

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 249 and 274**

**[Release Nos. 34-63087; IC-29461]**

**TECHNICAL AMENDMENTS TO FORMS N-CSR AND N-SAR IN CONNECTION WITH THE COMPREHENSIVE IRAN SANCTIONS, ACCOUNTABILITY, AND DIVESTMENT ACT OF 2010**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Securities and Exchange Commission is adopting technical amendments to Forms N-CSR and N-SAR under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 in connection with amendments to Section 13(c) of the Investment Company Act that were included in the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.

**EFFECTIVE DATE:** October 19, 2010

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 551-6784, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5720.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (“Commission”) is adopting technical amendments to Form N-CSR<sup>1</sup> and Form N-SAR<sup>2</sup> under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> and the Investment Company Act of 1940 (“Investment Company Act”).<sup>4</sup>

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<sup>1</sup> 17 CFR 249.331 and 274.128.

<sup>2</sup> 17 CFR 249.330 and 274.101.

<sup>3</sup> 15 U.S.C. 78a et seq.

<sup>4</sup> 15 U.S.C. 80a-1 et seq.

## **I. Discussion**

On July 1, 2010, the President signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (“Iran Divestment Act”) into law.<sup>5</sup> Among other things, the Iran Divestment Act amended Section 13(c) of the Investment Company Act<sup>6</sup> to provide that no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser of the investment company, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, engage in certain investment activities in Iran.<sup>7</sup> Section 13(c)(2)(B) of the Investment Company Act provides that this limitation on actions does not apply to a registered investment company, or any of its employees, officers, directors, or investment advisers, unless the investment company makes disclosures about the divestments in accordance with regulations prescribed by the Commission.<sup>8</sup> To that end, the Iran Divestment Act requires that we issue, not later than 120 days after enactment, any revisions we determine to be necessary to the regulations requiring disclosure by each registered investment company that divests itself of securities in accordance with Section 13(c) of the Investment Company Act to include divestments of securities in accordance with the amendments added by the Iran Divestment Act.<sup>9</sup>

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<sup>5</sup> Pub. L. 111-195, 124 Stat. 1312 (2010).

<sup>6</sup> 15 U.S.C. 80a-13(c).

<sup>7</sup> Section 203(a) of the Iran Divestment Act [to be codified at 15 U.S.C. 80a-13(c)(1)(B)].

<sup>8</sup> 15 U.S.C. 80a-13(c)(2)(B).

<sup>9</sup> Section 203(b) of the Iran Divestment Act.

Under our current regulations, each registered investment company that divests itself of securities in accordance with Section 13(c) of the Investment Company Act is required to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Management investment companies are required to provide the disclosure on Form N-CSR, pursuant to Item 6(b) of the form, and unit investment trusts are required to provide the disclosure on Form N-SAR, pursuant to Item 133 of the form.<sup>10</sup> These form items were originally adopted to implement the Sudan Accountability and Divestment Act of 2007 (“Sudan Divestment Act”), which limits civil, criminal, and administrative actions that may be brought against a registered investment company that divests from securities of issuers that conduct or have direct investments in certain business operations in Sudan, provided that the investment company makes disclosures in accordance with regulations prescribed by the Commission.<sup>11</sup> As a result, each item contains a termination provision that is based on the termination of the relevant provisions of the Sudan Divestment Act. Moreover, the

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<sup>10</sup> Item 6(b) of Form N-CSR; Item 133 of Form N-SAR. The regulations require disclosure of information that will identify the securities divested and the magnitude of the divestment, including the issuer’s name; exchange ticker symbol; Committee on Uniform Securities Identification Procedures (“CUSIP”) number; total number of shares or, for debt securities, principal amount divested; and dates that the securities were divested. Item 6(b)(1)-(5) of Form N-CSR; Items 133.A-E of Form N-SAR. In addition, if the registered investment company continues to hold any securities of the divested issuer, it is required to disclose the exchange ticker symbol; CUSIP number; and total number of shares or, for debt securities, principal amount of such securities, held on the date of filing. Item 6(b)(6) of Form N-CSR; Item 133.F of Form N-SAR. While a registered investment company is not required to include disclosure under the relevant Item, the limitation on actions provided in Section 13(c) does not apply with respect to a divestment that is not disclosed. Instruction 1 to Item 6(b) of Form N-CSR; Instruction to Item 133 of Form N-SAR.

<sup>11</sup> Sudan Accountability and Divestment Act of 2007, Pub. L. 110-174, 121 Stat. 2516 (2007); Investment Company Act Release No. 28254 (Apr. 24, 2008) [73 FR 23328, 23328 (Apr. 30, 2008)] (adoption of Item 6(b) of Form N-CSR and Item 133 of Form N-SAR).

instructions to the items contain references to the Sudan Divestment Act. Specifically, Instruction 1 to Item 6(b) of Form N-CSR and the Instruction to Item 133 of Form N-SAR each include a statement that Section 13(c) of the Investment Company Act was added by the Sudan Divestment Act. In addition, the heading to the Instruction to Item 133 of Form N-SAR includes a reference to the Sudan Divestment Act.

The requirements of Item 6(b) of Form N-CSR and Item 133 of Form N-SAR apply to divestment of securities in accordance with Section 13(c) of the Investment Company Act. Therefore, we have determined that the items are broad enough to apply to disclosure of divestment of securities in accordance with the amendments to Section 13(c) added by the Iran Divestment Act without substantive revision. However, we have determined that it is appropriate to make technical revisions that remove the references to the Sudan Divestment Act from the forms and require disclosure of a Section 13(c) divestment to specify whether it is undertaken pursuant to the Sudan Divestment Act or the Iran Divestment Act.

Specifically, in accordance with the Iran Divestment Act, we are amending our forms to delete the references to the Sudan Divestment Act from Instruction 1 to Item 6(b) of Form N-CSR, the Instruction to Item 133 of Form N-SAR, and the heading to the Instruction to Item 133 of Form N-SAR. We are also amending the termination provisions in Item 6(b) of Form N-CSR and Item 133 of Form N-SAR to eliminate the references to termination of the Sudan Divestment Act and to provide, more generically, that the disclosure requirements terminate one year after the first date on which all statutory provisions that underlie Section 13(c) of the Investment Company Act (i.e., the provisions of both the Sudan Divestment Act and the Iran Divestment Act) have

terminated. Finally, we are amending Item 6(b) of Form N-CSR and Item 133 of Form N-SAR to require that any registrant that divests itself of securities in accordance with Section 13(c) of the Investment Company Act must disclose the name of the statute that added the provision of Section 13(c) in accordance with which the securities were divested (i.e., the “Sudan Accountability and Divestment Act” or the “Comprehensive Iran Sanctions, Accountability, and Divestment Act”).<sup>12</sup> We are adding this requirement so that it will be clear from the disclosure which provision of Section 13(c) is being relied upon in connection with the divestment.

## **II. Procedural and Other Matters**

Under the Administrative Procedure Act (“APA”), notice and public comment procedures are not required when an agency, for good cause, finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>13</sup> As discussed in this document, because no substantive revisions to our forms requiring Section 13(c) divestment disclosure are necessary to conform them to Section 203(b) of the Iran Divestment Act, the Commission believes that good cause exists to dispense with a public notice and comment period for these amendments. We have determined that only technical revisions to our forms are appropriate to make the existing forms consistent with the Iran Divestment Act. The technical amendments to Forms N-CSR and N-SAR remove references to the Sudan Divestment Act from Item 6(b) of Form N-CSR and Item 133 of Form N-SAR. The technical amendments also require that any registrant that divests itself of securities in accordance with Section 13(c) of the

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<sup>12</sup> Item 6(b)(7) of Form N-CSR; Item 133.G. of Form N-SAR.

<sup>13</sup> 5 U.S.C. 553(b)(B).

Investment Company Act must disclose the name of the statute under which the securities were divested. Because these revisions merely revise Item 6(b) of Form N-CSR and Item 133 of Form N-SAR to make them consistent with a newly enacted statute, Section 203 of the Iran Divestment Act, the Commission finds that the amendments are technical in nature and that publishing the amendments for comment is unnecessary.<sup>14</sup>

Publication of a substantive rule not less than 30 days before its effective date is required by the APA except as otherwise provided by the agency for good cause.<sup>15</sup> For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for making the technical amendments to each of the forms effective on the date of publication in the Federal Register.

The form amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>16</sup> The titles for the collections of information are “Form N-CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report,” and “Form N-SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies.” Form N-CSR (OMB Control No. 3235-0570) under the Exchange Act and the Investment Company Act is used by registered management

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<sup>14</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2) (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines”), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801.

The amendments do not require analysis under the Regulatory Flexibility Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking).

<sup>15</sup> 5 U.S.C. 553(d).

<sup>16</sup> 44 U.S.C 3501 et seq.

investment companies filing certified shareholder reports. Form N-SAR (OMB Control No. 3235-0330) under the Exchange Act and the Investment Company Act is used by registered investment companies to file periodic reports with the Commission. 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.

We do not believe that the technical amendments necessitate an increase in the current PRA burden estimates for Form N-CSR and Form N-SAR. When the forms were originally amended to implement the Sudan Divestment Act, we estimated that approximately 15% of all registered investment companies had an objective of investing internationally.<sup>17</sup> We also conservatively assumed that every investment company portfolio that had an international investment strategy would disclose a divestment in accordance with the Sudan Divestment Act on each semi-annual filing, for a total of approximately 1,000 such filings per year.<sup>18</sup> Since then, however, it appears that there have been less than ten total filings by investment companies disclosing a divestment in accordance with the Sudan Divestment Act.<sup>19</sup> Based on this experience, we do not believe that it is appropriate to adjust our existing estimate upwards to reflect additional filings for divestments in accordance with the Iran Divestment Act.

We also do not believe that the technical amendments necessitate a decrease in the current PRA burden estimates for Form N-CSR and Form N-SAR. Because we do not know the extent to which divestments in accordance with the Iran Divestment Act

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<sup>17</sup> Investment Company Act Release No. 28254, supra note 11, at 23330.

<sup>18</sup> See id. (6,743 annual and semi-annual filings on Form N-CSR x 15% of filings on Form N-CSR) + (90 filings on Form N-SAR x 15% of filings on Form N-SAR) = 1,025 filings.

<sup>19</sup> Based on the Commission staff's review of filings made with the Commission.

will occur, we believe that it is appropriate to maintain a conservative assumption that each Form N-CSR and N-SAR filing by an international portfolio will have a disclosure either with respect to the Sudan Divestment Act or the Iran Divestment Act. In addition, any decrease in the estimates would be insignificant relative to the total current PRA burden estimates for Form N-CSR and Form N-SAR because the estimated current PRA burden for the Section 13(c) disclosure is itself insignificant relative to the total burden estimates for these forms, i.e., 510 hours (out of a total burden of 138,662.5 hours, or 0.37%)<sup>20</sup> for Form N-CSR and 10 hours (out of a total burden of 107,213 hours, or 0.01%)<sup>21</sup> for Form N-SAR.

Section 23(a)(2) of the Exchange Act<sup>22</sup> 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. In addition, Section 3(f) of the Exchange Act<sup>23</sup> requires 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. Section 2(c) of the Investment Company Act<sup>24</sup> requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent

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<sup>20</sup> Investment Company Act Release No. 28254, supra note 11, at 23330.

<sup>21</sup> Id.

<sup>22</sup> 15 U.S.C. 78w(a)(2).

<sup>23</sup> 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 80a-2(c).



with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Because the amendments are technical in nature, we do not anticipate that any competitive advantages or disadvantages would be created. We do not expect that the amendments, as technical amendments, will have an effect on efficiency, competition, or capital formation. Moreover, the Commission is taking this action to make Forms N-CSR and N-SAR consistent with the Iran Divestment Act. Thus, any costs and benefits and other economic effects resulting from these amendments are mandated under the Act.

### **III. Statutory Authority**

The Commission is adopting amendments to Form N-SAR and Form N-CSR pursuant to authority set forth in Section 203(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and 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 8, 13(c), 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-13(c), 80a-24(a), 80a-29, and 80a-37].

#### **List of Subjects**

##### **17 CFR Part 249**

Reporting and recordkeeping requirements, Securities.

##### **17 CFR Part 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

#### **TEXT OF 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.

**PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

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

**Authority:** 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

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**PART 274 – FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

2. The authority citation for Part 274 continues to read in part 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.

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3. Form N-SAR (referenced in §§ 249.330 and 274.101) is amended by:

- a. In paragraph E. of Item 133, deleting the word “and”;
- b. In paragraph F. of Item 133, revising “filing.” to read “filing; and”;
- c. Adding new paragraph G. to Item 133;
- d. Revising the sentence immediately following new paragraph G. to

Item 133;

- e. In the heading to the Instruction to Item 133, deleting the phrase “in Accordance with the Sudan Accountability and Divestment Act of 2007”; and

f. In the first sentence of the Instruction to Item 133, deleting the phrase “, which was added by the Sudan Accountability and Divestment Act of 2007”.

The addition and revision read as follows:

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

**FORM N-SAR**

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133. \* \* \*

G. Name of the statute that added the provision of Section 13(c) in accordance with which the securities were divested.

This item 133 shall terminate one year after the first date on which all statutory provisions that underlie Section 13(c) of the Investment Company Act of 1940 have terminated.

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- 4. Form N-CSR (referenced in §§ 249.331 and 274.128) is amended by:
  - a. In paragraph (b)(5) of Item 6, deleting the word “and”;
  - b. In paragraph (b)(6) of Item 6, revising “filing.” to read “filing; and”;
  - c. Adding new paragraph (7) to Item 6(b);
  - d. Revising the sentence immediately following new paragraph (7) to Item 6(b); and
  - e. In Instruction 1 to paragraph (b) of Item 6, deleting the phrase “, which was added by the Sudan Accountability and Divestment Act of 2007”.

The addition and revision 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**

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**Item 6. Investments.**

(a) \* \* \*

(b) \* \* \*

(7) Name of the statute that added the provision of Section 13(c) in accordance with which the securities were divested.

This Item 6(b) shall terminate one year after the first date on which all statutory provisions that underlie Section 13(c) of the Investment Company Act of 1940 have terminated.

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By the Commission.

Elizabeth M. Murphy  
Secretary

October 13, 2010