

**REGISTERED FUNDS FACE NEW DISCLOSURE OBLIGATIONS UNDER
AMENDED SEC EXECUTIVE COMPENSATION DISCLOSURE RULES**

On December 16, 2009 the Securities and Exchange Commission finalized amendments to compensation-related disclosure rules that will impose new disclosure requirements on public companies, including registered investment companies.¹ Our client memo published on December 17, 2009 describes the amended rules in the context of public companies generally and provides a discussion of the new requirements under Regulation S-K.² This memo focuses on the effect of the amended rules on disclosure about directors and director nominees in proxy statements and registration statements of registered open- and closed-end funds.

The amended rules will be effective February 28, 2010, and the SEC staff has indicated that the rules are applicable to registered funds based on their fiscal year ends.³ For an existing registered fund (or a series of a registered fund) with a fiscal year end *on or after* December 20, 2009, the new disclosure requirements are applicable to: (1) any registration statement or post-effective amendment filed on or after February 28, 2010, (2) any proxy statement filed on or after February 28, and (3) any preliminary proxy statement for which the fund expects to file a definitive proxy statement on or after February 28. For an existing registered fund (or a series of a registered fund) with a fiscal year *before* December 20, 2009, the new disclosure requirements are applicable only to registration statements, post-effective amendments, and proxy statements (including preliminary proxy statements) filed after the end of the fund's 2010 fiscal year, even if filed on or after February 28, 2010, provided that any fund may voluntarily comply with the amended rules. A new fund that files a registration statement on or after December 20, 2009 must also comply with the new disclosure requirements if its registration statement is to be declared effective on or after February 28, 2010. As is clear from the SEC guidance, registered funds with fiscal year ends on or after December 20, 2009 and new funds filing on or after December 20 are faced with a short period in which to collect the relevant information and draft disclosure to address the new requirements.

The amended rules require that a registered fund's proxy statements, in addition to the currently required disclosures, include more detailed information about the qualifications and backgrounds of directors and director nominees to whom a proxy statement applies. Specifically, if disclosure about directors under Item 22 of Schedule 14A is required in a proxy statement, the disclosure must include the following:

¹ The SEC's adopting release relating to the final rules is available at <http://sec.gov/rules/final/2009/33-9089.pdf>.

² *SEC Finalizes Amendments to Executive Compensation Disclosure Rules* (Dec. 17, 2009), available at http://www.willkie.com/files/tbl_s29Publications%5CFileUpload5686%5C3166%5CSEC%20Finalizes%20Amendments%20To%20Executive%20Compensation%20Rules.pdf.

³ *Frequently Asked Questions About Proxy Disclosure Enhancements Transition for Registered Investment Companies* (Dec. 23, 2009), <http://sec.gov/divisions/investment/guidance/icproxydisclosuretransition.htm>.

1. A discussion of the “specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director” of the fund.⁴ The amended rule requires that this information be provided for at least the past five years as of the time of the filing and, if material, the disclosure should cover more than the past five years, including “information about the person’s particular areas of expertise or other relevant qualifications.”
2. An indication of any directorships held in any public company or any registered investment company during the past five years by a director or director nominee.
3. Disclosure relating to the extent of the fund board’s role in risk oversight, such as “how the board administers its oversight function and the effect that this has on the board’s leadership structure.” Investment risk, compliance, and valuation are specifically identified by the SEC in its adopting release as areas for which additional disclosure would improve investor understanding of the board’s role in the fund’s risk management practices.
4. A brief description of the leadership structure of the fund’s board, such as “whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions” and whether the chairman of the board is an interested person of the fund as defined in Section 2(a)(19) of the Investment Company Act of 1940. Furthermore, if one person serves as principal executive officer and chairman of the fund’s board, or if the chairman is an interested person, certain additional information must be provided, including:
 - o whether the fund has a lead independent director and the specific role played by a lead independent director; and
 - o a discussion of why the fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the fund.
5. Disclosure regarding whether, and if so how, diversity is considered by a fund board’s nominating committee in identifying nominees for director.
6. In addition to legal proceedings currently required to be disclosed, information about certain additional types of legal proceedings during the past ten years that are “material to an evaluation of the ability or integrity” of a director or director nominee including:
 - o any judicial or administrative proceedings based on violations of federal or state securities, commodities, banking, or insurance laws and regulations (or any settlement of such actions);
 - o any judicial or administrative proceedings relating to mail or wire fraud or fraud in connection with any business entity; and

⁴ This information must be provided for all directors, including those not up for reelection that year.

- o any disciplinary sanctions or orders imposed by a stock, commodities, or derivatives exchange or other self-regulatory organization.

The amended rules require that disclosure relating to all legal proceedings must be provided for the past *ten* years, extended from the currently required period of five years.

The amended rules add disclosure obligations identical in substance to those described in the first four items above for a registered fund's registration statement by amending Forms N-1A, N-2, and N-3⁵ to require these disclosures in a fund's statement of additional information.

As mentioned above, the amended rules will be effective February 28, 2010 and will first apply to proxy statements and registration statements of registered funds with fiscal year ends on or after December 20, 2009 and new funds filing registration statements on or after that date. Given the short implementation period and the importance of director disclosure in proxy statements and registration statements, fund boards and their advisers are encouraged to be proactive in revising existing questionnaires or otherwise developing procedures to collect the appropriate information. We will provide updates to the extent additional guidance becomes available from the SEC or the SEC staff.

* * * * *

If you have any questions concerning the foregoing or would like additional information, please contact Rose F. DiMartino (212-728-8215, rdimartino@willkie.com), Daniel Schloendorn (212-728-8265, dschloendorn@willkie.com), James G. Silk (202-303-1275, jsilk@willkie.com), Jai Massari (202-303-1133, jmassari@willkie.com), or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, D.C. 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, D.C. telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

February 18, 2010

Copyright © 2010 by Willkie Farr & Gallagher LLP.

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information. Under New York's Code of Professional Responsibility, this material may constitute attorney advertising. Prior results do not guarantee a similar outcome.

⁵ Form N-1A is used by open-end investment companies, Form N-2 is used by closed-end investment companies, and Form N-3 is used by registered separate accounts of insurance companies.