposes to concentrate. (Concentration, for purposes of this Item, is deemed to be investment of 25% or more of the value of Registrant's total assets in a particular industry or group of industries. The policy on concentration should not be inconsistent with Registrant's name.);

(iii) subject to subparagraph (d) of this Item, the identity of other policies of Registrant that may be changed only with the approval of a majority of votes, including those policies which Registrant deems to be fundamental within the meaning of Section 8(b) of the 1940 Act; and

(iv) subject to subparagraph (d) of this Item, the significant investment policies or techniques (such as risk arbitrage, repurchase agreements, forward delivery contracts, investing for control or management) that are not described pursuant to subparagraphs (ii) or (iii) above that Registrant employs or intends to employ in the foreseeable future.

(d) Discussion of types of investments that will not be Registrant's principal portfolio emphasis, and of related policies or practices, should generally receive less emphasis in the prospectus, and under the circumstances set forth below may be omitted or limited to information necessary to identify the type of investment, policy, or practice. Specifically,

(i) do not disclose a policy which prohibits a particular practice, or one which permits a particular practice but which the Registrant has not used within the past year and does not intend to use in the foreseeable future; and

(ii) if a policy limits a particular practice so that no more than 5% of Registrant's net assets are at risk, or if Registrant has not followed that practice within the last year, and does not intend to follow such practice in the foreseeable future, simply identify the practice.

(e) Discuss briefly the principal risk factors associated with investment in Registrant, including factors peculiar to the types of portfolio securities in which it invests or intends to invest, as well as those factors generally associated with investment in a company with investment policies and objectives similar to Registrant's.

(f) State that a description of the Registrant's policies and procedures with respect to the disclosure of the Registrant's portfolio securities is available (A) in the Registrant's Statement of Additional Information; and (B) on the Registrant's website, if applicable.

**Item 6. Management**

Describe concisely how the business of the Registrant is managed, including:

(a) the responsibilities of the board of managers;

(b) for each investment adviser of the Registrant:

(i) its name and address and a brief description of its experience as an investment adviser, and, if the investment adviser is controlled by another person, the name of that person and the general nature of its business (If the investment adviser is subject to more than one level of control, simply give the name of the ultimate control person.);

(ii) the services provided by the investment adviser (If, in addition to providing investment advice, the investment adviser or persons employed by or associated with the in-

vestment adviser are, subject to the authority of the board of managers, responsible for overall management of Registrant's business affairs, simply state that fact instead of listing all services provided.); and

(iii) a statement, adjacent to the disclosure required by paragraph (b)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Registrant is available in the Registrant's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

(c) the identity and principal business address of any other person who provides significant administrative or business affairs management services (*e.g.*, an "Administrator," "Sub-Administrator," or "Servicing Agent"), and briefly describe the services provided;

*Instruction:*

Information need not be given about any services described in response to Item 7(a).

(d) If Registrant engages in any of the following practices, a statement to that effect:

(i) paying brokerage commissions to any broker;

(A) which is an affiliated person of the Registrant or the Insurance Company; or

(B) which is an affiliated person of such person; or

(C) an affiliated person of which is an affiliated person of the Registrant, the Insurance Company, the Registrant's investment adviser, or its principal underwriter; and

(ii) allocating brokerage transactions in a manner that takes into account the sale of investment company securities.

(e) the name, title, and length of service of the person or persons employed by or associated with the Registrant or an investment adviser of the Registrant who are primarily responsible for the day-to-day management of the Registrant's portfolio ("Portfolio Manager"). Also state each Portfolio Manager's business experience during the past 5 years. Include a statement, adjacent to the foregoing disclosure, that the SAI provides additional information about the Portfolio Manager's(s') compensation, other accounts managed by the Portfolio Manager(s), and the Portfolio Manager's(s') ownership of securities in the Registrant.

*Instructions:*

1. This requirement does not apply to a Registrant that holds itself out as a money market fund and meets the maturity, quality, and diversification requirements of rule 2a-7 [17 CFR 270.2a-7].

2. If a committee, team, or other group of persons associated with the Registrant or an investment adviser of the Registrant is jointly and primarily responsible for the

day-to-day management of the Registrant's portfolio, information in response to this Item is required for each member of such committee, team, or other group. For each such member, provide a brief description of the person's role on the committee, team, or other group (*e.g.*, lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Registrant's portfolio. If more than five persons are jointly and primarily responsible for the day-to-day management of the Registrant's portfolio, the Registrant need only provide information for the five persons with the most significant responsibility for the day-to-day management of the Registrant's portfolio.

**Item 7. Deductions and Expenses**

(a) Briefly describe all deductions from purchase payments, contractowner accounts, or assets of the Registrant (*e.g.*, investment advisory fees, sales loads, administrative and transaction charges, risk charges, and premium taxes). Specify the amount of any such deduction as a percentage or dollar figure (*e.g.*, 95% of the average daily net assets or $ 5 per exchange). Except for the deduction for premium taxes, identify the person who receives the amount deducted, briefly describe what is provided in consideration for the deduction, and explain the extent to which the deduction can be modified.

*Instructions:*

1. Identification of the range of current premium taxes is sufficient.

2. If proceeds from explicit sales loads will not cover the expected costs of distributing the contracts, identify from what source the shortfall, if any, will be paid. If any shortfall is to be made up from assets from the Insurance Company's general account, disclose, if applicable that any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from mortality and expense risk charges deducted from the account. If Registrant directly or indirectly pays distribution expenses under 1940 Act Rule 12b-1 [17 CFR 270.12b-1], list the principal types of activities for which payments are or will be made, and (i) if the plan has been in effect for a full fiscal year, give the total amount spent in the most recent fiscal year as a percentage of net assets; or (ii) otherwise briefly describe the basis on which payments will be made (*e.g.*, percentage of net assets, etc.).

(b) State the sales load as a percentage of each purchase payment, if it is so calculated, and as a percentage of the net amount invested for each breakpoint. For contracts with a deferred sales load, state the sales load as a percentage of the amount withdrawn or surrendered. The percentages should be shown in a table.

(c) Unless set forth in response to paragraph (b), list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variations in, or elimination of, the sales load (*e.g.*, group discounts, waiver of sales load upon annuitization

or attainment of a certain age, waiver of a deferred sales load for a certain percentage of contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Describe any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (i.e., the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services.

(d) State the commissions paid to dealers as a percentage of purchase payments.

(e) If the investment adviser is compensated for its services to the Registrant by someone other than the Registrant, identify the person who provides the compensation and specify the amount.

(f) If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized, including the amount to be amortized and the period over which the amortization will occur.

**Item 8. General Description of Variable Annuity Contracts**

(a) Identify the person or persons (*e.g.*, the contractowner, participant, annuitant, or beneficiary) who have material rights, including voting rights, under the variable annuity contracts, and briefly describe the nature of those rights, (1) during the accumulation period, (2) during the annuity period, or (3) after the death of the annuitant or contractowner.

*Instructions:*

The Registrant need not repeat rights that are described elsewhere in the prospectus. When describing voting rights, indicate how the rights will be allocated.

(b) Briefly describe any provisions for and limitations on:

(i) allocation of purchase payments among subaccounts of the Registrant;

(ii) transfer of contract values between subaccounts of the Registrant; and

(iii) exchanges of variable annuity contracts, including interests or participations therein.

(c) Briefly describe the changes that can be made in the variable annuity contract or the operations of the Registrant by the Registrant or the Insurance Company, including:

(i) why a change may be made (*e.g.*, changes in applicable law or interpretations of law);

(ii) who, if anyone, must approve any change (*e.g.*, the contractowner or the Securities and Exchange Commission); and

(iii) who, if anyone, must be notified of any change.

*Instruction:*

Describe only those changes that would be material to a purchaser of the variable annuity contracts, such as a reservation of the right to deregister the separate account under the 1940 Act. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(d) Describe how contractowner inquiries should be made.

(e)(i) Describe the risks, if any, that frequent transfers of contract value among sub-accounts of the Registrant may present for other contractowners and other persons (*e.g.*, participants, annuitants, or beneficiaries) who have material rights under the variable annuity contracts.

(ii) State whether or not the Registrant's board of managers has adopted policies and procedures with respect to frequent transfers of contract value among sub-accounts of the Registrant.

(iii) If the Registrant's board of managers has not adopted any such policies and procedures, provide a statement of the specific basis for the view of the board that it is appropriate for the Registrant not to have such policies and procedures.

(iv) If the Registrant's board of managers has adopted any such policies and procedures, describe those policies and procedures, including:

(A) whether or not the Registrant discourages frequent transfers of contract value among sub-accounts of the Registrant;

(B) whether or not the Registrant accommodates frequent transfers of contract value among sub-accounts of the Registrant; and

(C) any policies and procedures of the Registrant for deterring frequent transfers of contract value among sub-accounts of the Registrant, including any restrictions imposed by the Registrant to prevent or minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances, including whether each of these restrictions applies to trades that occur through omnibus accounts at intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

(1) any restrictions on the volume or number of transfers that may be made within a given time period;

(2) any transfer fee;

(3) any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of contract value among sub-accounts of the Registrant, together with a description of the circumstances under which such costs, fees, or charges will be imposed;

(4) any minimum holding period that is imposed before a transfer may be made from a sub-account into another sub-account of the Registrant;

(5) any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and

(6) any right of the Registrant to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit contracts based on a history of frequent transfers among sub-accounts, including the circumstances under which such right will be exercised.

(v) If applicable, include a statement, adjacent to the disclosure required by paragraphs (e)(i) through (e)(iv) of this Item, that the Statement of Additional Information includes a description of all arrangements with any person to permit frequent transfers of contract value among sub-accounts of the Registrant.

**Item 9. Annuity Period**

Briefly describe the annuity options available. The discussion should include:

(a) Material factors that determine the level of annuity benefits;

(b) The annuity commencement date (give the earliest and latest possible dates);

(c) Frequency and duration of annuity payments, and the effect of these on the level of payment;

(d) The effect of assumed investment return;

(e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and

(f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

*Instructions:*

1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.

2. Detailed disclosure on the method of calculating annuity payments should be placed in the Statement of Additional Information, Item 27.

**Item 10. Death Benefit**

Briefly describe any death benefit available under a variable annuity contract during the accumulation and the annuity periods. Include:

(a) when the death benefit is calculated and payable and the effect of choosing a specific method of payment on calculation of the death benefit; and

(b) the forms the benefit may take, including the effect of not choosing a payment option, and the period, if any, during which payments must begin under any annuity option.

**Item 11. Purchases and Contract Value**

(a) Briefly describe the procedures for purchasing a variable annuity contract. Include a concise explanation of:

(i) the minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (If there are separate limits for each sub-account, state these limits.);

(ii) a statement of when initial and subsequent purchase payments are credited; and

(iii) the way in which purchase payments are credited, including: (A) an explanation that purchase payments are credited on the basis of accumulation unit value, (B) how accumulation unit value is determined, and (C) how the number of accumulation units credited to a contract is determined.

(b) Explain that investment performance, expenses and deduction of certain charges affect accumulation unit value.

(c) Identify the method used to value the Registrant's assets (*e.g.*, market value, good faith determination, and amortized cost).

*Instruction:*

A Registrant (other than a money market fund or sub-account) must provide a brief explanation of the circumstances under which it will use fair value pricing and the effects of using fair value pricing. With respect to any portion of a Registrant's assets that are invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Registrant may briefly explain that the Registrant's net asset value is calculated based upon the net asset values of the registered open-end management investment companies in which the Registrant invests, and that the prospectuses for these companies explain the circumstances under which those companies will use fair value pricing and the effects of using fair value pricing.

(d) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a contract on the basis of accumulation unit value next determined after receipt of a purchase payment.

(e) Identify each principal underwriter (other than the Insurance Company) of the variable annuity contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant, the Insurance Company, or any affiliated person of the Registrant or the Insurance Company, identify how they are affiliated (*e.g.*, the principal underwriter is controlled by the Insurance Company).

**Item 12. Redemptions**

(a) Briefly describe how a contractowner or annuitant (if the variable annuity option chosen by the annuitant is not based on a life contingency) can redeem a variable annuity contract, including how the proceeds are calculated and when they are payable. Unless described in response to another item in the prospectus, describe any charges that may be attendant upon redemption.

(b) If the Registrant offers the variable annuity contracts in connection with the Texas Optional Retirement Program, describe the restrictions on redemption that apply.

*Instruction:*

Registrants can satisfy this Item by describing the applicable restrictions on redemption on a supplement attached to prospectuses delivered to participants in the Texas Optional Retirement Program.

(c) If a request for redemption may not be honored for a certain period of time after a contractowner's investment, describe briefly.

(d) Briefly describe any provision for lapse or involuntary redemptions under the contract and the reasons for it, such as size of the account or infrequency of purchase payments.

(e) Briefly describe any revocation rights (*e.g.*, "ten-day free look" provisions).

(f) If Registrant, under normal circumstances, intends to redeem in kind, that fact should be disclosed.

**Item 13. Taxes**

(a) Briefly describe the tax consequences to investors of an investment in the variable annuity contracts being offered.

*Instructions:*

This disclosure need not include a detailed description of applicable law. The discussion should include the taxation of annuity payments, death proceeds, periodic and non-periodic withdrawals, pledges and assignments of the contract (if permitted), and

any other method by which taxable income may be received by the investor under the variable annuity contract, as well as the tax benefits accorded annuities during the accumulation period. If the tax consequences vary depending on the use of the variable annuity contract (*e.g.*, to fund an individual retirement annuity or corporate plan), the variations should be briefly described.

(b) Identify the types of qualified plans with which the variable annuity contracts are intended to be used.

*Instructions:*

1. Identify the types of persons who may use the plans (*e.g.*, corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the rights otherwise available under the contracts.

2. Do not describe the Internal Revenue Code requirements for qualification of plans or the non-annuity tax consequences of qualification (*e.g.*, the effect on employer taxation).

(c) Briefly describe the impact, if any, of taxation on the determination of account or sub-account values.

**Item 14. Legal Proceedings**

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registrant, any subsidiary of the Registrant, or Registrant's investment adviser, principal underwriter, or Insurance Company is a party. Include the name of the court where the case is pending, the date filed, and the principal parties. Include similar information for any proceedings instituted by governmental authorities.

*Instruction:*

Legal proceedings are material only to the extent that they are likely to have a material adverse effect upon: (1) the ability of the investment adviser or principal underwriter to perform its contract with the Registrant or of the Insurance Company to meet its obligations under the variable annuity contracts or (2) the Registrant.

**Item 15. Table of Contents of the Statement of Additional Information**

List the contents of the Statement of Additional Information.

## PART B

## INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

### Item 16. Cover Page

(a) The outside cover page must contain the following information:

(i) the Registrant's name;

(ii) the Insurance Company's name;

(iii) a statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read with the prospectus; and (C) how a copy of the prospectus may be obtained;

(iv) the date of the Statement of Additional Information; and

(v) the date of the related prospectus and any other identifying information that the Registrant deems appropriate.

(b) The cover page may include other information, provided that it does not, by its nature, quantity, or manner of presentation, impede understanding of required information.

### Item 17. Table of Contents

List the contents of the Statement of Additional Information and, where useful, provide cross-references to the prospectus.

### Item 18. General Information and History

(a) If the Insurance Company's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registrant have been suspended at any time, or if sales of contracts offered by the Insurance Company have been suspended during the past five years, briefly describe the reasons for and results of the suspension.

(b) If 10 percent or more of the assets of any sub-account are not attributable to variable annuity contracts or to accumulated deductions or reserves (*e.g.*, initial capital contributed by the Insurance Company), state what percentage those assets are of the total assets of the separate account. If the Insurance Company, or any other person controlling the assets, has any present intention of removing the assets from the sub-account, so state.

(c) If the Insurance company is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

**Item 19. Investment Objectives and Policies**

(a) Describe clearly the investment policies of the Registrant. It is not necessary to repeat information contained in the prospectus, but, in augmenting the disclosure about those types of investments, policies, or practices that are briefly discussed or identified in the prospectus, Registrant should refer to the prospectus when necessary to clarify the additional information called for by this Item.

(b) Describe any fundamental policy of the Registrant not described in the prospectus with respect to each of the following activities:

(i) the issuance of senior securities;

(ii) short sales, purchases on margin, and the writing of put and call options;

(iii) the borrowing of money (Describe any fundamental policy which limits Registrant's borrowings of money and state the purpose for which borrowing may be used.);

(iv) the underwriting of securities of other issuers (Include any fundamental policy concerning the acquisition of restricted securities, i.e., securities that must be registered under the 1933 Act before they may be offered or sold to the public.);

(v) the concentration of investments in a particular industry or group of industries;

(vi) the purchase or sale of real estate and real estate mortgage loans;

(vii) purchase or sale of commodities or commodity contracts including futures contracts;

(viii) the making of loans (For purposes of this Item, the term "loans" does not include the purchase of a portion of an issue of publicly distributed bonds, debentures, or other securities, whether or not the purchase was made upon the original issuance of the securities. However, the term "loan" includes the loaning of cash or portfolio securities to any person.); and

(ix) any other policy which the Registrant deems fundamental.

*Instructions:*

1. For purposes of this Item, the term "fundamental policy" is defined as any policy which the Registrant has deemed to be fundamental or which may not be changed without the approval of a majority of the votes available to eligible voters.

2. The Registrant may reserve freedom of action with respect to any of the foregoing activities, but shall express definitely, in terms of a percentage of assets to be devoted to the particular activity, the maximum extent to which the Registrant intends to engage in it. For purposes of (vii) above, *see* the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) Describe fully any significant investment policies of the Registrant not described in the prospectus which are not deemed fundamental and which may be changed without the approval of the majority of votes available to eligible voters (for example, investing for control of management, investing in foreign securities, or arbitrage activities).

*Instruction:*

Registrant should disclose the extent to which it may engage in the above policies and the risks inherent in them.

(d) Explain any significant change in the Registrant's portfolio turnover rates over the last two fiscal years. If the Registrant anticipates a significant change in the portfolio turnover rate from that reported in Item 4(a)(10) for its most recent fiscal year, so state. In the case of a new registration, the Registrant should state its policy with respect to portfolio turnover.

(e)(i) Describe the Registrant's policies and procedures with respect to the disclosure of the Registrant's portfolio securities to any person, including:

(A) how the policies and procedures apply to disclosure to different categories of persons, including contractowners, participants, annuitants, beneficiaries, institutional investors, intermediaries that distribute the Registrant's contracts, third-party service providers, rating and ranking organizations, and affiliated persons of the Registrant;

(B) any conditions or restrictions placed on the use of information about portfolio securities that is disclosed, including any requirement that the information be kept confidential or prohibitions on trading based on the information, and any procedures to monitor the use of this information;

(C) the frequency with which information about portfolio securities is disclosed, and the length of the lag, if any, between the date of the information and the date on which the information is disclosed;

(D) any policies and procedures with respect to the receipt of compensation or other consideration by the Registrant, its investment adviser, the Insurance Company, or any other party in connection with the disclosure of information about portfolio securities;

(E) the individuals or categories of individuals who may authorize disclosure of the Registrant's portfolio securities (*e.g.*, executive officers of the Registrant's investment adviser);

(F) the procedures that the Registrant uses to ensure that disclosure of information about portfolio securities is in the best interests of contractowners, participants, annuitants, and beneficiaries, including procedures to address conflicts between the interests of such persons, on the one hand, and those of the Registrant's investment adviser or principal underwriter, the Insurance Company or any affiliated person of the Registrant, its investment adviser or principal underwriter, or the Insurance Company, on the other; and

(G) the manner in which the board of managers exercises oversight of disclosure of the Registrant's portfolio securities.

*Instruction:*

Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, with respect to the disclosure of the Registrant's portfolio securities to any person.

(ii) Describe any ongoing arrangements to make available information about the Registrant's portfolio securities to any person, including the identity of the persons who receive information pursuant to such arrangements. Describe any compensation or other consideration received by the Registrant, its investment adviser, the Insurance Company, or any other party in connection with each such arrangement, and provide the information described by paragraphs (e)(i)(B), (C), and (E) of this Item with respect to such arrangements.

*Instructions:*

1. The consideration required to be disclosed by Item 19(e)(ii) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the Insurance Company, or any affiliated person of the investment adviser or the Insurance Company.

2. The Registrant is not required to describe an ongoing arrangement to make available information about the Registrant's portfolio securities pursuant to this Item, if, not later than the time that the Registrant makes the portfolio securities information available to any person pursuant to the arrangement, the Registrant discloses the information in a publicly available filing with the Commission that is required to include the information.

3. The Registrant is not required to describe an ongoing arrangement to make available information about the Registrant's portfolio securities pursuant to this Item if:

a. the Registrant makes the portfolio securities information available to any person pursuant to the arrangement no earlier than the day next following the day on which the Registrant makes the information available on its website in the manner specified in its prospectus pursuant to paragraph b.; and

b. **[Text Effective Until April 30, 2020]** the Registrant has disclosed in its current prospectus that the portfolio securities information will be available on its website, including (1) the nature of the information that will be available, including both the date as of which the information will be current (*e.g.*, month-end) and the scope of the information (*e.g.*, complete portfolio holdings, Registrant's largest 20 holdings); (2) the date when the information will first become available and the period for which the information will remain available, which shall end no earlier than the date on which the Registrant files its Form N-CSR or Form N-Q with the Commission for the period that includes the date as of which the website information is current; and (3) the location on the Registrant's website where either the information or a prominent hyperlink (or series of prominent hyperlinks) to the information will be available.

b. **[Text effective May 1, 2020]** the Registrant has disclosed in its current prospectus that the portfolio securities information will be available on its website, including (1) the nature of the information that will be available, including both the date as of which the information will be current (*e.g.*, month-end) and the scope of the information (*e.g.*, complete portfolio holdings, Registrant's largest 20 holdings); (2) the date when the information will first become available and the period for which the information will remain available, which shall end no earlier than the date on which the Registrant files its Form N-CSR or Form N-PORT for the Registrant's first or third fiscal quarters with the Commission for the period that includes the date as of which the website information is current; and (3) the location on the Registrant's website where either the information or a prominent hyperlink (or series of prominent hyperlinks) to the information will be available.

**Item 20. Management**

*Instructions:*

1. For purposes of this Item 20, the terms below have the following meanings:

a. The term "family of investment companies" means any two or more registered investment companies that:

i. Share the same investment adviser or principal underwriter; and

ii. Hold themselves out to investors as related companies for purposes of investment and investor services.

b. The term "fund complex" means two or more registered investment companies that:

i. Hold themselves out to investors as related companies for purposes of investment and investor services; or

ii. Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies.

c. The term "immediate family member" means a person's spouse; child residing in the person's household (including step and adoptive children); and any dependent of the person, as defined in section 152 of the Internal Revenue Code (26 U.S.C. 152).

d. The term "officer" means the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.

2. When providing information about directors, furnish information for directors who are interested persons of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, separately from the information for directors who are not interested persons of the Registrant. For example, when furnishing information in a table, you should provide separate tables (or separate sections of a single

table) for directors who are interested persons and for directors who are not interested persons. When furnishing information in narrative form, indicate by heading or otherwise the directors who are interested persons and the directors who are not interested persons.

(a) Provide the information required by the following table for each member of the board of managers ("director") and officer of the Registrant, and, if the Registrant has an advisory board, member of the board. Explain in a footnote to the table any family relationship between the persons listed.

| (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|
| Name, Address, and Age | Position(s) Held with Registrant | Term of Office and Length of Time Served | Principal Occupation(s) During Past 5 Years | Number of Portfolios in Fund Complex Overseen by Director | Other Directorships Held by Director |

*Instructions:*

1. For purposes of this paragraph, the term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

2. For each director who is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, describe, in a footnote or otherwise, the relationship, events, or transactions by reason of which the director is an interested person.

3. State the principal business of any company listed under column (4) unless the principal business is implicit in its name.

4. Indicate in column (6) directorships not included in column (5) that are held by a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act (15 U.S.C. 80a-2(a)(19)), and name the companies in which the directorships are held. Where the other directorships include directorships overseeing two or more portfolios in the same fund complex, identify the fund complex and provide the number of portfolios overseen as a director in the fund complex rather than listing each portfolio separately.

(b) For each individual listed in column (1) of the table required by paragraph (a) of this Item 20, except for any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, describe any positions, including as an officer, employee, director, or general partner, held with affiliated persons or principal underwriters of the Registrant.

*Instruction:*

When an individual holds the same position(s) with two or more registered investment companies that are part of the same fund complex, identify the fund complex and provide the number of registered investment companies for which the position(s) are held rather than listing each registered investment company separately.

(c) Describe briefly any arrangement or understanding between any director or officer and any other person(s) (naming the person(s)) pursuant to which he was selected as a director or officer.

*Instruction:*

Do not include arrangements or understandings with directors or officers acting solely in their capacities as such.

(d)(i) Briefly describe the leadership structure of the Registrant's board, including whether the chairman of the board is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder. If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In addition, disclose the extent of the board's role in the risk oversight of the Registrant, such as how the board administers its risk oversight function, and the effect that this has on the board's leadership structure.

(ii) Identify the standing committees of the Registrant's board of managers, and provide the following information about each committee:

(A) A concise statement of the functions of the committee;

(B) The members of the committee;

(C) The number of committee meetings held during the last fiscal year; and

(D) If the committee is a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting recommendations.

(e)(i)Unless disclosed in the table required by paragraph (a) of this Item 20, describe any positions, including as an officer, employee, director, or general partner, held by any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years with:

(A) The Registrant;

(B) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(C) The Insurance Company or an investment adviser, principal underwriter, or affiliated person of the Registrant; or

(D) Any person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

(ii) Unless disclosed in the table required by paragraph (a) of this Item 20 or in response to paragraph (e)(i) of this Item 20, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or subject to the requirements of Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships were held.

*Instruction:*

When an individual holds the same position(s) with two or more portfolios that are part of the same fund complex, identify the fund complex and provide the number of portfolios for which the position(s) are held rather than listing each portfolio separately.

(f) For each director, state the dollar range of equity securities beneficially owned by the director as required by the following table:

(i) In the Registrant; and

(ii) On an aggregate basis, in any registered investment companies overseen by the director within the same family of investment companies as the Registrant.

| (1)<br>Name of<br>Director | (2)<br>Dollar<br>Range of Equity Securities in<br>the Registrant | (3)<br>Aggregate Dollar Range of<br>Equity Securities in<br>All Registered Investment<br>Companies Overseen<br>by Director in Family of<br>Investment Companies |
|---|---|---|

*Instructions:*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

3. If the SAI covers more than one sub-account, disclose in column (2) the dollar range of equity securities beneficially owned by a director in each sub-account overseen by the director.

4. In disclosing the dollar range of equity securities beneficially owned by a director in columns (2) and (3), use the following ranges: none, $ 1-$ 10,000, $ 10,001-$ 50,000, $ 50,001-$ 100,000, or over $ 100,000.

(g) For each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, and his immediate family members, furnish the information required by the following table as to each class of securities owned beneficially or of record in:

(i) The Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant:

| (1) Name of Director | (2) Name of Owners and Relationships to Director | (3) Company | (4) Title of Class | (5) Value of Securities | (6) Percent of Class |
|---|---|---|---|---|---|

*Instructions:*

1. Information should be provided as of the end of the most recently completed calendar year. Specify the valuation date by footnote or otherwise.

2. An individual is a "beneficial owner" of a security if he is a "beneficial owner" under either rule 13d-3 or rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.13d-3 or 240.16a-1(a)(2)).

3. Identify the company in which the director or immediate family member of the director owns securities in column (3). When the company is a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter, describe the company's relationship with the Insurance Company, investment adviser, or principal underwriter.

4. Provide the information required by columns (5) and (6) on an aggregate basis for each director and his immediate family members.

(h) Unless disclosed in response to paragraph (g) of this Item 20, describe any direct or indirect interest, the value of which exceeds $120,000, of each director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, during the two most recently completed calendar years, in:

(i) The Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(ii) A person (other than a registered investment company) directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

*Instructions:*

1. A director or immediate family member has an interest in a company if he is a party to a contract, arrangement, or understanding with respect to any securities of, or interest in, the company.

2. The interest of the director and the interests of his immediate family members should be aggregated in determining whether the value exceeds $120,000.

(i) Describe briefly any material interest, direct or indirect, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, in any transaction, or series of similar transactions, during the two most recently completed calendar years, in which the amount involved exceeds $ 120,000 and to which any of the following persons was a party:

(i) The Registrant;

(ii) An officer of the Registrant;

(iii) An investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and (c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(iv) An officer of an investment company, or a person that would be an investment company but for the exclusions provided by sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a-3(c)(1) and 3(c)(7)), having the same Insurance Company, investment adviser, or principal underwriter as the Registrant or having an Insurance Company, investment adviser, or principal underwriter that directly or indirectly controls, is controlled by, or is under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(v) The Insurance Company or an investment adviser or principal underwriter of the Registrant;

(vi) An officer of the Insurance Company or an investment adviser or principal underwriter of the Registrant;

(vii) A person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant; or

(viii) An officer of a person directly or indirectly controlling, controlled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant.

*Instructions:*

1. Include the name of each director or immediate family member whose interest in any transaction or series of similar transactions is described and the nature of the circumstances by reason of which the interest is required to be described.

2. State the nature of the interest, the approximate dollar amount involved in the transaction, and, where practicable, the approximate dollar amount of the interest.

3. In computing the amount involved in the transaction or series of similar transactions, include all periodic payments in the case of any lease or other agreement providing for periodic payments.

4. Compute the amount of the interest of any director or immediate family member of the director without regard to the amount of profit or loss involved in the transaction(s).

5. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost to the seller. Describe the method used in determining the purchase or sale price and the name of the person making the determination.

6. Disclose indirect, as well as direct, material interests in transactions. A person who has a position or relationship with, or interest in, a company that engages in a transaction with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect interest in the transaction by reason of the position, relationship, or interest. The interest in the transaction, however, will not be deemed "material" within the meaning of paragraph (i) of this Item 20 where the interest of the director or immediate family member arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in a company that is a party to the transaction with one of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, and the transaction is not material to the company.

7. The materiality of any interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

8. No information need be given as to any transaction where the interest of the director or immediate family member arises solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and the director or immediate family member receives no extra or special benefit not shared on a pro rata basis by all holders of the class of securities.

9. Transactions include loans, lines of credit, and other indebtedness. For indebtedness, indicate the largest aggregate amount of indebtedness outstanding at any time during the period, the nature of the indebtedness and the transaction in which it was incurred, the amount outstanding as of the end of the most recently completed calendar year, and the rate of interest paid or charged.

10. No information need be given as to any routine, retail transaction. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(j) Describe briefly any direct or indirect relationship, in which the amount involved exceeds $120,000, of any director who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act *(15 U.S.C. 80a-2*(a)(19)) and the rules thereunder, or immediate family member of the director, that existed at any time during the two most recently completed calendar years, with any of the persons specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20. Relationships include:

(i) Payments for property or services to or from any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(ii) Provision of legal services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20;

(iii) Provision of investment banking services to any person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20, other than as a participating underwriter in a syndicate; and

(iv) Any consulting or other relationship that is substantially similar in nature and scope to the relationships listed in paragraphs (j)(i) through (j)(iii) of this Item 20.

*Instructions:*

1. Include the name of each director or immediate family member whose relationship is described and the nature of the circumstances by reason of which the relationship is required to be described.

2. State the nature of the relationship and the amount of business conducted between the director or immediate family member and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 as a result of the relationship during the two most recently completed calendar years.

3. In computing the amount involved in a relationship, include all periodic payments in the case of any agreement providing for periodic payments.

4. Disclose indirect, as well as direct, relationships. A person who has a position or relationship with, or interest in, a company that has a relationship with one of the persons listed in paragraphs (i) through (viii) of paragraph (i) of this Item 20 may have an indirect relationship by reason of the position, relationship, or interest.

5. In determining whether the amount involved in a relationship exceeds $120,000, amounts involved in a relationship of the director should be aggregated with those of his immediate family members.

6. In the case of an indirect interest, identify the company with which a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 has a relationship; the name of the director or immediate family member affiliated with the company and the nature of the affiliation; and the amount of business conducted between the company and the person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 during the two most recently completed calendar years.

7. In calculating payments for property and services for purposes of paragraph (j)(i) of this Item 20, the following may be excluded:

(a) Payments where the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority; or

(b) Payments that arise solely from the ownership of securities of a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received.

8. No information need be given as to any routine, retail relationship. For example, the Registrant need not disclose that a director has a credit card, bank or brokerage account, residential mortgage, or insurance policy with a person specified in paragraphs (i) through (viii) of paragraph (i) of this Item 20 unless the director is accorded special treatment.

(k) If an officer of the Insurance Company or an investment adviser or principal underwriter of the Registrant, or an officer of a person directly or indirectly controlling, con-

trolled by, or under common control with the Insurance Company or an investment adviser or principal underwriter of the Registrant, served during the two most recently completed calendar years, on the board of directors of a company where a director of the Registrant who is not an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a-2(a)(19)) and the rules thereunder, or immediate family member of the director, was during the two most recently completed calendar years, an officer, identify:

(i) The company;

(ii) The individual who serves or has served as a director of the company and the period of service as director;

(iii) The Insurance Company, investment adviser, or principal underwriter or person controlling, controlled by, or under common control with the Insurance Company, investment adviser, or principal underwriter where the individual named in paragraph (k)(ii) of this Item 20 holds or held office and the office held; and

(iv) The director of the Registrant or immediate family member who is or was an officer of the company; the office held; and the period of holding the office.

(l) Provide the following information for all directors of the Registrant, all members of the advisory board of the Registrant, and for each of the three highest paid officers or any affiliated person of the Registrant with aggregate compensation from the Registrant for the most recently completed fiscal year in excess of $60,000 ("Compensated Persons").

(i) Furnish the information required by the following table:

**COMPENSATION TABLE**

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| Name of Person, Position | Aggregate Compensation From Registrant | Pension or Retirement Benefits Accrued as Part of Fund Expenses | Estimated Annual Benefits Upon Retirement | Total Compensation From Registrant and Fund Complex Paid to Directors |

*Instructions.*

1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Registrant, compensation is amounts received for service as a director.

2. If the Registrant has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)] or otherwise for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Registrant, any of its subsidiaries, or any other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and all other boards of related Funds in a Fund Complex specifying the number of such other Funds.

7. No information is required to be provided concerning the officers of the sponsoring insurance company who are not directly or indirectly engaged in activities related to the separate account.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (1) pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under the plan, the length of service or vesting period required by the plan, the retirement age or other event which gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Registrant.

(m) Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 of the 1940 Act [17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1-202-942-8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these codes of ethics

may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549-0102.

*Instruction:* A Registrant that is not required to adopt a code of ethics under Rule 17J-1 under the 1940 Act [17CFR 270.17j.1] is not required to respond to this item.

(n) Unless the Registrant invests exclusively in non-voting securities, describe the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities, including the procedures that the Registrant uses when a vote presents a conflict between the interests of the Registrant's contractowners, on the one hand, and those of the Registrant's investment adviser, principal underwriter or any affiliated person (as defined in Section 2(a)(3) of the 1940 Act (15 U.S.C. 80a-2(a)(3) and the rules thereunder) of the Registrant, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the Registrant's investment adviser, or any other third party, that the Registrant uses, or that are used on the Registrant's behalf, to determine how to vote proxies relating to portfolio securities. Also, state that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's website at a specified Internet address; or both; and (2) on the Commission's website at http://www.sec.gov.

*Instructions:*

1. A Registrant may satisfy the requirement to provide a description of the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities by including a copy of the policies and procedures themselves.

2. If a Registrant discloses that the Registrant's proxy voting record is available by calling a toll-free (or collect) telephone number, and the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for this information, the Registrant (or financial intermediary) must send the information disclosed in the Registrant's most recently filed report on Form N-PX, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

3. If a Registrant discloses that the Registrant's proxy voting record is available on or through its website, the Registrant must make available free of charge the information disclosed in the Registrant's most recently filed report on Form N-PX on or through its website as soon as reasonably practicable after filing the report with the Commission. The information disclosed in the Registrant's most recently filed report on Form N-PX must remain available on or through the Registrant's website for as long as the Registrant remains subject to the requirements of Rule 30b1-4 under the 1940 Act (17 CFR

270.30b1-4) and discloses that the Registrant's proxy voting record is available on or through its website.

(o) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Registrant at the time that the disclosure is made, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

**Item 21. Investment Advisory and Other Services**

(a) Give the following information about each investment adviser:

(i) the names of all controlling persons of the investment adviser and the basis of such control; and if significant, the business history of any organization that controls the adviser;

(ii) the name of any affiliated person of the Registrant or the Insurance Company who is also an affiliated person of the investment adviser and a list of all capacities in which the person named is affiliated with the Registrant or the Insurance Company and with the investment adviser; and

*Instruction:*

If an affiliated person of the Registrant or the Insurance Company either alone or together with others is a controlling person of the investment adviser, Registrant must disclose such fact but need not supply the specific amount or percentage of the outstanding voting securities of the investment adviser which is owned by the controlling person.

(iii) the method of computing the advisory fee payable by the Registrant including:

(A) the total dollar amounts paid to the adviser by the Registrant or its Insurance Company under the investment advisory contract for the last three fiscal years;

(B) if applicable, any credits which reduced the advisory fee for any of the last three fiscal years; and

(C) any expense limitation provision.

*Instructions:*

1. If the advisory fee payable by the Registrant or its Insurance Company varies depending on the Registrant's investment performance in relation to some standard, set forth the standard along with a fee schedule in tabular form. Registrant may include examples showing the fees the adviser would earn at various levels of performance, but such examples must include calculations showing the maximum and minimum fee percentages that could be earned under the contract.

2. State each type of credit or offset separately.

3. Describe only the most restrictive expense limitation provision.

4. If Registrant is organized as a "series" account the response to paragraph (a)(iii) of this Item should describe the methods of allocation and payment of advisory fees for each class or series.

(b) Describe all services performed for or on behalf of the Registrant, which are supplied or paid for wholly or substantially by the investment adviser in connection with the investment advisory contract.

(c) Describe all fees, expenses, and costs of the Registrant that are to be paid by persons other than the investment adviser, the Insurance Company, or the Registrant, and identify such persons.

(d) Give a summary of any contract for the provision of management-related services to the Registrant, which may be of interest to a purchaser of Registrant's securities, unless the contract is described in response to some other item of this form. Show the parties to the contract and the total dollars paid and by whom, for the past three years. If the services under any management-related service contract are paid for by a deduction from contract-owner accounts and if the Registrant or Insurance Company has changed the service provider in the past year, state the reasons for the change.

*Instructions:*

1. A contract for "management-related services" includes any agreement whereby another person agrees to keep, prepare, or file such accounts, books, records, or other documents as the Registrant may be required to keep under federal or state law, or to provide any similar services with respect to the daily operations of the Registrant, but does not include the following: (i) any contract to provide investment advice to the Registrant; (ii) any agreement to act as custodian or agent to administer purchases and redemptions under the contracts for the Registrant; or (iii) bona fide contracts for outside legal or auditing services, or bona fide contracts for personal employment entered into in the ordinary course of business.

2. Information need not be given about the service of mailing proxies or periodic reports of the Registrant.

3. In summarizing a management-related service contract, include the name of the person providing the service; any direct or indirect relationships between such person and the Registrant, its investment adviser, its Insurance Company, or its principal underwriter; the nature of the services provided; and the basis of the compensation paid in the last three fiscal years.

(e) If any person (other than a bona fide member of the board of managers, officer, member of an advisory board, or employee of the Registrant, as such, or a person named as an

investment adviser in response to paragraph (a) above), pursuant to any understanding, whether formal or informal, regularly furnishes advice to the Registrant or to the investment adviser of the Registrant about the desirability of the Registrant's investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property should be purchased or sold by the Registrant, and receives direct or indirect remuneration, give the following information:

(i) the name of such person;

(ii) a description of the nature of the arrangement, and the advice or information given; and

(iii) any remuneration (including, for example, participation, directly or indirectly, in commissions or other compensation paid in connection with transactions in Registrant's portfolio securities) paid for such advice or information, and a statement of how and by whom such remuneration was paid for the last three fiscal years.

*Instruction:*

Do not describe any of the following: (i) persons whose advice was given solely through uniform publications distributed to subscribers; (ii) persons who gave only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities by the Registrant; (iii) a company which is excluded from the definition of "investment adviser" of an investment company by reason of Section 2(a)(20)(iii) of the 1940 Act [15 U.S.C. 80a-2(a)(20)(iii)]; (iv) any person the character and amount of whose compensation for such service must be approved by a court; or (v) such other persons as the Commission has by rules and regulations or order determined not to be an "investment adviser" of an investment company.

(f) Furnish a summary of the significant aspects of any plan under which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to implementation of the plan. The summary should include, among other information, the following:

(i) The manner in which amounts paid by the Registrant under the plan during the last fiscal year were spent on:

(A) advertising,

(B) printing and mailing of prospectuses to other than current shareholders,

(C) compensation to underwriters,

(D) compensation to dealers,

(E) compensation to sales personnel, and

(F) other (specify).

(ii) Whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(A) any interested person of the Registrant; or

(B) any director of the Registrant who is not an interested person of the Registrant; and

(iii) The benefits, if any, to the Registrant resulting from the plan.

*Instruction:*

In responding to this Item, Registrants should take note of the requirements of Rule 12b-1 under the 1940 Act [17 CFR 270.12b-1].

(g) Give the name and principal business address of the Registrant's custodian and independent public accountant and provide a general description of the services they perform.

(h) If the portfolio securities of the Registrant are held by a person other than the Insurance Company, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.

(i) If an affiliated person of the Registrant or an affiliated person of such an affiliated person acts as administrative or servicing agent for the Registrant, describe the services performed by such person and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction: Information already provided in response to prior items need not be repeated.

(j) Securities Lending.

(i) Provide the following dollar amounts of income and fees/compensation related to the securities lending activities of each series of the Registrant during its most recent fiscal year:

(A) Gross income from securities lending activities;

(B) All fees and/or compensation for each of the following securities lending activities and related services: Any share of revenue generated by the securities lending program paid to the securities lending agent(s) ("revenue split"); fees paid for cash collateral management services (including fees deducted from a pooled cash collateral reinvestment vehicle) that are not included in the revenue split; administrative fees that are not included in the revenue split; fees for indemnification that are not included in the revenue split; rebates paid to borrowers; and any other fees relating to the securities lending program that are not included in the revenue split, including a description of those other fees;

(C) The aggregate fees/compensation disclosed pursuant to paragraph (B); and

(D) Net income from securities lending activities (i.e., the dollar amount in paragraph (A) minus the dollar amount in paragraph (C)).

**Instruction.**

If a fee for a service is included in the revenue split, state that the fee is "included in the revenue split."

(ii) Describe the services provided to the series of the Registrant by the securities lending agent in the series of the Registrant's most recent fiscal year.

*Instruction:*

Information already provided in response to prior items need not be repeated.

**Item 22. Portfolio Managers**

(a) If a Portfolio Manager required to be identified in response to Item 6(e) is primarily responsible for the day-to-day management of the portfolio of any other account, provide the following information:

(i) The Portfolio Manager's name;

(ii) The number of other accounts managed within each of the following categories and the total assets in the accounts managed within each category:

(A) Registered investment companies;

(B) Other pooled investment vehicles; and

(C) Other accounts.

(iii) For each of the categories in paragraph (a)(ii) of this Item, the number of accounts and the total assets in the accounts with respect to which the advisory fee is based on the performance of the account; and

(iv) A description of any material conflicts of interest that may arise in connection with the Portfolio Manager's management of the Registrant's investments, on the one hand, and the investments of the other accounts included in response to paragraph (a)(ii) of this Item, on the other. This description would include, for example. material conflicts between the investment strategy of the Registrant and the investment strategy of other accounts managed by the Portfolio Manager and material conflicts in allocation of investment opportunities between the Registrant and other accounts managed by the Portfolio Manager.

*Instructions:*

1. Provide the information required by paragraph (a) of this Item as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial reg-

istration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. If a committee, team, or other group of persons that includes the Portfolio Manager is jointly and primarily responsible for the day-to-day management of the portfolio of an account, include the account in responding to paragraph (a) of this Item.

(b) Describe the structure of, and the method used to determine, the compensation of each Portfolio Manager required to be identified in response to Item 6(e). For each type of compensation (*e.g.*, salary, bonus, deferred compensation, retirement plans and arrangements), describe with specificity the criteria on which that type of compensation is based, for example, whether compensation is fixed, whether (and, if so, how) compensation is based on the Registrant's pre- or after-tax performance over a certain time period, and whether (and, if so, how) compensation is based on the value of assets held in the Registrant's portfolio. For example, if compensation is based solely or in part on performance, identify any benchmark used to measure performance and state the length of the period over which performance is measured.

*Instructions:*

1. Provide the information required by paragraph (b) of this Item as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Disclose the date as of which the information is provided.

2. Compensation includes, without limitation, salary, bonus, deferred compensation, and pension and retirement plans and arrangements, whether the compensation is cash or non-cash. Group life, health, hospitalization, medical reimbursement and pension and retirement plans and arrangements may be omitted, provided that they do not discriminate in scope, terms, or operation in favor of the Portfolio Manager or a group of employees that includes the Portfolio Manager and are available generally to all salaried employees. The value of compensation is not required to be disclosed under this Item.

3. Include a description of the structure of, and the method used to determine, any compensation received by the Portfolio Manager from the Registrant, the Registrant's investment adviser, or any other source with respect to management of the Registrant and any other accounts included in the response to paragraph (a)(ii) of this Item. This description must clearly disclose any differences between the method used to determine the Portfolio Manager's compensation with respect to the Registrant and other accounts, *e.g.*, if the Portfolio Manager receives part of an advisory fee that is based on performance with respect to some accounts but not the Registrant, this must be disclosed.

(c) For each Portfolio Manager required to be identified in response to Item 6(e), state the dollar range of equity securities in the Registrant beneficially owned by the Portfolio Manager using the following ranges: none, $1-$10,000, $10,001- $50,000, $50,001-$100,000, $100,001-$500,000, $500,001-$1,000,000, or over $1,000,000.

*Instructions:*

1. Provide the information required by paragraph (c) of this Item as of the end of the Registrant's most recently completed fiscal year, except that, in the case of an initial registration statement or an update to the Registrant's registration statement that discloses a new Portfolio Manager, information with respect to any newly identified Portfolio Manager must be provided as of the most recent practicable date. Specify the valuation date.

2. Determine "beneficial ownership" in accordance with rule 16a-1(a)(2) under the Exchange Act (17 CFR 240.16a-1(a)(2)).

**Item 23. Brokerage Allocation**

(a) Describe how transactions in portfolio securities are effected including a general statement about brokerage commissions and mark-ups on principal transactions and the aggregate amount of any brokerage commissions paid by the Registrant during the three most recent fiscal years. Explain any material increase in brokerage commissions paid by the Registrant during the most recent fiscal year as compared to the two prior fiscal years.

(b)(i) State the total dollar amount, if any, of brokerage commissions paid by the Registrant during the three most recent fiscal years to any broker which: (A) is an affiliated person of the Registrant; (B) is an affiliated person of an affiliated person of the Registrant; or (C) has an affiliated person that is an affiliated person of the Registrant, its Insurance Company, investment adviser, or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be identified in this Item.

(ii) State for each broker identified in response to paragraph (b)(i) of this Item:

(A) the percentage of Registrant's aggregate brokerage commissions paid to each broker during the most recent fiscal year and

(B) the percentage of Registrant's aggregate dollar amount of transactions involving the payment of commissions effected through such broker during the most recent fiscal year.

(iii) Where there is a material difference in the percentage of brokerage commissions paid to, and the percentage of transactions effected through, any broker identified in response to paragraph (b)(i) of this Item, state the reasons for such difference.

(c) Describe how brokers will be selected to effect securities transactions for Registrant and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered.

*Instructions:*

1. If the receipt of products or services other than brokerage or research services is a factor in the selection of brokers, specify such products and services.

2. If the receipt of research services is a factor in selecting brokers, identify the nature of such research services.

3. State whether persons acting on behalf of Registrant are authorized to pay a broker a commission in excess of that which another broker might have charged for the same transaction, because of the value of (a) brokerage or (b) research services provided by the broker.

4. If applicable, explain that research services furnished by brokers through whom Registrant effects securities transactions may be used by Registrant's investment adviser in servicing all of its accounts and that not all such services may be used by the investment adviser in connection with the Registrant; or, if other policies or practices are applicable to Registrant with respect to the allocation of research services provided by brokers such policies and practices should be explained.

(d) If, during the last fiscal year, Registrant, its Insurance Company, or its investment adviser, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed Registrant's brokerage transactions to a broker because of research services provided, state the amount of such transactions and related commissions.

(e) If the Registrant has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 under the 1940 Act [17 CFR § 270.10b-1], or their parents, identify those brokers or dealers and state the value of the Registrant's aggregate holdings of the securities of each subject issuer as of the close of the Registrant's most recent fiscal year.

*Instruction:*

The Registrant need only disclose information with respect to an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year. If the Registrant has issued more than one class or series of stock, the requested information must be disclosed for the class or series that has securities that are being registered.

**Item 24. Purchase and Pricing of Securities Being Offered**

(a) Describe the manner in which Registrant's securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

*Instruction:*

Address exchange privileges between sub-accounts, between the Registrant and other separate accounts, and between the Registrant and contracts offered through the Insurance Company's general account.

(b) Describe the method that will be used to determine the sales load on the variable annuity contracts offered by the Registrant.

*Instruction:*

Explain fully any difference in the price at which variable annuity contracts are offered to members of the public, as individuals and as groups, and the prices at which the contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Registrant, the Insurance Company, its adviser, or underwriter.

(c) Describe the method used to value the Registrants' assets if not described in the prospectus.

*Instructions:*

1. Describe the valuation procedure used to determine accumulation unit value.

2. If Registrant uses either penny-rounding pricing or amortized cost valuation, pursuant to either an order of exemption from the Commission or Rule 2a-7 under the 1940 Act [17 CFR 270.2a-7], describe the nature, extent and effect of any conditions under the exemption.

(d) Describe the way in which purchase payments are credited to the contract to the extent not described in the prospectus.

(e) If the Registrant has received an order of exemption from Section 18(f) of the 1940 Act [15 U.S.C. 80a-18(f)] from the Commission or has filed a notice of election pursuant to Rule 18f-1 under the Act [17 CFR 270.18f-1] which has not been withdrawn, fully describe the nature, extent, and effect of the exemptive relief in the Statement of Additional Information if the information is not in the prospectus.

(f) Describe any arrangements with any person to permit frequent transfers of contract value among sub-accounts of the Registrant, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements and any compensation or other consideration received by the Registrant, its investment adviser, the Insurance Company, or any other party pursuant to such arrangements.

*Instructions:*

1. The consideration required to be disclosed by Item 24(f) includes any agreement to maintain assets in the Registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the Insurance Company, or any affiliated person of the investment adviser or the Insurance Company.

2. If the Registrant has an arrangement to permit frequent transfers of contract value among sub-accounts of the Registrant by a group of individuals, such as the participants in a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), the Registrant may identify the group rather than identifying each individual group member.

## Appendix E

## Selected Items from Form N-5

### Item 1. Organization and Business

(a) Give the date of incorporation of the registrant and the name of the state or other authority under which it was incorporated.

(b) State whether the registrant proposes to operate as a diversified or non-diversified closed-end investment company.

*Instruction.*

The registrant may reserve freedom of action to change from a non-diversified to a diversified investment company.

(c) Describe the business done and intended to be done by the registrant, including the type or types of businesses to which loans are to be made, the kind of loans to be made to such businesses and whether the registrant intends to perform advisory services for other businesses.

### Item 2. Fundamental Policies of the Registrant

Describe the policy or proposed policy of the registrant with respect to each of the following types of activities, and outline the extent, if any, to which the registrant has engaged in such activities during its last three fiscal years.

(a) The issuance of senior securities including the issuance of subordinated debentures to the Small Business Administration.

(b) The borrowing of money.

(c) The underwriting of securities of other issuers.

(d) The concentration of investments in particular industries.

(e) The purchase and sale of real estate.

(f) The purchase and sale of commodities or commodity contracts.

(g) The making of loans to other persons.

(h) Any other policy which the registrant deems a matter of fundamental policy and elects to treat as such pursuant to Sections 8(b)(2) and 13(a)(3) of the Investment Company Act.

*Instructions.*

1. The registrant may reserve freedom of action with respect to any of the foregoing activities, but in such cases shall express definitively, in terms of a reasonable percentage

of assets [which are] to be devoted to the particular activity, the percentage ratio of indebtedness to capital stock, or otherwise, the maximum extent to which the registrant intends to engage therein. *See* Release No. 167 under the Investment Company Act.

2. For the purposes of (g) the purchase of a portion of an issue of publicly distributed bonds, debentures or other securities, whether or not the purchase was made upon the original issuance of the securities, is not to be considered the making of a loan by the registrant.

**Item 3. Policies with Respect to Security Investments**

Describe the policy of the registrant with respect to each of the following matters which is not described as a fundamental policy of the registrant under Item 2, indicating which of such policies may not be changed without stockholder action:

(a) The type of securities (for example, bonds, convertible debentures, preferred stocks, and common stocks) in which it may invest, indicating the proportion of the assets which may be invested in each such type of security.

(b) The percentage of assets which it may invest in the securities of any one issuer.

(c) The percentage of voting securities of any one issuer which it may acquire.

(d) Investments in companies for the purpose of exercising control or management.

(e) Investment in securities of other investment companies.

(f) The policy with respect to portfolio turnover, including the resale or conversion of portfolio securities.

(g) Any other investment policy not specified above or in Item 2, which is set forth in the registrant's charter, by-laws or prospectus.

(h) If the registrant has acquired during its most recent fiscal year or during the period of time since organization, whichever is shorter, securities of its regular brokers or dealers as defined in rule 10b-1 under the Investment Company Act of 1940 [17 CFR 270.10b-1], or their parents, identify those brokers or dealers, and state the value of the registrant's aggregate holdings of the securities of each subject issuer as of the close of the registrant's most recent fiscal year.

*Instruction.*

The registrant need only disclose information with respect to an issuer that derived more than 15% of its gross revenues from the business of a broker, a dealer, an underwriter, or an investment adviser during its most recent fiscal year. If the registrant has issued more than one class or series of stock, the requested information must be disclosed for the class or series that has securities that are being registered.

(i) Whether the registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 of the Investment Company Act of 1940

[17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the registrant. Also explain that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1-202-942-8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549-0102.

*Instruction:* A registrant that is not required to adopt a code of ethics under Rule 17j-1 under the 1940 Act [17 CFR 270.17j-1] is not required to respond to this item.

**Item 4. Ownership of Voting and Convertible Securities of Other Issuers**

Furnish the following information, in the tabular form indicated, as of a specified date within 90 days prior to the date of filing the registration statement:

(a) If the registrant owns, controls or holds with power to vote, 5% or more of the voting securities of any company, furnish the information required by the following table as to each such company:

| Name and Address of Company | Nature of its Principal Business | Title of Securities Owned, Controlled or Held by Registrant | Percentage of Class Owned, Controlled or Held by Registrant |
|---|---|---|---|

(b) If the registrant owns securities of any company which are convertible into voting securities of such company and if upon the conversion of all such securities owned by the registrant it would own 5% or more of the voting securities of such company, furnish the information required by the following table as to each such company:

| Name and Address of Company | Nature of its Principal Business | Title of Securities Owned, Controlled or Held by Registrant | Percentage of Voting Securities Now Owned | Percentage of Voting Securities Owned upon Conversion |
|---|---|---|---|---|

**Item 5. Special Tax Provisions Applicable to Registrant**

Describe briefly any special tax provision of State or Federal income tax laws applicable to the registrant as a small business investment company.

**Item 6. Pending Legal Proceedings**

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party.

Include the name of the court in which the proceedings are pending, the date instituted, and the principal parties thereto. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

**Item 7. Summary of Earnings**

Furnish in comparative columnar form a summary of earnings for the registrant for each of the last five fiscal years of the registrant (or for the life of the registrant and its immediate predecessors, if less) and for any period between the end of the latest of such fiscal years and the date of the latest balance sheet furnished, and for the corresponding period of the preceding fiscal year. In connection with such summary, whenever necessary, reflect information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the prospectus.

*Instructions.*

1. Include comparable data for any additional fiscal years necessary to keep the summary from being misleading. Subject to appropriate variation to conform to the nature of the business or the purpose of the offering, the following items shall be included: net sales or operating revenues; cost of goods sold or operating expenses (or gross profit); interest charges; income taxes, net income; and special items. The summary shall reflect the retroactive adjustment of any material item affecting the comparability of the results. *See* Item 22(b).

2. If common stock is being registered, the summary shall be prepared to present earnings applicable to common stock. Per share earnings and dividends declared for each period of the summary shall also be included unless inappropriate.

3. In connection with any unaudited summary for an interim period or periods between the end of the last fiscal year and the balance sheet date, and any comparable unaudited prior period, a statement shall be made that all adjustments necessary to present a fair statement of the results for such interim period or periods, have been included. In addition, there shall be furnished in such cases, as supplemental information but not as a part of the registration statement, a letter describing in detail the nature and amount of any adjustments, other than normal recurring accruals, entering into the determination of the results shown.

4. If long term debt or preferred stock is being registered, there shall be shown the annual interest requirements on such long term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated.

* * * * *

**Item 9. Persons Owning Equity Security of Registrant**

Furnish the following information as to all equity securities of the registrant owned by the following persons as of a specified date within 90 days prior to the date of filing:

| (1)<br>Name and Address | (2)<br>Title of Class | (3)<br>Type of Ownership | (4)<br>Amount Owned | (5)<br>Percent of Class |
|---|---|---|---|---|

(a) Each person who directly or indirectly owns, controls or holds with power to vote, 5 percent or more of the outstanding voting securities of the registrant.

(b) Each person who owns of record or is known by the registrant to own beneficially more than 10 percent of any other class of equity securities of the registrant.

(c) All officers, directors and members of the advisory board of the registrant as a group, without naming them.

Instructions.

1. Indicate in the third column whether the securities are owned both of record and beneficially, of record only, or beneficially only, and show separately in the fourth and fifth columns the respective amounts and percentages owned in each such manner.

2. The percentages are to be calculated on the basis of the amount of outstanding securities of the class. In any case where the amount owned by all officers, directors and members of the advisory board as a group is less than 1 percent of the class, a statement to that effect will suffice as an answer to paragraph (c).

**Item 10. Number of Holders of Equity Securities**

State, in substantially the tabular form indicated, as of a specified date within 90 days prior to the date of filing, the approximate number of holders of record of each class of equity securities of the registrant.

| (1)<br>Title of Class | (2)<br>Number of Holders |
|---|---|

**Item 11. Directors and Executive Officers**

Furnish the information required by the following table as to all directors and executive officers of the registrant.

| Name and Address | Positions and Offices with Registrant | Principal Occupations During Past Five Years |
|---|---|---|

*Instruction.*

For the purposes of this item, the term "Executive Officer" means the president, vice-president, secretary and treasurer, and any other officer who performs policy-making functions for the registrant.

**Item 12. Members of Advisory Board of Registrant**

If the registrant has an advisory board, furnish the information specified in the following table as to each member of such board.

| (1)<br>Name and Address | (2)<br>Positions and Offices Held with Other Affiliated Persons |
|---|---|

*Instruction.*

List under Column (2) the name of each affiliated person of the registrant with which any member of the advisory board is connected in any capacity and show all positions and offices held with such person.

**Item 13. Remuneration of Directors, Officers and Members of Advisory Board**

(a) Furnish the information required by the following table as to all remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year to the following persons for services in all capacities:

(1) Each director, each of the three highest-paid officers, and each member of the advisory board of the registrant, whose aggregate remuneration exceeded $30,000, naming each such person.

(2) All directors, officers and members of the advisory board of the registrant as a group, without naming them.

| (A)<br>Name of Individual or Identity of Group | (B)<br>Capacities in Which Remuneration was Received | (C)<br>Aggregate Remuneration |
|---|---|---|

*Instructions.*

1. This item applies to any person who was a director, officer or member of the advisory board of the registrant at any time during the fiscal year. However, information need not be given for any portion of the year during which any such person did not occupy one of the positions indicated.

2. The information is to be given on an accrual basis if practicable. The tables required by this paragraph and paragraph (b) may be combined if the registrant so desires.

3. Do not include remuneration paid to a partnership in which any director, officer or member of the advisory board was a partner, but *see* Item 18.

4. If the registrant has not completed a full fiscal year since its organization, the information shall be given for the current fiscal year, estimating future payments if necessary.

(b) Furnish the following information, in substantially the tabular form indicated below, as to all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the registrant or any of its subsidiaries to each person named in answer to paragraph (a)(1) of this item:

| (A)<br>Name of Individual | (B)<br>Amount Set Aside or Accrued During Issuer's Last Fiscal Year | (C)<br>Estimated Annual Benefits Upon Retirement |
|---|---|---|

*Instructions.*

1. Column (B) need not be answered with respect to payments computed on an actuarial basis pursuant to any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

2. The information called for by Column (C) may be given in a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

3. In the case of any plan (other than those specified in instruction 1) where the amount set aside each year depends upon the amount of earnings of the issuer or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated annual benefits upon retirement, there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

* * * * *

**Item 15. Custodians of Portfolio Securities**

(a) State the name, principal business address and, if other than a commercial bank or trust company, the nature of the business of each person holding portfolio securities of the registrant as custodian.

* * * * *

**Item 16. Investment Advisers**

Furnish the following information as to each investment adviser of the registrant:

(a) Name and principal business address.

(b) Name and address of any affiliated person of the registrant who is also an affiliated person of the investment adviser and the nature of the affiliation.

(c) A brief description of the investment advisory contract with the registrant, including the basis for determining the remuneration of the investment adviser.

**Item 19. Capital Stock**

State the title of each class of capital stock of the registrant and furnish the following information:

(a) Outline briefly (1) dividend rights; (2) voting rights; (3) liquidation rights; (4) pre-emptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions; and (8) liability to further calls or to assessment by the registrant.

(b) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(c) Outline briefly any restriction on the repurchase or redemption of shares by the registrant while there is an arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

*Instructions.*

1. Only a brief summary of the pertinent provisions from an investment standpoint is required. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the governing instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by any class of securities being described are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities being described.

**Item 20. Long-Term Debt**

State the title of each class of long-term debt of the registrant and outline such of the following provisions as are relevant.

(a) Provisions with respect to interest, maturity, conversion, redemption, amortization, sinking fund or retirement;

(b) Provisions with respect to the kind and priority of any lien, restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties;

(c) Provisions permitting or restricting the issuance of additional securities, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions;

(d) The name of the trustee and the nature of any material relationship with the registrant or any of its affiliates, the percentage of securities of the class necessary to require the trustee to take action, and what indemnifications the trustee may require before proceeding to enforce the lien.

*Instruction.*

The instructions to Item 19 shall also apply to this item.

**Item 21. Other Securities**

If the registrant has any authorized securities other than capital stock or long-term debt, outline briefly the rights evidenced thereby. If the securities are subscription warrants or rights, state the title and amount of securities called for, the period during which and the prices at which the warrants or rights are exercisable.

*Instruction.*

The instructions to Item 19 shall also apply to this item.

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# MERGERS OF INVESTMENT COMPANIES

10th EDITION

STRADLEY RONON
ATTORNEYS AT LAW

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