SEC ISSUES FINAL RULES ON CERTIFICATION OF INVESTMENT COMPANY SHAREHOLDER REPORTS AND DISCLOSURE OF CODES OF ETHICS AND AUDIT COMMITTEE FINANCIAL EXPERTS

The Securities and Exchange Commission (the "SEC") has adopted rule and form amendments that require mutual funds and other registered management investment companies to file shareholder reports on Form N-CSR and require each investment company's principal executive and financial officers to certify the information contained in these reports in the manner specified by Section 302[1] of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"). In addition, mutual funds and other registered management investment companies will now be required to include new disclosures on Form N-CSAR in order to implement the "code of ethics" and "financial expert" disclosure requirements of Sections 406 and 407 of the Sarbanes-Oxley Act.

The amendments become effective on March 1, 2003, except that the effective date of the removal of the certification requirement from Form N-SAR is May 1, 2003. The text of the adopting release is available at *http://www.sec.gov/rules/final/34-47262.htm*.

Certified Shareholder Reports on Form N-CSR

Form N-SAR currently is the form designated for registered investment companies to comply with their reporting requirements under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). Rule 30a-2 under the Investment Company Act of 1940 (the "Investment Company Act") requires a registered investment company that files a Form N-SAR to include the certification specified by Section 302 of the Sarbanes-Oxley Act.

The SEC has now adopted an amendment to Rule 30b2-1 under the Investment Company Act, which requires each registered management investment company, regardless of whether they are subject to Section 13(a) or 15(d) of the Exchange Act, to file a report with the SEC on new Form N-CSR ("certified shareholder report") containing

- a copy of any required shareholder report,
- additional information regarding disclosure controls and procedures, and
- the certification required by the Sarbanes-Oxley Act.

The certification must cover all the information filed on Form N-CSR, including all of the information in the shareholder report such as the president's or portfolio manager's letter discussing fund performance. As is the current practice with N-SARs, the certification must be made by each principal

[1] Section 302 of the Sarbanes-Oxley Act, entitled "Corporate Responsibility for Financial Reports," required the SEC to adopt final rules under which the principal executive officer and the principal financial officer, or persons performing similar functions, of an issuer each must certify the information contained in the issuer's quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended.

executive officer, and financial officer, and the report itself must be signed on behalf of the registrant by those officers.

Reports on Form N-CSR will be designated as periodic reports filed with the SEC under Section 13(a) or 15(d) of the Exchange Act, and registrants will no longer be required to provide certifications for Form N-SARs. Form N-CSR is not required with respect to a report to shareholders that is not required under Rule 30e-1 under the Investment Company Act (*e.g.,* voluntary quarterly reports).

Disclosure Controls and Procedures

Under the newly-adopted Rule 30a-3, all registered management investment companies must maintain controls and procedures designed to ensure that the information required in filings on Form N-CSR is recorded, processed, summarized and reported on a timely basis. The Rule also requires a registered management investment company, under the supervision and with the participation of its principal executive and financial officers, to conduct an evaluation of its disclosure controls and procedures within the 90-day period prior to the filing date of each Form N-CSR requiring certification under the Investment Company Act.

Code of Ethics Disclosure

The SEC also adopted amendments requiring each registered management investment company to disclose in its annual report on Form N-CSR whether the investment company has adopted a code of ethics for its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. The code requirement applies to these individuals whether they are employed by the investment company or a third party. If an investment company has not adopted a code of ethics, it must disclose the reasons why not. The new code of ethics is in addition to that currently required by Rule 17j-1 under the Investment Company Act, which addresses transactions in a fund's portfolio securities.

"Code of ethics" is defined as written standards that are reasonably designed to deter wrongdoing and to promote:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in reports and documents that a registrant files with, or submits to, the SEC and in other public communications made by the registrant;
- compliance with applicable governmental laws, rules and regulations;
- the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and
- accountability for adherence to the code.

While a fund's code of ethics must address each of these standards, the SEC has not mandated any specific language or procedures or the types of sanctions that funds should impose for code of ethics

violations. In the adopting release, the SEC encouraged funds to adopt codes that are broader and more comprehensive than what is required.

Funds must make their codes public, using one of the following means:

- filing a copy of its code of ethics as an exhibit to its annual report on Form N-CSR;
- posting the text of the code of ethics on its website and disclosing, in its most recent report on Form N-CSR, its website address and the fact that it has posted its code of ethics on its website; or
- undertaking in its most recent report on Form N-CSR to provide without charge upon request a copy of the code of ethics and explaining the manner in which such request may be made.

Funds are required to disclose the nature of any amendment to the code of ethics that applies to the officers required to be subject to the code of ethics, and the nature of any waiver from a provision of the code of ethics for any of these officers. Both explicit and implicit waivers must be described, naming the person to whom the waiver was granted.

Amendments or waivers can be disclosed either in the annual Form N-CSR or on a fund's website. If the latter, disclosure must be made within five business days following the date of the amendment or waiver. The option of disclosing on a website is only available if the fund has disclosed in its most recently filed report on Form N-CSR its internet address and intention to provide disclosure in this manner. If the fund elects to disclose amendments and waivers on its website, that information must remain available on the website for at least a 12-month period. After that, the fund must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred.

Audit Committee Financial Expert Disclosure

The SEC adopted proposals requiring registered management investment companies to disclose in an annual report on Form N-CSR that its board of directors has determined that the company either:

- has at least one "audit committee financial expert" serving on its audit committee and if so, the name of the expert and whether the expert is "independent"; or
- does not have an "audit committee financial expert" serving on its audit committee; and an explanation as to why it does not have such an expert.

In order to be considered "independent," a member of an audit committee may not be an "interested person" of the fund and may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee accept, directly or indirectly, any consulting, advisory or other compensation from the fund. More than one audit committee financial expert can be identified, at the option of the fund's governing Board.

An "audit committee financial expert" is defined as a person who has all of the following attributes:

- an understanding of generally accepted accounting principles and financial statements;

- the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

- experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the fund's financial statements, or experience actively supervising one or more persons engaged in such activities;

- an understanding of internal controls and procedures for financial reporting; and

- an understanding of audit committee functions.

A person must have acquired these attributes through one or more of the following means:

- education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

- experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

- experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

- other relevant experience.[2]

Responding to concerns that designation as an audit committee financial expert could expose the director to additional liability, the Form N-CSR states that an audit committee financial expert will not be deemed an "expert" for any purpose, including for purposes of Section 11 of the Securities Act of 1933, and does not have expanded duties, obligations or liability as a result of the designation. As a corollary, the duties, obligations and liability of any other audit committee or Board member are not altered by the designation of one or more audit committee financial experts.

Transition Provisions and Compliance Dates

- A registered management investment company that has a fiscal annual or semi-annual period ending on or before March 31, 2003 may choose either to file Form N-CSR or to continue to comply with the certification requirements of Form N-SAR. A registered management investment company that has a fiscal annual or semi-annual period ending on or after April 1, 2003 is required to file Form N-CSR for that period.

[2] If a person qualifies as an audit committee financial expert by virtue of possessing "other relevant experience," the fund's disclosure must briefly list that person's experience.

- The audit committee financial expert and code of ethics disclosure requirements will apply beginning with annual reports for fiscal years ending on or after July 15, 2003.

- Disclosure of amendments to, and waivers from, codes of ethics are required on or after the filing date of the first annul report that includes disclosure about a company's code of ethics.

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If you wish to obtain additional information regarding the amendments, please contact Burton M. Leibert (212-728-8238, *bleibert@willkie.com*); Daniel Schloendorn (212-728-8265, *dschloendorn@willkie.com)*; or Rose F. DiMartino (212-728-8215, *rdimartino@willkie.com)*.

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