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Securities and Exchange Commission

17 CFR Parts 239, 249, 270, and 274

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies; Final Rule

17 CFR Part 275

Proxy Voting by Investment Advisers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 249, 270, and 274

[Release Nos. 33–8188, 34–47304, IC–25922; File No. S7–36–02]

RIN 3235–AI64

Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments on Paperwork Reduction Act burden estimate.

SUMMARY: The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to require registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities they hold. These amendments require registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. The amendments also require registered management investment companies to file with the Commission and to make available to shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities.

DATES: *Effective Date:* April 14, 2003.

Compliance Dates: See Section III of this release for information on compliance dates.

Comment Date: Comments regarding the ''collection of information'' requirements, within the meaning of the Paperwork Reduction Act of 1995, of Form N–PX should be received by March 14, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–36–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will also be posted on the Commission's Internet site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Attorney, Christopher P. Kaiser, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting new rule 30b1–4 [17 CFR 270.30b1–4] and new Form N–PX [17 CFR 274.130] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''); amendments to Forms N–1A [17 CFR 239.15A; 274.11A], N–2 [17 CFR 239.14; 274.11a–1], and N–3 [17 CFR 239.17a; 17 CFR 274.11b], the registration forms used by management investment companies to register under the Investment Company Act and to offer their securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''); and amendments to Form N–CSR [17 CFR 249.331; 17 CFR 274.128],[2] the form to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[3]

Executive Summary

We are adopting rule and form amendments that:

- Require a management investment company registered under the Investment Company Act of 1940 (''fund'') to disclose in its registration statement (and, in the case of a closed-end fund, Form N–CSR) the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities; and
- Require a fund to file with the Commission and to make available to its shareholders, either on its Web site or upon request, its record of how it voted proxies relating to portfolio securities. A fund will be required to disclose in its annual and semi-annual reports to shareholders and in its registration statement the methods by which shareholders may obtain information about proxy voting.[4]

In a companion release, we are also adopting a new rule and rule amendments under the Investment Advisers Act of 1940 that will require a registered investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, to disclose to clients how they may obtain information on how the adviser voted their proxies, and to maintain certain records relating to proxy voting.[5]

I. Introduction and Background

As of September 2002, mutual funds[6] held $2.0 trillion in publicly traded U.S. corporate equity, representing approximately 18% of all publicly traded U.S. corporate equity.[7] This represents a dramatic increase from only 7.4% at the end of 1992.[8] Millions of individual American investors, in turn, hold shares of equity mutual funds, relying on these funds—and the value of the corporate securities in which they invest—to fund their retirements, their childrens' educations, and their other basic financial needs.[9] Yet, despite the enormous influence of mutual funds in the capital markets and their huge

[1] We do not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[2] *See* Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Form N–CSR).

[3] Pub. L. 107–204, § 302, 116 Stat. 745 (2002).

[4] *See* Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)] (''Proposing Release'').

[5] *See* Investment Advisers Act Release No. 2106 (Jan. 31, 2003).

[6] For simplicity, this release focuses on mutual funds (*i.e.*, open-end management investment companies). An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. The amendments, however, would also apply to registered closed-end management investment companies and insurance company separate accounts organized as management investment companies that offer variable annuity contracts.

[7] *See* Board of Governors of the Federal Reserve System, Flow of Funds Accounts of the United States: Flows and Outstandings, Third Quarter 2002, at 90 (2002) [hereinafter Flow of Funds Accounts] (estimating $2.005 trillion market value of mutual fund corporate equity holdings and $10.960 trillion market value of all corporate equity issues).

[8] Securities Industry Association, Securities Industry Fact Book 71 (2002).

[9] Investment Company Institute, Mutual Fund Fact Book 37 (42nd ed. 2002). Approximately 93 million individual investors hold shares of mutual funds. *Id.* Shares of equity mutual funds are held through 164.8 million shareholder accounts. *Id.* at 63. A single individual may hold mutual fund shares through multiple accounts.

impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities.[10] We believe that the time has come to increase the transparency of proxy voting by mutual funds. This increased transparency will enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which may have a dramatic impact on shareholder value.

Mutual funds are formed as corporations or business trusts under state law and, as in the case of other corporations and trusts, must be operated for the benefit of their shareholders.[11] Because a mutual fund is the beneficial owner of its portfolio securities, the fund's board of directors, acting on the fund's behalf, has the right and the obligation to vote proxies relating to the fund's portfolio securities. As a practical matter, however, the board typically delegates this function to the fund's investment adviser as part of the adviser's general management of fund assets, subject to the board's continuing oversight. The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of ''utmost good faith, and full and fair disclosure.''[12] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[13]

Traditionally, mutual funds have been viewed as largely passive investors, reluctant to challenge corporate management on issues such as corporate governance.[14] Funds have often followed the so-called ''Wall Street rule,'' according to which an investor should either vote as management recommends or, if dissatisfied with management, sell the stock.[15] In recent years, however, some funds, along with other institutional investors, have become more assertive in exercising their proxy voting responsibilities.[16] The increased assertiveness by mutual funds in the voting of proxies may have a number of causes. In some instances, funds have come to hold such large positions in a particular portfolio company that they cannot easily sell the company's stock if the company's management is performing poorly.[17] The investment policies of index funds typically do not permit them to sell poorly performing investments, and thus these funds may become active in corporate governance in order to maximize value for their shareholders.[18]

Recent corporate scandals have created renewed investor interest in issues of corporate governance and have underscored the need for mutual funds and other institutional investors to focus on corporate governance.[19] The increased equity holdings and accompanying voting power of mutual funds place them in a position to have enormous influence on corporate accountability. As major shareholders, mutual funds may play a vital role in monitoring the stewardship of the companies in which they invest.

Moreover, in some situations the interests of a mutual fund's shareholders may conflict with those of its investment adviser with respect to proxy voting.[20] This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund.[21] In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests.

Yet, in spite of the substantial institutional voting power held by mutual funds, the increasing importance of the exercise of that power to fund shareholders, and the potential for conflicts of interest with respect to the exercise of fund proxy voting power, limited information is available regarding how funds vote their proxies. At present, the Commission's rules do not require mutual funds to disclose either their proxy voting policies and procedures or their proxy voting records.[22] Several mutual fund complexes voluntarily provide

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[10] *See* John Wasik, *Speak Loudly—Or Lose Your Big Stick,* The Financial Times, July 24, 2002, at 26 (only eight retail mutual fund groups openly disclose how they vote on proxies). We have previously prepared reports commenting on the role of institutional investors in the corporate accountability process and their impact on portfolio companies. *See* Division of Corporation Finance, SEC, Staff Report on Corporate Accountability (Sept. 4, 1980) (printed for the use of Senate Comm. on Banking, Housing and Urban Affairs, 96th Cong., 2d Sess.) [hereinafter SEC, Staff Report on Corporate Accountability]; SEC, Institutional Investor Study Report (Mar. 10, 1971) (printed for the use of House Comm. on Interstate and Foreign Commerce, 92nd Cong., 1st Sess.) [hereinafter SEC, Institutional Investor Study Report].

[11] *See generally* James M. Storey & Thomas M. Clyde, Mutual Fund Law Handbook § 7.2 (1998); Allan S. Mostoff & Olivia P. Adler, *Organizing an Investment Company—Structural Considerations* § 2.4 *in* The Investment Company Regulation Deskbook (Amy L. Goodman ed., 1997).

[12] *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[13] *See* Investment Advisers Act Release No. 2106, *supra* note 5. See also SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

[14] *See, e.g.*, SEC, Staff Report on Corporate Accountability, *supra* note 10, at 404 (investment managers have routinely supported management slates of director nominees); Alan R. Palmiter, *Mutual Fund Voting of Portfolio Shares: Why Not Disclose?*, 23 Cardozo L. Rev. 1419, 1430–31 (2002) (discussing mutual fund passivity in corporate governance). *See generally* John C. Coffee, Jr., *The SEC and The Institutional Investor: A Half-Time Report*, 15 Cardozo L. Rev. 837 (1994) (institutional investors have historically been passive investors); Bernard S. Black, *Shareholder Passivity Reexamined*, 89 Mich. L. Rev. 520 (1990) (shareholder voting has historically been passive).

[15] *See* SEC, Staff Report on Corporate Accountability, *supra* note 10, at 392 (describing ''Wall Street Rule'').

[16] *See, e.g.*, Aaron Lucchetti, *A Mutual-Fund Giant Is Stalking Excessive Pay*, Wall Street Journal, June 12, 2002, at C1 (Fidelity has voted against management recommendations involving stock-option plans); Kathleen Day, *Prodding For Disclosure of Funds' Proxy Votes*, Washington Post, Apr. 8, 2001, at H1 (Domini Social Equity Fund voted against management proposal to issue additional stock options for directors).

[17] *See* Palmiter, *supra* note 14, at 1435–36 (as holdings have increased, mutual funds have realized that they cannot easily sell blocks of poorly performing stock).

[18] *See* Kathleen Pender, *The Influence of Indexing on the Markets*, San Francisco Chronicle, June 23, 2002, at G1 (some index funds are more likely to vote proxies because they generally cannot sell portfolio securities consistent with their investment policies).

[19] *See, e.g.*, Josh Friedman, *Vanguard to Turn More Activist in Proxy Voting*, Los Angeles Times, Aug. 22, 2002, at B3 (Vanguard imposing stricter corporate governance guidelines in light of recent events); Tom Hamburger, *Union Targets Corporate Change,* Wall Street Journal, July 30, 2002, at A2 (workers should use pension funds and votes to compel changes in corporate behavior); Beth Healy, *Big Investors Assuming a More Activist Stance*, Boston Globe, July 11, 2002, at C1 (big investors say they are taking a more activist stance after financial scandals at Enron, Global Crossing, and WorldCom); Russ Wiles, *Funds May Have More to Say on Governance*, Chicago Sun-Times, June 3, 2002, at F53 (investors taking a closer look at corporate governance issues as a result of Enron).

[20] *See, e.g.*, Aaron Bernstein & Geoffrey Smith, *Can You Trust Your Fund Company?*, BusinessWeek Online, Aug. 8, 2002 (AFL–CIO argues that conflicts of interest lead mutual funds to vote with management).

[21] For additional examples of potential conflicts of interest involving investment advisers, *See* Investment Advisers Act Release No. 2106, *supra* note 5, at Section I., ''Background.''

[22] In general, investment companies are organized either as business trusts in Delaware or Massachusetts, or as corporations in Maryland. The applicable state statutes do not specifically permit shareholders to inspect books and records relating to proxy voting by funds with respect to portfolio securities. *See* Del. Code Ann. tit. 12, § 3801–3824 (2001); Mass. Gen. Laws. Ann. ch. 182, § 1–14 (2002); Md. Code Ann., Corporations § 2–512 (2001).

information to investors, often on their Web sites, about the policies and procedures that they use to determine how to vote proxies and, in some cases, their actual proxy voting decisions.[23] The Internet provides a medium for these funds to make information about their proxy voting available to shareholders quickly and in a cost-effective manner. We applaud these voluntary efforts of mutual funds to disclose proxy voting information to shareholders.

We believe, however, that the time has now arrived for the Commission to require mutual funds to disclose their proxy voting policies and procedures, and their actual voting records. Investors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf. Last September, we proposed amendments that would require mutual funds and other registered management investment companies to provide disclosure about how they vote proxies relating to portfolio securities that they hold (''Proposing Release'').[24] Our proposals resulted in an extraordinary level of public interest and vigorous debate and over 8,000 comment letters.[25] Today we adopt these proposals, with modifications to address commenters' concerns.

Proxy voting decisions by funds can play an important role in maximizing the value of the funds' investments, thereby having an enormous impact on the financial livelihood of millions of Americans. Further, shedding light on mutual fund proxy voting could illuminate potential conflicts of interest and discourage voting that is inconsistent with fund shareholders' best interests. Finally, requiring greater transparency of proxy voting by funds may encourage funds to become more engaged in corporate governance of issuers held in their portfolios, which may benefit all investors and not just fund shareholders.

II. Discussion

The Proposing Release generated significant comment and public interest. Of the approximately 8,000 comment letters, the overwhelming majority supported the proposals and urged us to adopt the proposed amendments. Many commenters, including individual investors, fund groups that currently provide proxy voting information to their shareholders, labor unions, and pension and retirement plan trustees, supported the proposals, and in some cases commented that the proposals did not go far enough in requiring funds to provide proxy voting disclosure. Many fund industry members supported the proposed amendments regarding the disclosure of policies and procedures. However, most fund industry members opposed the proposed amendments that would require disclosure of a fund's complete proxy voting record and disclosure of votes that are inconsistent with fund policies and procedures.

The Commission is adopting the proposed amendments with the modifications described below that address some of the concerns expressed by commenters.

A. Disclosure of Policies and Procedures With Respect to Voting Proxies Relating to Portfolio Securities

The Commission is adopting, with one modification to address commenters' concerns, the requirement that mutual funds that invest in voting securities disclose in their statements of additional information (''SAIs'') the policies and procedures that they use to determine how to vote proxies relating to securities held in their portfolios.[26] We are also adopting the requirement that closed-end funds disclose their proxy voting policies and procedures annually on Form N–CSR.[27] This disclosure would include the procedures that a 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 an affiliated person of the fund, its investment adviser, or principal underwriter, on the other.[28] It also includes any policies and procedures of a 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. For example, if a fund delegates proxy voting decisions to its investment adviser and the adviser uses its own policies and procedures to vote the fund's proxies, disclosure of the adviser's policies and procedures is required. Or a fund's board may wish to adopt its adviser's policies and procedures, rather than designing its own.

We also are adopting, as proposed, the requirement that a fund disclose in its shareholder reports that a description of the fund's proxy voting policies and procedures is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://*

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[23] *See* Calvert Group, Ltd. <*www.calvertgroup.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Domini Social Investments LLC <*www.domini.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Fidelity Management & Research Company <*www.fidelity.com*> (visited January 14, 2003) (proxy voting policies); PAX World Management Corporation <*www.paxfund.com*> (visited January 14, 2003) (proxy voting policies and votes cast); Teachers Insurance and Annuity Association of America-College Retirement and Equities Fund <*www.tiaa-cref.org*> (visited January 14, 2003) (proxy voting policies); The Vanguard Group <*www.vanguard.com*> (visited January 14, 2003) (proxy voting policies).

[24] *See* Proposing Release, *supra* note 4. Prior to our rule proposal, we received three rulemaking petitions urging that we adopt rules requiring funds to disclose both the policies and guidelines followed by the funds in determining how to vote on proxy proposals and the record of actual proxy votes cast. *See* Rulemaking Petition by Domini Social Investments, LLC (Nov. 27, 2001); Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001); Rulemaking Petitions by the American Federation of Labor and Congress of Industrial Organizations (July 30, 2002 and Dec. 20, 2000). The rulemaking petitions are available for inspection and copying in File No. 4–439 in the Commission's Public Reference Room.

[25] *See, e.g.*, John J. Brennan and Edward C. Johnson 3d, *No Disclosure: The Feeling is Mutual*, Wall Street Journal, Jan. 14, 2003, at A14 (arguing that proxy voting disclosure would harm shareholders); Aaron Lucchetti, *SEC Proposal on Proxy Votes Finds Supporters in the House*, Wall Street Journal, Dec. 17, 2002, at C14 (reporting that House Financial Services Committee Chairman Michael G. Oxley and Capital Markets Subcommittee Chairman Richard H. Baker support the proxy voting disclosure proposal); John C. Bogle, *Mutual Fund Secrecy*, New York Times, Dec. 14, 2002, at A35 (arguing that fund agents should disclose proxy voting information); Gretchen Morgenson, *Wider Support Is Sought For Disclosing Mutual Fund Votes*, New York Times, Oct. 23, 2002, at C11 (explaining joint efforts of Pax World Funds, AFL–CIO, and Fund Democracy to urge investors to support the proposal, and discussing comments by industry participants); Kathleen Day, *SEC Wants Funds To Disclose Votes*, Washington Post, Sept. 20, 2002, at E3 (reporting comments on the proposal by disclosure advocates and opponents).

The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–36–02). Public comments submitted by electronic mail are also available on our Web site, *www.sec.gov*. Many of the comment letters that the Commission received commented on both the Proposing Release and a companion release proposing a new rule and rule amendments under the Investment Advisers Act of 1940 that we are also adopting today. *See* Investment Advisers Act Release No. 2106, *supra* note 5.

[26] Item 13(f) of Form N–1A; Item 18.16 of Form N–2; Item 20(o) of Form N–3. The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').

[27] Item 7 of Form N–CSR.

[28] *See* Investment Advisers Act Release No. 2106, *supra* note, at Section II.A.2.b. ''Resolving Conflicts of Interest'' (discussing need for investment adviser's policies and procedures to address how adviser resolves material conflicts of interest with its clients).

www.sec.gov.[29] A fund will be required to send this description of the fund's proxy voting policies and procedures within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[30]

Commenters generally supported the proposed disclosure requirements regarding proxy voting policies and procedures. A number of commenters, however, objected to certain aspects of the disclosure requirements. Some commenters recommended that we provide additional, more specific guidelines regarding the categories of disclosure that should be included in proxy voting policies and procedures. These commenters, which included many ''socially responsible'' fund groups,[31] argued that the absence of specific guidelines could create an incentive for funds to adopt as few policies and procedures as possible, thereby minimizing reporting and disclosure obligations.

We have determined not to prescribe more specific guidelines or requirements for the proxy voting policies and procedures that a fund must disclose in its SAI or Form N–CSR for closed-end funds. The intent of our proposal is to promote transparency with respect to proxy voting information, and not to mandate the content of a fund's policies or procedures. Therefore, we believe that funds should be allowed the flexibility to determine the content that would be appropriate for this disclosure.

We do expect, however, that funds' disclosure of their policies and procedures will include general policies and procedures, as well as policies with respect to voting on specific types of issues. The following are examples of general policies and procedures that some funds include in their proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- The extent to which the fund delegates its proxy voting decisions to its investment adviser or another third party, or relies on the recommendations of a third party;
- Policies and procedures relating to matters that may affect substantially the rights or privileges of the holders of securities to be voted; and
- Policies regarding the extent to which the fund will support or give weight to the views of management of a portfolio company.

The following are examples of specific types of issues that are covered by some funds' proxy voting policies and procedures and with respect to which disclosure would be appropriate:

- Corporate governance matters, including changes in the state of incorporation, mergers and other corporate restructurings, and anti-takeover provisions such as staggered boards, poison pills, and supermajority provisions;
- Changes to capital structure, including increases and decreases of capital and preferred stock issuance;
- Stock option plans and other management compensation issues; and
- Social and corporate responsibility issues.

We are modifying our proposal in one respect, however, to clarify that a fund may satisfy the requirements for a description of its policies and procedures by including a copy of the policies and procedures themselves.[32] A number of commenters recommended that we streamline the disclosure of policies and procedures that would be required in the SAI. Several of these commenters were fund groups that noted that they have funds with multiple sub-advisers, each of which uses its own proxy voting policies and procedures to vote the fund's proxies. Because the proposed rules would require the fund to include a description of each such sub-adviser's policies and procedures in the fund's SAI, commenters argued, the requirements would add lengthy disclosure to the SAI. Further, because different sub-advisers for a single fund could have policies that vary with respect to a particular issue, this disclosure could confuse investors. These commenters argued that disclosure of policies and procedures was not necessary or appropriate given the lack of genuine shareholder interest in the information.

We have determined that it would not be appropriate to modify the proposal to allow a fund to reduce or eliminate the disclosure regarding its proxy voting policies and procedures. Shareholders have a right to know the policies and procedures that are being used by a fund to vote proxies on their behalf. To the extent that multiple policies are being used by a single fund, shareholders should have access to information about all the policies that are in effect. In order to mitigate the burden of preparing descriptions of policies and procedures, however, we have modified our disclosure requirements to permit a fund to include the actual policies and procedures used to vote proxies in the SAI or N–CSR, rather than a description of the policies.

Some commenters argued that the SAI was not the appropriate location for disclosure of proxy voting policies and procedures because the SAI is not likely to reach a wide base of investors. These commenters argued that the policies and procedures should be required to be distributed to all investors, as part of the fund's prospectus, annual report, or in a separate mailing. We continue to believe, however, that the SAI is the most appropriate and cost-effective location for this disclosure. The disclosure will be readily accessible to shareholders because funds are required to provide an SAI promptly to any investor who requests one.[33] On the other hand, funds and their shareholders will not be forced to bear the costs for printing and mailing this information to every shareholder, without regard to their level of interest in this information.

B. Disclosure of Proxy Voting Record

The Commission is adopting, with modifications, amendments that will require each fund to file with the Commission its proxy voting record and make this record available to its shareholders. The Commission is not, however, adopting its proposal to require a fund to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures.

The proposal to require funds to disclose their proxy voting records generated strong and divergent views among commenters. A number of commenters, including an overwhelming number of individual investors, strongly supported the Commission's proposal to require a fund to disclose its complete proxy voting record. Many of these commenters stated that this disclosure would improve shareholders' ability to monitor funds' voting decisions on their behalf and that it would allow investors to make more informed decisions when choosing among funds.

[29] *See* Item 22(b)(7) and 22(c)(5) of Form N–1A; Instructions 4.g. & 5.e. to Item 23 of Form N–2; Instructions 4(vii) & 5(v) to Item 27(a) of Form N–3.

[30] Instructions to Items 22(b)(7) and 22(c)(5) of Form N–1A; Instruction 6.a. to Item 23 of Form N–2; Instruction 6(i) to Item 27(a) of Form N–3.

[31] ''Socially responsible'' funds use social and moral criteria as well as traditional investment criteria to select investments.

[32] Instruction 1 to Item 13(f) of Form N–1A; Instruction 1 to Item 18.16 of Form N–2; Instruction 1 to Item 20(o) of Form N–3; Instruction to Item 7 of Form N–CSR.

[33] Instruction 3 to Item 1(b)(1) of Form N–1A (requiring fund or financial intermediary through which shares of the fund may be purchased or sold to send the SAI, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery).

On the other hand, many commenters, including a large number of fund industry participants, strongly opposed any requirement for a fund to provide disclosure of its actual proxy votes cast. First, they argued that shareholders are not interested in this disclosure, with many fund groups claiming that they have received virtually no requests from their shareholders for proxy voting information. Second, they argued that the proposals would deny funds the ability to vote confidentially and subject funds to pressure from corporate management to influence proxy voting decisions, as well as to retaliatory actions by management, such as restricting access by portfolio managers to corporate personnel. Third, on a related point, commenters argued that mandatory disclosure of proxy votes would undermine their ability to change corporate governance practices of portfolio companies through ''behind the scenes'' private communications. Fourth, they argued that requiring funds to disclose their proxy votes publicly will subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which will detract from a fund's ability to concentrate on the management of its portfolio. Fifth, fund industry commenters argued that the required disclosure of proxy votes would undermine the role of fund boards of directors, including independent directors, in overseeing proxy voting and protecting fund shareholders against conflicts of interest. Some of these commenters suggested that rather than requiring disclosure of proxy votes, the Commission should mandate that fund directors approve proxy voting policies and procedures, including policies and procedures for addressing potential conflicts of interest, and should require reports to be provided to fund directors concerning actual proxy votes cast. Sixth, the commenters argued that the costs of collecting and disclosing the information in semi-annual reports on Form N–CSR would be substantial and would exceed any benefit to shareholders from the disclosure.

After careful consideration of these comments, we continue to believe that requiring funds to disclose their complete proxy voting records will benefit investors by improving transparency and enabling fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies. With respect to the specific arguments raised by commenters who opposed disclosure of proxy votes, we note first that the argument that investors are not interested in proxy voting disclosure is to some extent belied by the large number of favorable comments from individual investors that the proposal attracted. In addition, we note that a recent shareholder proposal seeking to require a major fund to disclose its proxy votes on social and environmental issues generated significant support from fund shareholders.[34] Further, regardless of whether all, or a majority of, investors are interested in proxy vote disclosure, we believe that fund shareholders who are interested in this information have a fundamental right to know how the fund has exercised its proxy votes on their behalf.

Second, while we are cognizant of concerns that disclosure will undermine funds' ability to vote confidentially and thereby lead to pressure on or retaliation against funds, we believe that this risk is not sufficient to outweigh shareholders' interests in knowing how their funds have voted their portfolio securities. In addition, as some proponents of the disclosure requirements argued, the principle of confidential voting is intended to protect shareholders from having their votes disclosed *prior* to a shareholder meeting, while the amendments that we are adopting would only require disclosure of votes two months or more *after* a shareholder meeting. We are also persuaded by other commenters who noted that a large majority of portfolio companies currently do not have confidential voting policies and that companies are often able to identify when and how a particularly large shareholder, such as a fund, has cast its votes.[35]

Third, with respect to the argument that the disclosure of a fund's proxy voting record will undermine the use of ''behind the scenes'' communications to change corporate governance practices, we note that disclosure by funds of their proxy votes is not inconsistent with these communications and will not force funds to disclose these communications. Further, we believe that requiring a fund to disclose its proxy voting record may actually encourage it to become more engaged in corporate governance matters involving issuers held in its portfolio, through ''behind the scenes'' communications as well as other means.

Fourth, with respect to the argument that proxy vote disclosure will ''politicize'' the process of proxy voting by funds to the detriment of fund shareholders, we believe that to the extent that greater disclosure may encourage and enable shareholders to express their views on their funds' proxy decisions, that is an appropriate development. We agree, however, that fund shareholders could be adversely affected if, in fact, disclosure of fund proxy votes results in significant politicization of the proxy voting process by non-shareholder interest groups and interference with funds' ability to change corporate governance practices through ''behind the scenes'' communications. Therefore, the Commission has asked the staff to monitor the effects of the disclosure and report back to the Commission on the operation of the rules, and whether there have been any unintended consequences as a result of the disclosure, no later than December 31, 2005.

Fifth, we disagree with the argument that proxy voting disclosure will undermine the authority of funds' boards of directors, and that we instead should adopt amendments to require that boards be more involved in the proxy voting process. Disclosure of proxy votes is not inconsistent with, and, in fact, will promote recognition by fund boards of their obligation to exercise their proxy voting responsibilities in a manner that is consistent with shareholders' interests. Further, we believe that the additional requirements with respect to fund boards that some commenters suggested that we adopt in lieu of proxy voting disclosure are unnecessary. A fund's board of directors, acting on the fund's behalf, already has the obligation to vote proxies relating to the fund's portfolio securities. Although the board typically delegates this function to the fund's investment adviser, the adviser remains subject to the board's continuing oversight. By increasing transparency of proxy voting, the amendments will work in tandem with the existing obligation of fund boards.

Finally, with respect to arguments that the disclosure may impose excessive costs, we note that several fund groups that currently provide disclosure of their complete proxy

[34] *See CREF Participants Reject All Four Resolutions at 2002 Annual Meeting,* TIAA–CREF Press Release, Nov. 7, 2002 <*www.tiaa-cref.org*> (visited Jan. 14, 2002) (18.7% of shares voted in favor of shareholder proposal that College Retirement Equities Fund (CREF) disclose how it votes proxies that involve social and environmental issues).

[35] *See* Timothy M. Hunt, *IRRC Corporate Governance Service 2002 Background Report F,* Background Reports (IRRC) at 7, 10 (Jan. 2002) (noting that 26.9% of the S&P 500 companies have confidential voting procedures, with smaller percentages at smaller companies, and that use of street names often does not protect the identity of shareholders).

voting records to their shareholders commented that although there are start-up costs for compliance systems, this cost decreases over time, and that the overall costs of the disclosure are minimal. We find these arguments made by funds that are providing this disclosure to be particularly persuasive and continue to believe that the costs of disclosure are reasonable. We also note that by requiring disclosure of the proxy voting record in filings with the Commission, with additional disclosure in the fund's SAI and annual and semi-annual reports to shareholders about how investors may obtain this voting record, we have tailored the disclosure requirement to allow those investors who are interested in this disclosure to access the information without imposing undue cost burdens. In addition, as discussed below, we have modified our proposals in order to further reduce the costs associated with this disclosure.[36]

Disclosure of Complete Proxy Voting Record

The Commission is adopting new rule 30b1–4 under the Investment Company Act to require that a fund file its complete proxy voting record on an annual basis.[37] This rule will require a fund to file new Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Form N–PX will be a reporting form required under the Investment Company Act, and will be required to be signed by the fund, and on behalf of the fund by its principal executive officer or officers.[38]

We had proposed to require a fund to file its complete proxy voting record as part of its semi-annual reports on Form N–CSR, which will be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002.[39] One commenter argued that this means of disclosure would impose unnecessary costs and substantial administrative complexity.[40] The commenter noted that, under our proposed rules, fund complexes that have funds with staggered fiscal year ends would be required to file reports on Form N–CSR containing their proxy voting records as many as twelve times per year. We are persuaded that annual disclosure of a fund's proxy voting record is sufficient and that the filing does not need to be based on a fund's fiscal year end. Therefore, to reduce the burden of proxy vote disclosure, we are modifying our proposal to require that all funds file their voting records annually not later than August 31, for the twelve-month period ended June 30. This approach will have the advantages of making each fund's proxy voting record available within a relatively short period of time after the proxy voting season,[41] and of providing disclosure of all funds' proxy voting records over a uniform period of time.

Funds will be required to disclose the following information on Form N–PX for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the fund was entitled to vote:

- The name of the issuer of the portfolio security;
- The exchange ticker symbol of the portfolio security;
- The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;
- The shareholder meeting date;
- A brief identification of the matter voted on;
- Whether the matter was proposed by the issuer or by a security holder;
- Whether the fund cast its vote on the matter;
- How the fund cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and
- Whether the fund cast its vote for or against management.[42]

In response to commenters who noted that the exchange ticker symbol and CUSIP number may be difficult to obtain for certain portfolio securities, particularly foreign securities, we have added an instruction permitting a fund to omit this information if it is not available through reasonably practicable means.[43]

A fund also will be required to make its proxy voting record available to shareholders. However, we are modifying our proposal, in response to a comment, to allow a fund the flexibility to choose to make its proxy voting record available to shareholders either upon request or by making available an electronic version on or through the fund's Web site.[44] The proposed amendments would have required a fund to send the proxy voting record upon request.[45] This modification addresses concerns that the proposals would require funds with large numbers of holdings to produce lengthy proxy voting spreadsheets and to send them to investors who request them.[46]

As adopted, our amendments will require a fund to include in its annual and semi-annual reports to shareholders as well as its SAI a statement that information regarding how the fund voted proxies relating to portfolio securities during the most recent twelve-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 Web site at a specified Internet address; or both; and (2) on the Commission's Web site.[47] If a fund discloses that its proxy voting record is available by calling a toll-free (or collect) telephone number, it must send the information disclosed in the fund's most recently filed report on Form N–PX within three business days of receipt of a request for this information, by first-class mail or other

[36] *See* discussion *infra,* ''Disclosure of Complete Proxy Voting Record.''

[37] 17 CFR 270.30b1–4; General Instruction A and Item 1 to Form N–PX [17 CFR 274.129].

[38] General Instruction F.2.(a) to Form N–PX.

[39] Investment Company Act Release No. 25914 (Jan. 27, 2003) (adopting Form N–CSR).

[40] Memorandum from Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission re: Comments of Investment Company Institute (Jan. 15, 2003) (''ICI Memorandum'') (available in the comment file for File Nos. S7–36–02 and S7–38–02 and on the Commission's Web site, *www.sec.gov*).

[41] Based on information provided to the Commission staff by a third party that provides proxy voting services, the staff estimates that over 54% of shareholder meetings are held in the period from April through June of each year.

[42] Item 1 of Form N–PX.

[43] Instruction 2 to Item 1 of Form N–PX. *See* ICI Memorandum, *supra* note ; Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company (Dec. 6, 2002).

[44] In addition, the fund's proxy voting record will be publicly available on the EDGAR section of the Commission's Web site.

[45] Proposed Instructions to Items 13(f), 22(b)(7), and 22(c)(5) of Form N–1A; Proposed Instruction to Item 18.16 and proposed Instruction 6 to Item 23 of Form N–2; Proposed Instruction to Item 20(o) and proposed Instruction 6 to Item 27(a) of Form N–3.

[46] Letter of Matthew P. Fink, President, Investment Company Institute (Jan. 21, 2003).

[47] Items 13(f), 22(b)(8), and 22(c)(6) of Form N–1A; Item 18.16 and Instructions 4.h and 5.f to Item 23 of Form N–2; Item 20(o) and Instructions 4(viii) and 5(vi) to Item 27(a) of Form N–3.

If a fund is complying with this disclosure requirement, the inclusion of the fund's Web site address will not, by itself, include or incorporate by reference the information on the site into the fund's reports to shareholders or SAI, unless the fund otherwise acts to incorporate the information by reference. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58494 (Sept. 16, 2002)] (noting that if a company is complying with the requirement to disclose its Web site address in its annual report on Form 10–K, inclusion of its Web site address would not, by itself, include or incorporate by reference the information on the Web site into the filing).

means designed to ensure equally prompt delivery.[48]

If a fund discloses that its proxy voting record is available on or through its Web site, it 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 Web site as soon as reasonably practicable after filing the report with the Commission.[49] We interpret the ''as soon as reasonably practicable'' standard to mean that the information would be available, barring unforeseen circumstances, on the same day as filing. We could revisit this requirement if posting on the same day does not generally occur.[50] A fund would not be required to continue to make available on or through its Web site any information from reports on Form N–PX that precede the most recently filed report on Form N–PX.

These rules require that a fund's proxy voting record be publicly available through filings with us. They also require that this information be readily available to fund shareholders from the fund itself and that shareholders be apprised of how this information may be obtained. We believe that these rules strike an appropriate balance—ensuring that a fund's proxy voting record is readily available to interested fund shareholders, while allowing funds the flexibility to choose how to make this information available in the most effective and cost-efficient manner.

Some commenters recommended other specific modifications to our proposed disclosure requirements, which we are not adopting. Several of these commenters suggested that we require funds to provide additional disclosure with respect to situations where the fund's investment adviser has a conflict of interest, including, for example, disclosure of any business and financial relationship with the issuer and all fees received by the adviser or its affiliates from the issuer during a designated period of time.

We have determined not to require additional disclosure regarding conflict of interest situations at the present time. We believe that disclosure of a fund's complete voting record will enable shareholders to monitor how the fund voted in specific instances and whether the vote is in the shareholders' best interests. Further, requiring additional public disclosure with respect to conflicts of interest would significantly increase the complexity and cost of the proxy vote disclosure.

Several commenters argued that we should require a fund to provide its proxy vote disclosure in a uniform, web-accessible, downloadable format. Other commenters indicated that we should require a fund to disclose its proxy voting record on its Web site, if it has one. Commenters also suggested that we require funds to provide an executive summary of their votes, that might include, for example, the percentage of votes cast for and against management, sorted by the type of issue.

We have determined not to modify our proposals in order to add these requirements, in order to minimize the cost to funds and their shareholders of providing disclosure of fund proxy voting records. As adopted, our requirements will allow funds the flexibility to determine the best manner in which to make their proxy voting records available to shareholders. We continue to believe that our disclosure requirements strike an appropriate balance by ensuring that a fund's proxy voting record, as well as its policies and procedures, is readily available to interested fund shareholders without imposing undue costs. We would, however, encourage funds to use their Web sites and other available means to make their proxy voting records readily accessible to shareholders in a user-friendly format.

Other commenters, by contrast, requested that we limit the proposed disclosure regarding a fund's proxy voting record. For example, some commenters recommended that we require a fund to disclose information regarding only those proxy votes cast against management of the portfolio companies in which it invests, or where a conflict of interest exists.[51] In addition, one commenter suggested that we require only a summary of all proxy votes in the aggregate arranged according to issue.[52] We believe, however, that limiting disclosure of the proxy voting record to specific votes, or to a general summary of all votes, would significantly undercut the intent of our proposals, which is to enable fund shareholders to determine how a fund voted with respect to any particular proxy vote.

Disclosure of Proxy Votes That Are Inconsistent With Fund's Policies and Procedures

The Commission has determined not to adopt the proposed requirement that a fund disclose in its annual and semi-annual reports to shareholders proxy votes (or failures to vote) that are inconsistent with the fund's proxy voting policies and procedures.[53] Many commenters, including both those who generally supported the disclosure of funds' proxy voting records and those who generally opposed this disclosure, expressed concerns regarding the proposed requirements for disclosure of inconsistent votes. Proponents of proxy voting record disclosure argued that a requirement to disclose inconsistent votes might lead funds to draft overly broad policies and procedures to avoid triggering the required disclosure. Opponents of proxy voting record disclosure argued that the disclosure of inconsistent votes would be burdensome because it would require funds to analyze a large volume of proxy votes to determine whether any vote triggered the disclosure and then to provide a lengthy explanation to shareholders regarding each inconsistent vote, which would be expensive to prepare and not meaningful to investors. We find these arguments persuasive and have therefore determined not to adopt the requirement that funds disclose information regarding votes that are inconsistent with the fund's policies and procedures.

III. Effective Date and Compliance Date

The effective date of these amendments is April 14, 2003.

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[48] Instruction 2 to Item 13(f), Instruction 1 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N–1A; Instruction 2 to Item 18.16 and Instruction 6.b. to Item 23 of Form N–2; Instruction 2 to Item 20(o) and Instruction 6(ii) to Item 27(a) of Form N–3.

[49] Instruction 3 to Item 13(f), Instruction 2 to Item 22(b)(8), and Instruction to Item 22(c)(6) of Form N–1A; Instruction 3 to Item 18.16 and Instruction 6.c. to Item 23 of Form N–2; Instruction 3 to Item 20(o) and Instruction 6(iii) to Item 27(a) of Form N–3.

A fund could satisfy this requirement through hyperlinking to a third-party service or our EDGAR Web site. *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)]. We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking.

[50] *Cf.* Securities Act Release No. 8128 (Sept. 5, 2002) [67 FR 58480, 58493 (Sept. 16, 2002)] (construing the ''as soon as reasonably practicable'' standard to mean the same day as filing, barring unforeseen circumstances, with respect to the requirement that issuers disclose whether they make reports on Forms 10–K, 10–Q, and 8–K available on their Web sites as soon as reasonably practicable after filing of these reports with the Commission).

[51] *See* Letter of Peter C. Clapman, Senior Vice President and Chief Counsel, Teachers Insurance and Annuity Association of America/College Retirement and Equities Fund (Dec. 6, 2002) (recommending proxy vote disclosure in instances of potential conflict of interest); Letter of Leslie L. Ogg, President, Board Services Corporation (Nov. 22, 2002) (recommending disclosure when a fund votes against the recommendation of management and where a conflict of interest exists).

[52] Letter of Peter C. Clapman, Teachers Insurance and Annuity Association of America/College Retirement Equities Fund (Dec. 6, 2002).

[53] Proposed Items 22(b)(8) & (c)(6) of Form N–1A; Proposed Instructions 4.h. & 5.f. to Item 23 of Form N–2; Proposed Instructions 4(viii) & 5(vi) to Item 27(a) of Form N–3.

Registered management investment companies must file their first report on Form N–PX not later than August 31, 2004, for the twelve-month period beginning July 1, 2003, and ending June 30, 2004. Based on the comments, we believe that this will provide funds with sufficient time to make any necessary changes to existing software and internal systems in order to compile proxy voting information in the manner that will be required by new Form N–PX.

All initial registration statements on Form N–1A, N–2, or N–3, and all post-effective amendments that are annual updates to effective registration statements on these forms, filed on or after July 1, 2003, must include the disclosure required by Item 13(f) of Form N–1A, Item 18.16 of Form N–2, or Item 20(o) of Form N–3, as applicable, regarding the fund's proxy voting policies and procedures.[54] Every annual report by a closed-end fund on Form N–CSR filed on or after July 1, 2003, must include the disclosure required by Item 7 of Form N–CSR regarding the fund's proxy voting policies and procedures.

All initial registration statements on Form N–1A, N–2, or N–3, and all post-effective amendments that are annual updates to effective registration statements on these forms, filed on or after August 31, 2004, must include the disclosure required by Item 13(f) of Form N–1A, Item 18.16 of Form N–2, or Item 20(o) of Form N–3, as applicable, regarding the availability of the fund's proxy voting record. Every report to shareholders of a fund registered on Form N–1A, N–2, or N–3 that is transmitted to shareholders on or after August 31, 2004, must include the disclosure required by Item 22(b)(8) and 22(c)(6) of Form N–1A, Instructions 4.h. and 5.f. to Item 23 of Form N–2, or Instructions 4(viii) and 5(vi) to Item 27(a) of Form N–3, as applicable, regarding the availability of a fund's proxy voting record. Every report to shareholders of a fund registered on Form N–1A, N–2, or N–3 that is transmitted to shareholders on or after the effective date of an initial registration statement or post-effective amendment that is required to include a description of the fund's proxy voting policies and procedures (or, in the case of a closed-end fund, the filing date of its first annual report on Form N–CSR filed on or after July 1, 2003) must include the disclosure required by Item 22(b)(7) and 22(c)(5) of Form N–1A, Instructions 4.g. and 5.e. to Item 23 of Form N–2, or Instructions 4(vii) and 5(v) to Item 27(a) of Form N–3 regarding the availability of the fund's proxy voting policies and procedures.

[54] We would not object if existing funds file their first annual update complying with the amendments pursuant to rule 485(b) under the Securities Act [17 CFR 230.485(b)], provided that the post-effective amendment otherwise meets the conditions for immediate effectiveness under the rule.

IV. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') [44 U.S.C. 3501 *et seq.*], and the Commission has submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information that we have submitted are: (1) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; (2) ''Form N–2—Registration Statement of Closed-End Management Investment Companies''; (3) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; (4) ''Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies''; and (5) ''Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies.'' OMB approved the collections of information for the amendments to Forms N–1A, N–2, and N–3, and rule 30e–1. Because we have modified our proposals as described above, we are revising the burden estimate for Form N–CSR and rule 30e–1. We have submitted a revised collection of information for Form N–CSR to OMB, and have submitted the following additional collection of information to OMB: ''Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Companies.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and Section 5 of the Securities Act [15 U.S.C. 77e]. Form N–CSR (OMB Control No. 3235–0570) was adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29] and Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78m and 78o(d)]. Form N–PX is being adopted pursuant to Section 30 of the Investment Company Act [15 U.S.C. 80a–29]. Rule 30e–1 under the Investment Company Act (OMB Control No. 3235–0025) was adopted pursuant to Section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)].

As discussed above, the amendments will require that funds holding equity securities disclose the policies and procedures that they use to determine how to vote the proxies of their portfolio securities. The amendments also require funds to file with the Commission and to make available to their shareholders the specific proxy votes that they cast in shareholder meetings of issuers of portfolio securities. These changes are intended to enhance the transparency of fund proxy voting and will allow shareholders to monitor whether funds are voting portfolio securities in the best interests of shareholders.

Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release, and we received numerous comment letters concerning the proposed collection of information requirements, particularly with respect to the proposed requirement to disclose funds' actual proxy voting records. Many commenters, including in particular funds that currently provide disclosure of their proxy votes, indicated that the Commission's estimates of the burden of the proposed disclosure were reasonable, and that available technology and other resources would render record-keeping and reporting requirements relatively routine. Other commenters, including many other members of the fund industry, argued that the Commission's estimates substantially underestimated the burden of providing the proposed disclosure. Some of these commenters argued that the Commission's estimates omitted start-up and one-time transition costs for collecting proxy voting information and preparing it in the format that would be required by Form N–CSR.[55]

Several commenters provided specific estimates of the costs of providing the disclosure of their proxy vote records. However, these commenters generally did not provide any breakdown of the components of these estimates (*e.g.*, number of tasks required, persons

[55] *See, e.g.*, Letter of Craig Tyle, General Counsel, Investment Company Institute (Dec. 6, 2002) (''ICI Letter'').

required to perform each task, wage rates for each person). One fund group which opposed the requirement to disclose its proxy voting record prepared a sample disclosure in the format prescribed by the proposed amendment to Form N–CSR for one of its funds which cast proxy votes on 1,607 agenda items at 500 shareholder meetings during a six-month period.[56] The fund group estimated that the collection of votes from its information systems would take four hours, reformatting the data to the format of Form N–CSR would take eight hours, and reconfirming that each vote was cast in accordance with the fund's proxy voting policies would take at least another two hours. Another fund group which recently began to post its proxy voting guidelines and proxy voting records for two of its funds on its Web site estimated that this task took approximately two days.[57] These estimates are generally consistent with the estimate in the Proposing Release that the disclosure on Form N–CSR of a fund's proxy voting record would take 10 hours per semi-annual filing on Form N–CSR, at an annual cost of $1,379 per fund. By contrast, a fund industry trade group estimated, based on a survey of fund complexes conducted on its behalf by a third-party, that proxy voting record disclosure would cost approximately $3,380 per fund in start-up costs, and $5,530 per year in ongoing costs.[58]

We note that we have modified our proposal in two significant ways, in part in response to concerns expressed about costs by commenters. First, the amendments will require disclosure of proxy votes cast in annual reports on new Form N–PX, rather than semi-annually on Form N–CSR. Second, we are not adopting the proposed requirement that funds disclose in their annual and semi-annual reports to shareholders votes that were inconsistent with their proxy voting policies and procedures. Because of these modifications, we have revised our burden estimates for Form N–CSR and rule 30e–1. The burden estimate for disclosure of a fund's proxy voting record will be the burden estimated for new Form N–PX. These revisions to the burden estimates are described below.

Form N–1A

Form N–1A, including the amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–1A was 801 hours per portfolio, and the estimated hour burden for preparing post-effective amendments on Form N–1A was 99 hours per portfolio. The Commission estimates that, on an annual basis, 193 portfolios file initial registration statements on Form N–1A and 7,525 portfolios file post-effective amendments on Form N–1A. Thus, the total hour burden for the preparation and filing of Form N–1A, prior to the proposed amendments, was 899,568 hours.

We estimated in the Proposing Release that the amendments would increase the hour burden per portfolio per filing of an initial registration statement by 8 hours, to 809 hours per portfolio, and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours, to 101 hours per portfolio. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A is 916,162 hours.

Form N–2

Form N–2, including the amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–2 was 536.7 burden hours per filing, and the estimated annual hour burden for preparing post-effective amendments on Form N–2 was 101.7 hours per filing. The Commission estimates that, on an annual basis, 140 respondents file an initial registration statement on Form N–2 and 38 respondents file post-effective amendments on Form N–2. Thus, the total annual hour burden for the preparation and filing of Form N–2, prior to the proposed amendments, was 79,003 hours.

We estimated in the Proposing Release that the amendments would increase the hour burden per filing of an initial registration statement on Form N–2 by 8 hours, to 544.7 hours per filing, and would increase the hour burden per filing of a post-effective amendment to a registration statement on Form N–2 by 2 hours, to 103.7 hours per filing. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–2 is 80,198 hours.

Form N–3

Form N–3, including the amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

Prior to the proposed amendments, the estimated hour burden for preparing an initial registration statement on Form N–3 was 907.2 hours per portfolio, and the estimated hour burden for preparing post-effective amendments on Form N–1A was 148.4 hours per portfolio. The Commission estimates that, on an annual basis, no initial registration statements will be filed on Form N–3 and 60 post-effective amendments will be filed on Form N–3. The estimated average number of portfolios per filing is 4, bringing the estimated total number of portfolios in post-effective amendments to filings on Form N–3 annually to 240. Thus, the total hour burden for the preparation and filing of Form N–3, prior to the proposed amendments, was 35,616 hours.

We estimated in the Proposing Release that the amendments to Form N–3 would increase the hour burden per portfolio of an initial registration statement by 8 hours, to 915.2 hours per portfolio, and would increase the hour burden per portfolio of a post-effective amendment to a registration statement by 2 hours, to 150.4 hours per portfolio. Thus, the current total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–3 will be 36,096 hours.

Form N–CSR

Form N–CSR, including the amendments, contains collection of information requirements. The

[56] Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co. (Dec. 6, 2002).

[57] Letter of Timothy Smith, Senior Vice-President, Walden Asset Management (Nov. 20, 2002).

[58] ICI Letter, *supra* note 55, at 14–15.

respondents to this information collection will be closed-end management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–CSR is mandatory. Responses to the disclosure requirements are not confidential.

The current estimated total hour burden for preparation of Form N–CSR is 35,139 hours.[59] In the Proposing Release, we estimated that 3,700 registered investment companies would file Form N–CSR on a semi-annual basis for a total of 7,400 filings.[60] We estimated in the Proposing Release that the amendments to Form N–CSR would increase the hour burden per filing of each semi-annual report on Form N–CSR by 10 hours, or 74,000 hours total. However, we have modified our proposal to require funds to disclose their proxy voting record in reports on new Form N–PX on an annual basis, rather than in reports on Form N–CSR on a semi-annual basis. As proposed, however, we are requiring registered closed-end management investment companies to include in their annual reports on Form N–CSR a description of the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. We estimate that 663 closed-end management investment companies will file reports on Form N–CSR, and are revising our estimate of the increase in the hour burden resulting from the amendments to 2 hours per filing. We estimate that the total annual burden attributable to the disclosure of proxy voting policies and procedures for closed-end funds will be 1,326 hours. Thus, the new total annual hour burden for preparation and filing of Form N–CSR will be 36,465 hours.[61]

Shareholder Reports

Rule 30e–1, including the amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[62] Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not confidential.

There are approximately 3,700 funds subject to rule 30e–1. We estimated in the Proposing Release that the hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1, prior to the proposed amendments, was 202.5 hours per year, and that the amendments would increase the hour burden of complying with rule 30e–1 by 10 hours per fund per year for a total increase in burden hours of 37,000 hours. However, we have revised our proposed amendments to eliminate the proposed requirement that annual and semi-annual shareholder reports include disclosure of proxy votes that are inconsistent with the fund's proxy voting policies. Thus, we are revising our estimate of the increase in the hour burden of complying with rule 30e–1 attributable to the proposed amendments to 3,700 hours, rather than 37,000 hours, to reflect the elimination of this proposed disclosure requirement. The total hour burden of complying with rule 30e–1 will be 203.5 hours per year, for a total annual burden to the industry of 752,950 hours.[63]

Rule 30b1–4

The purpose of rule 30b1–4 is to improve the transparency of information about funds' proxy voting records. Rule 30b1–4 will require a fund to file Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. The respondents to rule 30b1–4 will be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5.

We estimate that there are approximately 3,700 funds that will be affected by the rule. Each of these 3,700 funds will be required by rule 30b1–4 to file complete proxy voting records with the Commission on Form N–PX. For purposes of this PRA analysis, the burden associated with the requirement of Rule 30b1–4 has been included in the collection of information required by Form N–PX, rather than the rule. Compliance with rule 30b1–4 is mandatory for every registered management investment company, other than a small business investment company registered with the Commission on Form N–5. Responses to the disclosure requirements are not confidential.

Form N–PX

Form N–PX contains collection of information requirements. The respondents to this information collection will be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5. Compliance with the disclosure requirements of Form N–PX is mandatory. Responses to the disclosure requirements are not confidential.

Every registered management investment company, other than a small business investment company registered with the Commission on Form N–5, will be required to file Form N–PX, containing its complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. We estimate that there are approximately 3,700 funds registered with the Commission, with 5,200 fund portfolios that hold equity securities that will be required to file Form N–PX.[64] We further estimate that for each of these funds the disclosure of its proxy voting record in filings on Form N–PX as of the end of each twelve-month period ended June 30 will require, on average, 14.4 hours per filing per equity portfolio, for a total annual

[59] *See* Investment Company Act Release No. 25914 (Jan. 27, 2003) (release adopting Form N–CSR).

[60] Investment Company Act Release No. 25739 (Sept. 20, 2002) [67 FR 60828 (Sept. 26, 2002)].

[61] The Commission has submitted additional collections of information to OMB for Form N–CSR in connection with Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)] (code of ethics and financial expert disclosure); Investment Company Act Release No. 25838 (Dec. 2, 2002) [67 FR 76780 (Dec. 13, 2002)] (auditor independence provisions of the Sarbanes-Oxley Act); Investment Company Act Release No. 25845 (Dec. 10, 2002) [67 FR 77593 (Dec. 18, 2002)] (revisions to rule 10b–18 under the Exchange Act); Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (shareholder reports and quarterly portfolio disclosure); and Investment Company Act Release No. 25885 (Jan. 8, 2003) [68 FR 2637 (Jan. 17, 2003)] (standards relating to listed company audit committees). These submissions are currently pending before OMB. If these submissions are approved, the approved total burden hours for Form N–CSR will be 195,472 hours. With the adjustment to reflect the modifications we are making here to our proposed amendments to Form N–CSR, the approved total burden hours for Form N–CSR would be 122,798 hours (195,472—(74,000—1,326)).

[62] Rule 30e–1(a) under the Investment Company Act of 1940 [17 CFR 270.30e–1(a)] requires funds to include in their shareholder reports the information that is required by the fund's registration statement form.

[63] We have submitted an additional collection of information to OMB in connection with Investment Company Act Release No. 25870 (Dec. 18, 2002) [68 FR 160 (Jan. 2, 2003)] (proposing amendments regarding shareholder reports and quarterly portfolio disclosure). This submission is currently pending before OMB. If the submission is approved, the approved total burden hours for complying with rule 30e–1 will be 926,350 hours. With the adjustment to reflect the modifications we are making here to our proposed amendments to Forms N–1A, N–2, and N–3, the approved total burden hours for complying with rule 30e–1 would be 893,050 hours (926,350 − (37,000 − 3,700)).

[64] The estimate of 3,700 funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 4,700 fund portfolios that invest primarily in equity securities and 500 ''hybrid'' or bond portfolios that may hold some equity securities, for a total of 5,200 portfolios holding equity securities.

burden of 74,880 hours (14.4 hours per filing × 5,200 equity portfolios).[65]

In the Proposing Release, we estimated that the hour burden imposed by the proposed amendments to Form N–CSR, including the requirement for a fund to disclose its proxy voting record on Form N–CSR, would increase the hour burden per filing of a Form N–CSR by 10 hours, or 74,000 hours total.[66] This total burden hour estimate is comparable to our estimate of 74,880 total burden hours for filing Form N–PX. However, our estimate of the hour burden per filing of Form N–PX differs from the estimated hour burden per filing of Form N–CSR, in part because Form N–PX will be filed annually rather than semi-annually, and in part because we are calculating the hour burden for Form N–PX by portfolio, rather than by fund.[67]

Request for Comments

We request comments on the accuracy of our estimates with respect to Form N–PX. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–36–02. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this Release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments we are adopting will require funds to provide disclosure about how they vote proxies of the portfolio securities they hold. A fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, and to include disclosure about the availability of the fund's proxy voting record. This disclosure will be included in the fund's Statement of Additional Information (''SAI'') (and on Form N–CSR also, in the case of a closed-end fund's policies and procedures), which is not part of the fund's prospectus but is delivered to investors free of charge upon request. We are also requiring a fund to file with the Commission an annual report on Form N–PX, containing the fund's complete proxy voting record for the twelve-month period ended June 30, by no later than August 31 of each year. Our amendments will also require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. In addition, a fund will be required to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

In the Proposing Release, we analyzed the costs and benefits of our proposals and requested comments and data regarding the costs and benefits of the proposed form amendments. These comments are summarized below.

A. Benefits

The amendments to the registration statement and reporting forms that we are adopting will benefit fund investors, by providing them with access to information about how funds vote their proxies.

First, the amendments will provide better information to investors who wish to determine:

- To which fund managers they should allocate their capital, and
- Whether their existing fund managers are adequately maximizing the value of their shares.

The investment adviser to a mutual fund is a fiduciary that owes the fund a duty of ''utmost good faith, and full and fair disclosure.'' [68] This fiduciary duty extends to all functions undertaken on the fund's behalf, including the voting of proxies relating to the fund's portfolio securities. An investment adviser voting proxies on behalf of a fund, therefore, must do so in a manner consistent with the best interests of the fund and its shareholders.[69] The increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties. Without disclosure about how the fund votes proxies, fund shareholders cannot evaluate this aspect of their managers' performance. To the extent that investors choose among funds based on their proxy voting policies and records, in addition to other factors such as expenses, performance, and investment policies, investors will be better able to select funds that suit their preferences. Further, insofar as investors may over-emphasize certain of these factors, *e.g.*, past performance, in selecting funds, it may be beneficial to provide additional

[65] The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

[66] Proposing Release, *supra* note 4, 67 FR at 60834.

[67] We believe it is more appropriate to estimate the burden of complying with Form N–PX by portfolio, rather than by fund, as we estimated the burden of complying with Form N–CSR in the Proposing Release. We note that many funds do not have portfolios that hold equity securities, while many funds have multiple equity portfolios. Funds with multiple equity portfolios would be required to report their proxy voting records for each portfolio holding equity securities.

[68] *SEC v. Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (interpreting Section 206 of the Investment Advisers Act of 1940). *Cf.* Section 36(b) of the Investment Company Act [15 U.S.C. 80a–35] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund).

[69] *See* Investment Advisers Act Release No. 2106, *supra* note 5. *See also* SEC, Staff Report on Corporate Accountability, *supra* note 10, at 391 (fiduciary principle applies to all aspects of investment management, including voting). *Cf.* Dep't of Labor, Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 29 CFR 2509.94–2 (2002) (fiduciary act of managing employee benefit plan assets consisting of equity securities includes voting of proxies appurtenant to those securities).

information to use in selecting funds. On a related point, we anticipate that over time, commercial third-party information providers will offer services that will enable investors to better analyze proxy voting by funds. These developments will further facilitate the benefits to fund investors from proxy vote disclosure.

Second, in some situations the interests of a fund's shareholders may conflict with those of its investment adviser with respect to proxy voting. This may occur, for example, when a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. In these situations, a fund's adviser may have an incentive to support management recommendations to further its business interests. The amendments require funds to disclose how they address such conflicts of interest in determining how to vote their proxies. This disclosure requirement may benefit fund shareholders by deterring voting decisions that are motivated by considerations of the interests of the fund's adviser rather than the interests of fund shareholders. Further, the increased transparency resulting from proxy voting disclosure may increase investors' confidence that their fund managers are voting proxies in accordance with their fiduciary duties.

A third significant benefit of the amendments comes from providing stronger incentives to fund managers to vote their proxies conscientiously. The amendments could increase the incentives for fund managers to vote their proxies carefully, and thereby improve corporate performance and enhance shareholder value. The improved corporate performance that could result from better decisionmaking in corporate governance matters may benefit fund investors. In addition, other equity holders may benefit from the improvement to corporate governance that results from more conscientious proxy voting by fund managers. We note that assets held in equity funds account for approximately 18% of the $11 trillion market capitalization of all publicly traded U.S. corporations, and therefore funds exercise a considerable amount of influence in proxy votes affecting the value of these corporations.[70]

The benefits to the economy that will result from improved corporate governance are difficult to measure. While measuring the effects of such a rule involves a high degree of uncertainty, the scale of the aggregate portfolio holdings involved suggests that they may be substantial.[71]

A number of commenters addressed the benefits of the proposals identified in the Proposing Release. Most commenters who addressed the costs and benefits of our proposals concurred with our assessment of the benefits of the proposed requirements to disclose the policies and procedures that funds use to determine how to vote proxies relating to securities held in their portfolios.

Our proposals to require disclosure of the actual votes cast by funds generated divergent views as to the possible benefits of this disclosure. Many commenters, including individual investors, labor unions, trustees of pension and retirement plans, and funds that currently make their proxy voting records available to their shareholders agreed with our assessment of the benefits of this disclosure, and argued that these benefits would be substantial. These commenters stated that investors would benefit from the increased transparency resulting from disclosure of proxy voting records, by allowing investors to consider a fund's proxy voting record when making an investment decision.[72] In addition, commenters argued that disclosure of proxy votes cast would have beneficial effects across the entire U.S. economy, by encouraging better decisionmaking in corporate governance matters, which would enhance shareholder value of the issuers of portfolio securities and, in turn, benefit both investors in the fund and other investors in these issuers.

Many other commenters, however, argued that the disclosure of proxy votes cast would not benefit fund investors. These commenters, who consisted primarily of funds, investment advisers, and members of boards of directors of funds, argued that the funds with which they are associated have received virtually no requests from their shareholders for proxy voting information.[73] They also argued that investors who care about proxy vote disclosure can decide to invest in those funds that choose to disclose their votes.

The arguments of these commenters do not address two important considerations, however. First, investors consider many factors besides proxy voting histories when choosing their investment managers. If other factors—for example, fund performance—are more important to them than proxy voting, competitive pressures alone may cause few funds to reveal their proxy votes. The fact that market pressure has not forced many funds to reveal their votes merely suggests that investors do not value transparency of proxy votes as much as they value other factors. That does not mean that investors do not value transparency of proxy votes. In addition, the availability of proxy voting information may increase shareholder interest in the future. Second, these arguments do not consider the external benefits that all fund investors may obtain if, as discussed above, disclosure increases the incentives for fund managers to vote their proxies more carefully, and thereby improve corporate performance and enhance shareholder value.

Commenters who objected to the proposed disclosure requirement also questioned whether disclosure of proxy voting records would benefit investors by discouraging voting motivated by conflicts of interest, and noted that the Proposing Release did not provide any evidence of any fund failing to vote its proxies in its shareholders' best interests due to a conflict of interest. However, as noted above, funds may have strong incentives to vote in a certain way when, for example, a fund's adviser also manages or seeks to manage the retirement plan assets of a company whose securities are held by the fund. It may be difficult to prove that a particular vote in such a situation was motivated by a conflict of interest, and therefore disclosure may be the most effective means of deterring these conflicts.

In addition, commenters objected to the argument that proxy voting disclosure would result in benefits to all investors by encouraging funds to be more engaged in corporate governance of issuers held in their portfolios. The commenters asserted that funds were already sufficiently engaged in corporate governance issues, and that requiring disclosure of proxy votes by funds, but not other institutional investors, would unfairly single out one class of investors and force them to bear the burdens of the Commission's broader objectives with respect to the improvement of corporate governance.[74]

We recognize that while the costs of the disclosure requirements will be borne by funds, the benefits of improved corporate governance resulting from the disclosure will accrue to all investors. We note, however, that investors in a fund may benefit from any improved

[70] *See* Flow of Funds Accounts, *supra* note 7.

[71] *Id.*

[72] *See, e.g.*, Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[73] *See, e.g.*, ICI Letter, *supra* note 55, at 9; Letter of Robert D. Neary, Chairman of the Board, Armada Funds, at 2 (Dec. 4, 2002); Letter of Domenick Pugliese, Senior Vice President, Alliance Capital Management L.P. (Dec. 5, 2002).

[74] *See, e.g.*, ICI Letter, *supra* note 55, at 12.

oversight of its portfolio companies resulting from more careful proxy voting by other funds. In addition, we note that some of the other positive effects resulting from the disclosure, such as allowing investors to better evaluate whether their fund managers are voting proxies in accordance with their fiduciary duties, are benefits to fund investors.

We also note that, as adopted, the disclosure required by the amendments will provide the same benefits to investors as the proposal. However, the modifications to the proposal will mitigate the costs of disclosure, for funds and fund investors, by requiring a fund to file its proxy voting record on Form N–PX annually, by allowing a fund flexibility in determining how to disclose its proxy voting record to shareholders, and by not requiring a fund to disclose votes that are inconsistent with its policies and procedures.

B. Costs

The amendments will lead to some additional costs for funds, which may be passed on to fund shareholders. As discussed below, the amendments require new disclosure by a fund regarding how it votes proxies relating to portfolio securities it holds, in its SAI (and in Form N–CSR for closed-end funds), in annual reports on new Form N–PX, and in the fund's annual and semi-annual reports to shareholders. The direct costs of this disclosure will include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for typesetting, printing, and mailing of the disclosure).

First, the amendments require disclosure of the fund's proxy voting policies and procedures, and disclosure about the availability of its proxy voting record, in the fund's SAI (and in the case of a closed-end fund, disclosure of its policies and procedures on Form N–CSR also).[75] Because the SAI is typically not typeset and is only provided to shareholders upon request, we estimate that the external costs per fund of this additional disclosure in the SAI will be minimal. Similarly, because the disclosure in Form N–CSR will only be required to be provided to shareholders upon request, we estimate that the external costs of this disclosure on Form N–CSR will be minimal as well. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements will add 19,596 hours to the burden of completing Forms N–1A, N–2, N–3, and N–CSR.[76] We estimate that this additional burden will equal total internal costs of $1,350,948 annually, or $365 per fund.[77]

Second, the amendments will require a fund to file with the Commission an annual report on new Form N–PX, containing the fund's complete proxy voting record for the twelve month period ended June 30, by no later than August 31 of each year, and to make available to its shareholders the information contained in Form N–PX. We estimate that because this information will be available on the Commission's Web site, and because we anticipate that many funds will choose to make this information available to their shareholders on or through their Web sites, the external costs to funds (for typesetting, printing, and mailing) of providing this disclosure to shareholders will be minimal. For purposes of the Paperwork Reduction Act, we estimate that funds will spend 74,880 hours to comply with Form N–PX, or 14.4 hours per equity fund portfolio filing on Form N–PX annually.[78] Further, we estimate that funds will file reports on Form N–PX for 5,200 portfolios holding equity securities.[79] Thus, we estimate that the burden of filing Form N–PX will equal $5,162,227 in total internal costs annually, or $992 per equity fund portfolio.[80] We had originally proposed to require a fund to file its complete proxy voting record as part of its semi-annual reports on Form N–CSR. However, we modified our proposal in response to one commenter who suggested that requiring disclosure on Form N–CSR would impose unnecessary costs and substantial administrative complexity for fund complexes that have funds with staggered fiscal year ends.

Third, with respect to reports to shareholders, funds will be required to include in their annual and semi-annual reports to shareholders disclosure about the availability of information regarding the fund's proxy voting policies and procedures, and the fund's proxy voting record. We estimate that to comply with these disclosure requirements, a typical fund will need to include at most one additional page in its annual and semi-annual reports to shareholders, at a typesetting cost of $55 per page and a printing cost of $0.025 per page.[81] We estimate that a typical fund may have, on average, 30,000 shareholder accounts;[82] therefore, the additional disclosure in shareholder reports will cost approximately $1,610 (($0.025 × 30,000 shareholder accounts, plus $55) × 2 reports per year) in external costs per fund. Based on the Commission's

[75] Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR. We are not requiring closed-end funds to provide disclosure about the availability of their proxy voting policies and records on Form N–CSR.

[76] This represents 16,594 additional hours for Form N–1A, 1,196 additional hours for Form N–2, 480 additional hours for Form N–3, and 1,326 additional hours for Form N–CSR. The estimated total hour burden for disclosure of proxy voting policies and procedures differs from the figure of 18,270 hours used in the Proposing Release, because here we are including the estimated hour burden for disclosure of policies and procedures by closed-end funds on Form N–CSR as well.

[77] These figures are based on a Commission estimate that approximately 3,700 management investment companies are subject to the amendments and an estimated hourly wage rate of $68.94. The estimate of the number of funds is based on data derived from the Commission's EDGAR filing system. The estimated wage rate figure is based on published hourly wage rates for compliance attorneys in New York City ($74.22) and programmers ($27.91), and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys and programmers will divide time equally on compliance with the proxy voting disclosure requirements, yielding a weighted wage rate of $51.065 (($74.22 × .50) + (27.91 × .50)) = $51.065). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $68.94 (51.065 × 1.35) = $68.94.

[78] The estimate of 14.4 hours per equity portfolio is based on the staff's consultations with funds that currently provide disclosure of their proxy voting records, and estimates that the average equity fund will cast votes at 144 shareholder meetings during a twelve-month reporting period, and will vote on three matters at each shareholder meeting, for a total of 432 matters voted on per year. The estimate of the number of shareholder meetings per equity fund is based on the staff's analysis of data on the average number of equities held per fund from the December 2002 edition of the *Morningstar Principia Pro* database. The estimate of the number of matters voted on at each shareholder meeting is based on information provided to the staff by a third-party provider of proxy voting services for funds and other institutional investors.

[79] This estimate is based on the staff's analysis of data from the Investment Company Institute and other sources indicating that there are approximately 4,700 fund portfolios that invest primarily in equity securities and 500 ''hybrid'' or bond portfolios that may hold some equity securities.

[80] These figures are based on the Commission's estimate that approximately 3,700 funds, with 5,200 portfolios holding equity securities, will report their proxy voting records on Form N–PX, an estimate of 14.4 hours per equity fund portfolio filing on Form N–PX, and an estimated hourly wage rate of $68.94. *See supra* note 77.

[81] This estimate is based on information provided to the Division of Investment Management by registered investment companies regarding printing and typesetting costs for prospectuses and SAIs.

[82] This estimate regarding the average number of shareholder accounts per typical fund is derived from data provided in the Mutual Fund Fact Book, *supra* note 9, at 63, 64.

estimate of 3,700 funds that are required to transmit annual and semi-annual reports to shareholders, we estimate these external costs will be $5,957,000 for the industry as a whole. In addition, we estimate for purposes of the Paperwork Reduction Act that these disclosure requirements will add 3,700 burden hours for funds required to transmit shareholder reports, or one hour per fund, equal to internal costs of $255,078 for the industry annually, or $69 per investment company.[83]

Therefore, based on this analysis, we estimate that the total external and internal direct costs of the additional disclosure required by the amendments will be $12,725,253.[84] Because the amendments may have the effect of inducing fund advisers and fund boards to devote more resources to articulating their proxy voting policies and procedures in more detail, and to monitoring proxy voting decisions, they may result in higher expenses and advisory fees for funds. Some or all of these expenses may be passed on to shareholders.

Numerous commenters responded to the Commission's request for comment on the potential costs of the proposed disclosure requirements, particularly with respect to the required disclosure of their complete proxy voting records in reports on Form N–CSR, and the proposed disclosure of inconsistent votes in annual and semi-annual reports to shareholders. A number of commenters, principally members of the fund industry, argued that the Commission's estimates substantially underestimated the direct costs of the proposed disclosure requirements. First, commenters argued that the estimates omitted any start-up or one-time transition costs, noting that fund groups would need to establish systems or make arrangements with outside vendors to capture the information on proxy votes cast.[85] Second, a commenter argued that while some fund groups rely on outside service providers to vote their proxies, and these service providers may provide proxy voting records in electronic form, many fund groups do not use such outside service providers, and hence may have higher costs to compile their proxy voting records in electronic form.[86] Third, commenters argued that the costs of preparing the voting record disclosure may be higher for funds with significant holdings in foreign securities, because foreign proxies typically contain more proposals than those of U.S. issuers, and certain required data, such as ticker symbols and sponsorship of proposals, is not readily available for meetings of foreign portfolio companies.[87] Fourth, some fund groups also stated that they would incur costs by having to hire and train shareholder servicing personnel in order to respond to requests from shareholders for the proxy voting records disclosed in Form N–CSR.

We continue to believe that our estimates of the direct costs imposed by the disclosure are reasonable. First, we note that our cost estimates, which were based in part on the costs of funds that currently disclose their proxy votes, incorporate start-up costs and one-time transition costs amortized over time. In addition, we believe that start-up costs should be limited in most cases, because most funds currently keep track of information regarding their proxy votes. Second, our cost estimates are derived both from funds that outsource the collection and disclosure of proxy voting information, and from funds that perform these tasks internally. We anticipate that funds will choose to provide the required proxy voting information in the most cost-efficient manner. Third, with respect to the argument that the costs incurred by funds with significant foreign holdings may be higher than estimated, we note that we have modified our proposal to include an instruction permitting a fund to omit exchange ticker symbols and CUSIP numbers if they are not available through reasonably practicable means.[88] Finally, with respect to the argument that funds would incur costs by having to hire and train personnel to respond to requests for their proxy voting records, we note that we have modified our proposals to allow funds to choose to provide their proxy voting records to shareholders through Web site disclosure or upon request, which should reduce the number of shareholder requests received by phone.

Other commenters argued that the estimates of direct costs in the Proposing Release were reasonable. Several fund groups which currently disclose proxy voting records on their Web sites as well as through hard copy stated that based on their experience the costs of the proposed disclosure requirements would be minimal.[89] These commenters argued that funds should already be keeping track of their proxy votes internally, so that providing the required disclosure should be a matter of converting existing data to new fields for web interface.[90] One commenter noted that the expense ratios of funds that disclose their proxy votes are not higher than those of funds in general.[91]

A few commenters, including supporters and opponents of the proposed requirement to disclose proxy voting records, provided specific estimates of the direct costs of providing this disclosure. One fund group which opposed the requirement to disclose its proxy voting record prepared a sample disclosure in the format prescribed by the proposed amendment to Form N–CSR, and estimated that the collection of votes from its information systems would take four hours, reformatting the data to the format of Form N–CSR would take eight hours, and that reconfirming that each vote was cast in accordance with the fund's proxy voting policies would take at least another two hours.[92] Another fund group which recently began to post its proxy voting guidelines and proxy voting records for two of its funds on its Web site estimated that this task took approximately two days.[93] These estimates are generally consistent with our estimate that proxy vote disclosure on Form N–PX will take 14.4 hours per equity portfolio per filing, at an annual cost of $992 per equity portfolio.[94] By

[83] These figures are based on a Commission estimate that approximately 3,700 investment companies will be subject to the amendments and an estimated hourly wage rate of $68.94. *See supra* note 77.

[84] The Commission has modified its estimate of the total external and internal costs of the additional disclosure required by the amendments from the estimate in the Proposing Release, to reflect that it is not adopting the proposal to require a fund to disclose in its annual and semi-annual reports to shareholders information regarding any proxy votes that are inconsistent with its proxy voting policies and procedures, and that it is requiring funds to disclose their proxy voting records annually on Form N–PX rather than semi-annually on Form N–CSR.

[85] *See, e.g.*, ICI Letter, *supra* note 55, at 14.

[86] ICI Letter, *supra* note 55, at 14–15.

[87] *See, e.g.*, Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 4 (Dec. 6, 2002).

[88] Instruction 2 to Item 1 of Form N–PX.

[89] *See, e.g.*, Letter of Amy Domini, CEO, Domini Social Investments LLC (Nov. 1, 2002); Letter of Thomas W. Grant, President, and Laurence A. Shadek, Chairman, Pax World Funds (Nov. 26, 2002); Letter of Timothy Smith, Senior Vice President, Walden Asset Management (Nov. 20, 2002).

[90] *See, e.g.*, Letter of Timothy H. Smith, President and Chair, Social Investment Forum (Nov. 11, 2002).

[91] *See, e.g.*, Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[92] Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 3 (Dec. 6, 2002).

[93] Letter of Timothy Smith, Senior Vice President, Walden Asset Management (Nov. 20, 2002).

[94] By comparison, a third-party service provider of proxy voting services to funds and other institutional investors indicated to the staff that for a basic vote disclosure Web site it charges a $3,000 setup fee, a $12,000 base fee for disclosure for the first fund in the complex, and $1,000 for additional

Continued

contrast, a fund industry trade group estimated, based on a survey of eight fund complexes conducted on its behalf by a third-party, that proxy voting record disclosure would cost approximately $3,380 per fund in start-up costs, and $5,530 per year in ongoing costs.[95]

We also note, as discussed above, that we have modified our proposals in three significant ways, in part in response to concerns expressed about costs by commenters. First, the amendments will require disclosure of proxy votes cast in annual reports on Form N–PX, rather than semi-annually on Form N–CSR. Second, we are not adopting the proposed requirement that funds disclose in their annual and semi-annual reports to shareholders votes that were inconsistent with their proxy voting policies and procedures. Third, rather than requiring funds to send their proxy voting records without charge and upon request, we are permitting them to choose to make their records available either upon request or by making available an electronic version on or through their Web sites.

The rules may also impose potential indirect costs on fund managers. Several commenters identified certain indirect costs that they argued were not addressed by the cost-benefit analysis in the Proposing Release. First, commenters argued that depriving funds of confidential voting would subject them to possible retaliatory actions by corporate management of the issuers of portfolio securities, such as restricting access by portfolio managers to corporate personnel.[96] These costs are difficult to quantify. Further, these commenters did not provide any evidence that this retaliatory action has occurred or might occur as a result of proxy vote disclosure. We also note that while it is possible that corporations could retaliate against fund managers if they knew that those fund managers had voted against them in the past, it is also possible that corporations could react by trying to work harder to develop cooperative relationships with fund managers. One additional advantage of the amendments is that they will permit fund managers to demonstrate credibly to management of a portfolio company that they have been willing to vote against the recommendations of corporate management in other cases.

Second, several commenters, including funds, claimed that required disclosure of proxy voting records would politicize the process of proxy voting and thereby impose costs on funds in order to address orchestrated campaigns in the media and elsewhere by special interest groups, which would detract from a fund's ability to concentrate on the management of its portfolio.[97] These commenters did not provide any estimates of the magnitude of these costs, however. Some commenters argued that proxy vote disclosure might lead to certain groups threatening to encourage their members and others to withdraw their investments from a fund complex unless the funds' adviser voted in a certain way.[98] To the extent that this possibility is real, and that fund managers may be pressured by large or influential shareholders to vote as directed, making voting policies and procedures available to investors will mitigate this influence to a large degree. Because of the disclosure requirements we are adopting, shareholders will be able to evaluate how closely fund managers follow their stated proxy voting policies, and to react adversely to fund managers who vote inconsistently with these policies.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[99] In addition, Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[100] The Commission has considered these factors.

The amendments requiring disclosure of funds' proxy voting policies and procedures and actual proxy voting records are intended to provide greater transparency for fund shareholders regarding the management of their investments in funds. The amendments may improve efficiency. The enhanced disclosure requirements will provide shareholders with greater access to information regarding the proxy voting policies and decisions of the funds in which they invest, which should promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The amendments may also improve competition, as enhanced disclosure may prompt funds to seek to differentiate themselves based on their proxy voting policies and practices. Finally, the effects of the amendments on capital formation are unclear. Although, as noted above, we believe that the amendments will benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify.

In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation, or, conversely, would impose a burden on competition. The Commission received several letters addressing the effect of the proposed amendments on efficiency, competition, and capital formation. A number of commenters expressed concern that the required disclosure, particularly the requirements that funds disclose their proxy votes cast and any votes that are inconsistent with their proxy voting policies, may have adverse effects on competition and capital formation among funds. Commenters argued that the amendments would disadvantage funds relative to other institutional investors such as banks and pension funds, because funds would be the only class of investors not allowed to vote confidentially. Further, the commenters argued, depriving funds of confidential voting would subject them to possible retaliatory actions by corporate management of the issuers of portfolio securities, such as restricting access by portfolio managers to corporate personnel. Commenters also argued that requiring funds to disclose their proxy votes would subject them to orchestrated campaigns in the media and elsewhere by special interest groups with social or political agendas different from those of fund shareholders, which would detract from a fund's ability to

funds after the first fund. Thus, a fund complex with 20 funds would pay $34,000 ($3,000 + $12,000 + (19 × $1,000)), or $1,700 per fund.

[95] ICI Letter, *supra* note 55, at 14–15.

[96] See, *e.g.*, Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002).

[97] *See, e.g.*, Letter of Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Co., at 6–7 (Dec. 6, 2002); Letter of Philip L. Kirstein, General Counsel, Merrill Lynch Investment Managers, L.P., at 7 (Dec. 6, 2002).

[98] *See, e.g.*, Jonathan S. Bowater, Paul S. Lowengrub, and James C. Miller III, *The SEC's Proposal to Require Mutual Funds to Publish Proxy Votes,* at 23, *attachment to* Letter of Craig Tyle, General Counsel, Investment Company Institute (Jan. 16, 2003).

[99] 15 U.S.C. 78w(a)(2).

[100] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

concentrate on the management of its portfolio and ultimately harm fund shareholders. Finally, commenters asserted that the proposed disclosure requirements would impose substantial costs on funds, which would be passed on to their shareholders.

Other commenters, however, argued that proxy voting disclosure would improve competition by allowing investors who wish to consider proxy voting policies and records when deciding between two funds to do so. According to one such commenter, mandating proxy voting disclosure would thereby allow proxy voting policies and records to be fully ''valued'' by the marketplace.[101] Many commenters also asserted that because funds hold a significant percentage of equity securities, requiring proxy vote disclosure by funds would improve corporate governance and accountability among issuers of portfolio securities, which would benefit investors broadly. With respect to the argument that disclosure would harm funds by ''politicizing'' the proxy voting process, one commenter argued that to the extent that this meant funds would come under market pressure for behavior that their investors disapprove of, this would be a positive, not a negative, result.[102]

As discussed in more detail in the Cost-Benefit Analysis above, we continue to believe that the proxy vote disclosure required by the amendments will provide several benefits to fund investors. The amendments will provide better information to investors to use in selecting funds, and in determining whether fund managers are adequately maximizing the value of their shares. The amendments may also deter votes motivated by conflicts of interest. In addition, the amendments may provide stronger incentives to fund managers to vote their proxies carefully, which could thereby improve corporate performance and enhance shareholder value. With respect to the commenters' argument that the amendments may disadvantage funds by depriving them of confidential voting, we note that there is no evidence that retaliatory action by portfolio company management has occurred or might occur as a result of proxy vote disclosure, and that it is possible that this disclosure will encourage corporations to work harder to develop cooperative relationships with fund managers. With respect to the argument that disclosure of a fund's proxy voting record may subject it to pressure from special interest groups to vote in a certain manner, we note that to the extent that this possibility is real, making voting policies and procedures available to investors will mitigate this influence to a large degree. With respect to the argument that the proposed disclosure requirements would impose substantial costs on funds, we have modified certain of our proposals to mitigate costs by requiring a fund to file its proxy voting record annually on new Form N–PX rather than semi-annually on Form N–CSR, by eliminating the requirement that a fund disclose its proxy votes (or failures to vote) that are inconsistent with its proxy voting policies and procedures, and by permitting a fund to choose to make available to its shareholders its record of how it voted proxies relating to portfolio securities on or through its Web site or upon request.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to require funds to provide disclosure about how they vote proxies of portfolio securities they hold. Under the amendments, a fund will be required to disclose in its registration statement the policies and procedures that it uses to determine how to vote the proxies of portfolio securities. The amendments also require a fund to file with the Commission on new Form N–PX, and to make available to its shareholders, on or through its Web site or upon request, its record of how it voted proxies relating to portfolio securities.

Specifically, a fund will be required to disclose in its statement of additional information (''SAI'') its policies and procedures used to determine how to vote proxies of the securities held in its portfolio, and to provide disclosure regarding the availability of its proxy voting record to shareholders.[103] The amendments also require a fund to file with the Commission, in an annual report on Form N–PX, its complete proxy voting record for the most recent twelve-month period ended June 30. The amendments require a fund to include in its annual and semi-annual reports to shareholders disclosure that the fund's proxy voting policies and procedures, are available (i) without charge, upon request from the fund, (ii) on the fund's Web site, if applicable, and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 in conjunction with the Proposing Release, which was made available to the public. The Proposing Release included the IRFA and solicited comments on it.

A. Reasons for, and Objectives of, Amendments

Proxy voting decisions may play an important role in maximizing the value of a fund's investments for its shareholders. Requiring funds to disclose specific proxy voting information could enable shareholders to make an informed assessment as to whether funds are utilizing proxy voting for the benefit of fund shareholders. We are adopting these amendments because we believe that requiring management investment companies to disclose their proxy policies and procedures as well as voting records will result in greater transparency for fund shareholders regarding the overall management of their investments. We also believe it is possible to achieve this improved disclosure efficiently at minimal cost because of recent advances in technology, such as the Internet.

B. Significant Issues Raised by Public Comment

No comments specifically addressed the IRFA. However, a few commenters asserted that the proposed amendments that would require disclosure of a fund's proxy voting record would have a negative impact on small entities.[104] These commenters noted that the loss of confidential voting that would result from the disclosure of proxy votes would raise the risk that portfolio company management might retaliate against a fund, and that this risk of retaliation would be disproportionately greater for small funds. One commenter

[101] Letter of Mercer Bullard, Fund Democracy, LLC (Oct. 21, 2002).

[102] Letter of Richard L. Trumka, Secretary-Treasurer, AFL–CIO, at 4 (Dec. 6, 2002).

[103] Because closed-end funds do not offer their shares continuously, and are therefore generally not required to maintain an updated SAI to meet their obligations under the Securities Act of 1933, they will be required to disclose their proxy voting policies and procedures in their annual reports on Form N–CSR.

[104] *See, e.g.*, Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002); ICI Letter, *supra* note 55, at 16.

argued that small funds should not be required to bear the burden and costs of providing proxy voting disclosure, when many much larger institutional investors, such as pension plans, insurance companies, common and collective trust funds, and hedge funds would not be required to do so.[105] On the other hand, an association of ''socially responsible'' funds commented that some smaller fund companies have been providing proxy voting disclosure for some time, with little cost to their investors.[106]

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[107] Approximately 205 out of 3700 investment companies that will be affected by this rule meet this definition.[108]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments require a fund to disclose in its SAI (and in Form N–CSR, in the case of a closed-end fund) the policies and procedures it uses to determine how to vote proxies for the securities held in its portfolio, and to provide disclosure in its SAI regarding the availability of its proxy voting record to shareholders. The amendments also require a fund to file with the Commission, on Form N–PX, its complete proxy voting record for its most recent twelve-month period ended June 30. Finally, the amendments require a fund to include in its annual and semi-annual reports to shareholders disclosure that a description of the policies and procedures that the fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the SEC Web site. The amendments also require a fund to state in its registration statement and reports to shareholders that its proxy voting record is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the fund's Web site at a specified Internet address; or both; and (ii) on the SEC Web site.

The Commission estimates some one-time formatting and ongoing costs and burdens that will be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing proxy voting policies and procedures to fund shareholders; filing proxy voting records with the Commission on Form N–PX; and disclosing voting records through Web site disclosure or upon request. These costs could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultations with a number of fund complexes, including smaller fund complexes, that many investment companies presently collect in-house or outsource the collection of proxy voting information on a basis at least as current as annually and, therefore, that the marginal cost increases for most funds will be minimal.

E. Agency Action To Minimize Effect on Small Entities

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency regarding a fund's proxy voting polices and procedures, as well as records of votes cast. Different disclosure requirements for small entities, such as reducing the level of proxy voting disclosure that small entities would have to provide shareholders, may create the risk that those shareholders would not receive sufficient information to make an informed evaluation as to whether the fund's board and its investment adviser are complying with their fiduciary duties to vote proxies of portfolio securities in the best interest of fund shareholders. We believe it is important for the proxy disclosure required by the amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the amendments for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

We note, however, that we have modified our proposals in response to comments, in part to reduce the regulatory burden on funds, including small funds. As adopted, our amendments will require a fund to provide disclosure of its proxy voting record annually on Form N–PX, rather than semi-annually. In addition, we are not adopting the proposed requirement that a fund's annual and semi-annual reports to shareholders include all votes that are inconsistent with the fund's proxy voting policies and procedures. Further, we are modifying our proposed requirement that a fund must send its proxy voting record without charge and upon request, by permitting a fund to make its proxy voting record available on or through its Web site instead.

VIII. Statutory Authority

The Commission is adopting amendments to Forms N–1A, N–2, N–3, and N–CSR pursuant to authority set forth in Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3], Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and Sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is adopting new rule 30b1–4 and new Form N–PX pursuant to authority set forth in Sections 8, 30, 31, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37].

List of Subjects

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

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

[105] Letter of Richard Mason, General Counsel, Mosaic Funds (Nov. 27, 2002).

[106] Letter of Timothy H. Smith, President and Chair, Social Investment Forum, at 3 (Nov. 11, 2002).

[107] 17 CFR 270.0–10.

[108] This estimate is based on figures compiled by the Commission's staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

2. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

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

3. The general authority citation for part 270 continues to read as follows:

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

* * * * *

4. Section 270.30b1–4 is added to read as follows:

§ 270.30b1–4 Report of proxy voting record.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), shall file an annual report on Form N–PX (§ 274.129 of this chapter) not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

5. The authority citation for Part 274 is amended by revising the sectional authority for § 274.128 to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

Section 274.128 is also issued under secs. 3(a), 202, 208, 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

6. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. In Item 13, adding paragraph (f); and

b. In Item 22, adding paragraphs (b)(7) and (8) and (c)(5) and (6).

These additions read as follows:

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

Form N–1A

* * * * *

Item 13. Management of the Fund

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(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 Web site at a specified Internet address; or both; and (2) on the Commission's Web site 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 Web site, 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 Web site 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 Web site 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 Web site.

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Item 22. Financial Statements

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(b) * * *

(7) A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 13(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(8) A statement that information regarding how the Fund 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 Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instructions.

1. 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.

2. If a Fund discloses that the Fund's proxy voting record is available on or through its Web site, 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 Web site 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 Web site 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 Web site.

(c) * * *

(5) A statement that a description of the policies and procedures that the Fund uses to determine how to vote proxies relating to portfolio securities is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at http://www.sec.gov.

Instruction. When a Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for a description of the policies and procedures that the Fund uses to determine how to vote proxies, the Fund (or financial intermediary) must send the information disclosed in response to Item 13(f) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(6) A statement that information regarding how the Fund 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 Fund's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site at *http://www.sec.gov.*

Instruction. Instructions 1 and 2 to Item 22(b)(8) also apply to this Item 22(c)(6).

* * * * *

7. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. In Item 18, adding paragraph 16;

b. In Item 23, removing ''and'' from the end of Instruction 4.e.;

c. In Item 23, removing the period from the end of Instruction 4.f. and in its place adding a semi-colon;

d. In Item 23, adding Instructions 4.g. and 4.h.;

e. In Item 23, removing ''and'' from the end of Instruction 5.c.;

f. In Item 23, removing the period from the end of Instruction 5.d. and in its place adding a semi-colon;

g. In Item 23, adding Instruction 5.e and 5.f.;

h. In Item 23, redesignating Instruction 6 as Instruction 7; and

i. In Item 23, adding new Instruction 6.

These additions read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–2

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Item 18. Management

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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 interests 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 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 (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (ii) on the Commission's Web site 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 Web site, 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 Web site 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 Web site 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 Web site.

* * * * *

Item 23. Financial Statements

* * * * *

Instructions:

* * * * *

4. * * *

g. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

h. a statement 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 Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

5. * * *

e. a statement that a description of the policies and procedures that the Registrant uses to determine how to vote

proxies relating to portfolio securities is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov;* and

f. a statement 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 Web site at a specified Internet address; or both; and (2) on the Commission's Web site at *http://www.sec.gov.*

6. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 7 of Form N–CSR within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

b. 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.

c. If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, 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 Web site 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 Web site 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 Web site.

* * * * *

8. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. In Item 20, adding paragraph (o);

b. In Item 27(a), removing ''and'' from the end of Instruction 4(v);

c. In Item 27(a), removing the period from the end of Instruction 4(vi) and in its place adding a semi-colon;

d. In Item 27(a), adding Instructions 4(vii) and 4(viii);

e. In Item 27(a), removing ''and'' from the end of Instruction 5(iii);

f. In Item 27(a), removing the period from the end of Instruction 5(iv) and in its place adding a semi-colon;

g. In Item 27(a), adding Instructions 5(v) and 5(vi);

h. In Item 27(a), redesignating Instruction 6 as Instruction 7; and

i. In Item 27(a), adding new Instruction 6.

These additions read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–3

* * * * *

Item 20. Management

* * * * *

(o) 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 Web site at a specified Internet address; or both; and (2) on the Commission's Web site 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 Web site, 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 Web site 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 Web site 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 Web site.

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions:

* * * * *

4. * * *

(vii) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(viii) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the

Registrant's Web site at a specified Internet address; or both; and (B) on the Commission's Web site at *http://www.sec.gov.*

5. * * *

(v) a statement that a description of the policies and procedures that the Registrant uses to determine how to vote proxies relating to portfolio securities is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (B) on the Registrant's Web site, if applicable; and (C) on the Commission's Web site at *http://www.sec.gov;* and

(vi) a statement that information regarding how the Registrant voted proxies relating to portfolio securities during the most recent 12-month period ended June 30 is available (A) without charge, upon request, by calling a specified toll-free (or collect) telephone number; or on or through the Registrant's Web site at a specified Internet address; or both; and (B) on the Commission's Web site at *http://www.sec.gov.*

6. (i) When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information disclosed in response to Item 20(o) of this Form, within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

(ii) 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.

(iii) If a Registrant discloses that the Registrant's proxy voting record is available on or through its Web site, 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 Web site 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 Web site 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 Web site.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

9. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by adding new Item 7 to read as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–CSR

* * * * *

Item 7. Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies

A closed-end management investment company that is filing an annual report on this Form N–CSR must, unless it invests exclusively in non-voting securities, describe the policies and procedures that it uses to determine how to vote proxies relating to portfolio securities, including the procedures that the company uses when a vote presents a conflict between the interests of its shareholders, on the one hand, and those of the company's investment adviser; principal underwriter; or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) and the rules thereunder) of the company, its investment adviser, or its principal underwriter, on the other. Include any policies and procedures of the company's investment adviser, or any other third party, that the company uses, or that are used on the company's behalf, to determine how to vote proxies relating to portfolio securities.

Instruction. A company 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.

* * * * *

10. Section 274.129 is added to read as follows:

§ 274.129 Form N–PX, annual report of proxy voting record of registered management investment company.

This form shall be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), for annual reports to be filed not later than August 31 of each year, containing the company's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and § 270.30b1–4 of this chapter.

11. Add Form N–PX (referenced in § 274.129) to read as follows:

Note: The text of Form N–PX will not appear in the *Code of Federal Regulations.*

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response:

United States Securities and Exchange Commission, Washington, DC 20549

Form N–PX—Annual Report of Proxy Voting Record of Registered Management Investment Company

Investment Company Act file number

_____

(Exact name of registrant as specified in charter)

(Address of principal executive offices) (Zip code)

(Name and address of agent for service)

Registrant's telephone number, including area code:

Date of fiscal year end:

Date of reporting period:

Form N–PX is to be used by a registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file reports with the Commission, not later than August 31 of each year, containing the registrant's proxy voting record for the most recent twelve-month period ended June 30, pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1–4 thereunder (17 CFR 270.30b1–4). The Commission may use the information provided on Form N–PX in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–PX, and the Commission will make this information public. A registrant is not

required to respond to the collection of information contained in Form N–PX unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

General Instructions

A. Rule as to Use of Form N–PX

Form N–PX is to be used for reports pursuant to Section 30 of the Investment Company Act of 1940 (the ''Act'') and Rule 30b1–4 under the Act (17 CFR 270.30b1–4) by all registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file their complete proxy voting record not later than August 31 of each year for the most recent twelve-month period ended June 30.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Act. The Commission does not furnish blank copies of this form to be filled in for filing.

2. These general instructions are not to be filed with the report.

D. Incorporation by Reference

No items of this Form shall be answered by incorporating any information by reference.

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–PX have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report filed with the Commission must be manually signed. Copies not manually signed must bear typed or printed signatures.

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Proxy Voting Record

Disclose the following information for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which the registrant was entitled to vote:

(a) The name of the issuer of the portfolio security;

(b) The exchange ticker symbol of the portfolio security;

(c) The Council on Uniform Securities Identification Procedures (''CUSIP'') number for the portfolio security;

(d) The shareholder meeting date;

(e) A brief identification of the matter voted on;

(f) Whether the matter was proposed by the issuer or by a security holder;

(g) Whether the registrant cast its vote on the matter;

(h) How the registrant cast its vote (*e.g.*, for or against proposal, or abstain; for or withhold regarding election of directors); and

(i) Whether the registrant cast its vote for or against management.

Instructions

1. In the case of a registrant that offers multiple series of shares, provide the information required by this Item separately for each series. The term ''series'' means shares offered by a registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with Rule 18f–2(a) under the Act (17 CFR 270.18f–2(a)).

2. The exchange ticker symbol or CUSIP number required by paragraph (b) or (c) of this Item may be omitted if it is not available through reasonably practicable means, *e.g.*, in the case of certain securities of foreign issuers.

Signatures

[See General Instruction F]

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his or her signature.

Dated: January 31, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–2951 Filed 2–6–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2106; File No. S7–38–02]

RIN 3235–AI65

Proxy Voting by Investment Advisers

AGENCY: Securities and Exchange Commission

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule and rule amendments under the Investment Advisers Act of 1940 that address an investment adviser's fiduciary obligation to its clients when the adviser has authority to vote their proxies. The new rule requires an investment adviser that exercises voting authority over client proxies to adopt policies and procedures reasonably designed to ensure that the adviser votes proxies in the best interests of clients, to disclose to clients information about those policies and procedures, and to disclose to clients how they may obtain information on how the adviser has voted their proxies. The rule amendments also require advisers to maintain certain records relating to proxy voting. The rule and rule amendments are designed to ensure that advisers vote proxies in the best interest of their clients and provide clients with information about how their proxies are voted.

DATES: *Effective Date:* March 10, 2003.